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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JERRY HOLLENDORFER,

Petitioner,

v.

CALIFORNIA HORSE RACING BOARD,

Respondent.

CASE NO. 37-2020-00016369-CU-WM-CTL

**VERIFIED PETITION
FOR WRIT OF MANDATE AND DAMAGES**

1. PETITION FOR WRIT OF MANDATE
AND DAMAGES (*Code of Civil
Procedure, §§1085 and 1095*)
2. PETITION FOR WRIT OF MANDATE
AND DAMAGES (*Code of Civil
Procedure, §§1094.5 and 1095*)
3. STATUTORY VIOLATION (*Government
Code, §815.6*)

Petitioner, Jerry Hollendorfer, by way of this Petition for Writ of Mandate and Damages,
through his attorney of record, based on information and belief, alleges as follows:

THE PARTIES

1. PETITIONER, **Jerry Hollendorfer** (hereinafter "Petitioner" or "Hollendorfer"), at all
times mentioned herein, was and is an individual residing in the City of Point Richmond, County of
Alameda, State of California.

2. RESPONDENT, **California Horse Racing Board** (hereinafter "CHRB") is, and at all

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CLERK OF THE SUPERIOR COURT
2020 MAY 28 PM 1:15
By: J. Tellez Deputy CA
SAN DIEGO COUNTY

BY FAX

1 times herein mentioned was, an agency of the State of California and a department of the Business,
2 Consumer Services and Housing Agency, which conducts business throughout the State including, but
3 not limited to, within the City of Del Mar, County of San Diego.

4 JURISDICTION

5 3. The Court has jurisdiction over this matter pursuant to *Article VI §10* of the *California*
6 *Constitution* and *Code of Civil Procedure §§410.10, 410.50, 1085, and 1094.5*.

7 VENUE

8 4. Actions alleged herein relate both to activities pertaining to, occurring at, or involving
9 the operation of Thoroughbred race meetings conducted at the Del Mar Fairgrounds and Racetrack,
10 located within the City of Del Mar, County of San Diego, and elsewhere.

11 5. Pursuant to *Code of Civil Procedure §§393, 394, and 395*, venue is also proper in the
12 County as the Office of the Attorney General has an office in this judicial district.

13 RELATED CASE

14 6. A case now pending before this court is related.

15 7. That matter, entitled *Hollendorfer v. Del Mar Thoroughbred Club*, Case No. 37-2019-
16 00036284-CU-BC-CTL, is assigned to Department C-65, involves the same individual (Petitioner) as
17 Plaintiff therein, and arises from the same or substantially identical transactions, incidents, and/or
18 events, requiring resolution of the same or substantially the same questions of law and/or fact.

19 8. Petitioner believes the progress and outcome of the related case – and others pending in
20 Alameda and Los Angeles Counties – are reliant on determinations of certain issues in this matter.

21 9. Intervening events, controlled by others, made necessary Petitioner's initiation of this
22 action now, so as to legally and expeditiously continue pursuit of the related matters, and thus ensure
23 Petitioner's administrative rights and remedies have been effectively addressed and exhausted.

24 STANDING

25 10. By act of the California Legislature, Respondent has "all powers necessary and proper
26 to enable it" to license and regulate "all persons, other than the public at large, who participate in a
27 horse racing meeting," pursuant to *Business & Professions Code §19440(a)(4)*.

28 11. Petitioner is a Thoroughbred trainer who for over 40 years has held occupational

1 licenses granted by Respondent, as a trainer and owner, pursuant to *CHRB Rules 1481 (Occupational*
2 *Licenses and Fees)* and *1491 (Examinations)*.

3 12. Petitioner's licenses are, and at all relevant times were, current.

4 13. Petitioner has never been suspended by Respondent, in either licensed capacity, for any
5 violation of *CHRB Rules*, regulation, or "*Horse Racing Law*" (*Business & Professions Code §19400*
6 *et. seq.*).

7 14. Petitioner has also been informed by the CHRB that there were/are no regulatory nor
8 other administrative hearings or matters pending nor threatened against him, and was/is therefore, and
9 has at all relevant times been, considered by Respondent to be a licensee in good standing.

10 15. In the context of horse racing, the United States Supreme Court has determined that no
11 state agency may take any action against a licensee – directly or indirectly – which deprives that
12 licensee of any property or personal interest without first affording that licensee due process and equal
13 protection under the Constitution. *Barry v. Barchi*, 443 U.S. 55 (1979).

14 16. In California, the State's Supreme Court has determined that no state agency may
15 interfere – directly or indirectly – with an individual's vested fundamental rights to practice his or her
16 profession without similar constitutional protections. *Bixby v. Pierno*, 4 Cal.3d 130 (1971).

17 17. *Business & Professions Code §19613* recognizes and authorizes the California
18 Thoroughbred Trainers ("CTT") to act as the official organization representing the interests of
19 licensed Thoroughbred trainers in the State of California.

20 18. Pursuant to *CHRB Rule 2044 (Agreements to Be Filed)*, since 1995 Respondent has
21 required every licensed Thoroughbred racing association to enter into a Race Meet Agreement
22 ("RMA") with the official organization representing the interests of licensed Thoroughbred trainers
23 prior to the start of each such race meet.

24 19. CTT is thus both charged with statutory and regulatory duties to negotiate, among other
25 matters, the terms and conditions under which individual licensed Thoroughbred trainers participate in
26 licensed race meets.

27 20. At all relevant times RMAs existed between CTT and the relevant Thoroughbred racing
28 associations.

1 21. By virtue of his status as a licensed Thoroughbred trainer in good standing, Petitioner
2 is, and was at all relevant times, a member of CTT.

3 22. Petitioner is informed and understands that CTT considers, and considered at all
4 relevant times, him to be a member in good standing.

5 23. Petitioner is informed and understands that, at all relevant times, CTT considered
6 Hollendorfer's grievances and claims against the relevant racing associations to appear to and/or to
7 have merit.

8 24. Respondent is constitutionally charged with implementing and enforcing the law
9 equally within its statutory authority and jurisdiction.

10 25. When a licensed trainer who seeks to exercise his occupational rights and privileges
11 under his license is excluded from and/or denied the opportunity to do so by a licensed racing
12 association, particularly without Fair Procedure or due process, the jurisdiction of CHRB is
13 necessarily and unavoidably invoked.

14 26. Petitioner seeks judicial relief because, despite his possession of a valid license and
15 subsequent denial of occupational rights and privileges, and substantial economic interests, the CHRB
16 has wrongfully refused to act in conformity with the law, and has thus further deprived Petitioner of
17 his vested fundamental rights – the ability to pursue his licensed occupation and livelihood – without
18 due process and/or equal protection under the law.

19 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

20 **A. EXCLUSIONARY ACTS AND 'BANS' BY LICENSED RACING ASSOCIATIONS**

21 27. Hollendorfer is a 73-year-old, Hall of Fame Thoroughbred trainer, ranked third all-time
22 in the sport in terms of the number of winners saddled, and both the leading trainer and owner of all
23 time in California, based on the number of Thoroughbred race wins.

24 28. For over 40 years – as a result of his more than 33,000 starters and 7,600+ winners –
25 the licensed California racing associations identified herein below have continuously recruited and
26 encouraged Hollendorfer's participation in their annual race meets, and have provided him access to
27 all areas of their facilities necessary to engage in his licensed occupation; i.e., to train, saddle, observe,
28 and race Thoroughbreds at those race meets.

1 29. During the 2018-2019 winter and spring race meets conducted at Santa Anita Park
2 Racecourse ("Santa Anita"), 31 horses suffered catastrophic breakdowns.

3 30. Beginning in February of that year, repeated calls to suspend racing at Santa Anita were
4 made by the CHRB, elected officials – including Governor Gavin Newsom, U.S. Senator Diane
5 Feinstein, and others – local and national media, participating horsemen, the founder of TSG, and
6 concerned members of the general public.

7 31. As the number of horse deaths continued to mount at Santa Anita, countless additional
8 news articles and media reports about the deaths were published.

9 32. Identified by many, including CHRB Board members, as possible causes for the deaths
10 were: the unusually wet winter and its impact on the track surface; last minute changes in track
11 maintenance supervisory personnel; the general changing conditions of Santa Anita's surfaces;
12 pressure by track managers on trainers and owners to enter their horses as often as possible; general
13 concerns regarding increased incidents of race horse deaths in the United States; and the use of
14 prohibited substances.

15 33. Though he had suffered none at the same track during all race meets conducted there
16 the prior year. Petitioner had the misfortune of losing 4 horses at Santa Anita's during its disastrous
17 2018-2019 season.

18 34. Up to the time of their deaths, each of Petitioner's four horses had been active and
19 training well, with the last two having been specifically approved to race and train by Santa Anita's
20 own veterinarians and the so-called "CHRB Blue Ribbon Review Committee."

21 35. None of the four had received joint injections, nor had they received non-steroidal
22 treatments as part of their normal training/work regimen. Petitioner did/does not work/train his horses
23 on "Bute" (Phenylbutazone), an analgesic and anti-inflammatory medication commonly used for the
24 treatment of lameness, which belongs to a group of medications known as "non-steroidal anti-
25 inflammatory drugs" ("NSAIDS").

26 36. Despite those 4 losses, the CHRB confirmed on February 3, 2020 -- in its 49th Annual
27 Report -- that Hollendorfer's personal fatality rate during the relevant time frame (July 1, 2018 through
28 June 30, 2019) was 14% lower than the average for trainers in the State.

1 37. Similarly, Necropsy Reports prepared for the CHRB by the Veterinary Medicine
2 Laboratory at the University of California, Davis did not identify nor find any of the four deaths to
3 have been caused directly by a training practice or action on the part of the Petitioner.

4 38. Petitioner is informed and believes that, based on records publicly available via
5 Respondent's website, including but not limited to its Annual Reports and "Vet's List," since the
6 CHRB began the practice of voiding claims, Petitioner's rate of voided claims is less than the average
7 rate of voided claims in the State for all Thoroughbred claiming races.

8 39. At no point has the CHRB nor any of the racing associations specifically referenced
9 herein asserted, identified, nor put forward any evidence that Petitioner violated any CHRB or 'house'
10 rules or safety procedures, or that his training practices directly caused any of the equine fatalities he
11 experienced at Santa Anita.

12 40. In fact, with specific regard to the fatalities that occurred during Santa Anita's 2018-
13 2019 winter and spring meets, the current CEO for that track's parent company acknowledged and
14 admitted publicly in during a March 14, 2020, telephone conference for members of the Thoroughbred
15 Owners of California, that, with specific regard the CHRB's March 10, 2010, Report on Fatalities at
16 Santa Anita Park from 12/30/18 through 3/31/19:

17 **I can tell you -- only add that the term 'preexisting injuries' can be a little bit**
18 **deceiving. I think when the public reads that, they think, oh, somebody knew that this**
19 **poor horse had a problem and they drugged it up and put it out anyway.**

20 **I think -- and I believe the report was sort of optimistic in this regard -- that the --**
21 **to the extent that preexisting injuries have clinical signs of -- visible to a trained**
22 **eye. I think what we've done in terms of medication reform with joint injections and**
23 **nonsteroidals has made a huge step forward in terms of our ability for the attending**
24 **veterinarians as well as the regulatory and track veterinarians to identify horses with**
25 **problems and hopefully have them seek treatment rather than race.**

26 **Probably the majority of those injuries do not show clinical signs. While it's easy**
27 **for everybody to -- we all point fingers in these circumstances and we hear other**
28 **folks say, oh, I saw a horse in the paddock and he had big ankles and -- I mean,**
 you hear things like this over and over again whenever something happens.

I think the answer is a lot of -- most of the time neither the trainer, the attending, or our
 folks are seeing any signs of these injuries. They are part of the normal bone
 remodeling process. And sometimes, you know, as much as I hate to say it, probably
 unavoidable. [Emphasis added.]

1 41. Nonetheless, beginning June 22, 2019, the five racing associations referenced herein
2 below set up Hollendorfer as a “scapegoat,” sequentially “banning” and excluding him from their
3 racetracks without good or valid cause, and without first providing him Fair Procedure or due process.

4 **B. RESPONDENT’S STATUTORY AUTHORITY, DUTIES, AND RESPONSIBILITIES**

5 42. According to *Business & Professions Code, §19401*, the purposes for which the
6 California Legislature enacted the *Horse Racing Law* and created the CHRB include assuring the
7 “protection of the public” and providing for “uniformity of regulation.”

8 43. *Business & Professions Code, §19440(a)(2)*, requires Respondent faithfully,
9 consistently, and accurately administer and enforce “all laws, rules, and regulations” as they may
10 affect horse racing.

11 44. Notwithstanding these duties and obligations, rather than conduct the hearings and
12 good faith investigatory procedures expressly mandated by statute, Respondent has:

- 13 a. Abused its power and discretion;
- 14 b. Sought to adopt, interpret, and apply regulations in a manner that exceed its lawful rule-
15 making authority; and,
- 16 c. Abrogated and improperly delegated its statutory licensing and regulatory duties and
17 responsibilities to private entities – racing associations, in violation of State law.

18 45. Respondent’s conduct as alleged herein was prejudicial to Petitioner’s fundamental
19 rights and interests as a licensed Thoroughbred owner and trainer.

20 **C. PETITIONER’S STATUTORY AND REGULATORY COMPLAINTS**

21 46. As a CHRB licensee, Petitioner was and is required to “be familiar with and
22 knowledgeable of the [CHRB’s] rules” and “presumed to know the rules.” *CHRB Rule 1510*
23 *(Knowledge of Rules)*.

24 47. Pursuant to *CHRB Rule 2044 (Agreements to Be Filed)* and *Business & Professions*
25 *Code §19613*, since 1995 Respondent has required every Thoroughbred racing association it licenses
26 to enter into a Race Meet Agreement (“RMA”) with the official organization representing licensed
27 Thoroughbred trainers in order to establish and set certain terms and conditions of the race meet, prior
28 to the start of each such race meet.

1 48. For the 2018-2019 race year – December 26, 2018 through December 25, 2019, and
2 previously – Respondent issued licenses to conduct Thoroughbred race meets in Northern and
3 Southern California to the following racing associations:

- 4 a) Del Mar Thoroughbred Club (acting on behalf of the 22nd Agricultural District)
5 (“DMTC”), which conducts race meets at the Del Mar Fairgrounds and Racetrack
6 (“Del Mar”);
7 b) Los Angeles Turf Club, Inc., I & II (collectively “LATC”), which conduct race
8 meets at Santa Anita Park (“Santa Anita”); and,
9 c) Pacific Racing Association, Inc., I & II (collectively “PRA”), which conduct race
10 meets at Golden Gate Fields (“Golden Gate”).

11 (DMTC, LATC and PRA are collectively referred to herein as the “Racing Associations”).

12 49. The racing associations that own and operate Santa Anita and Golden Gate – LATC
13 and PRA – have common ownership: TSG Developments Investments, Inc., and 445327 Ontario
14 Limited d/b/a The Stronach Group, all of which are owned by The Stronach Group (“TSG.”)

15 50. In all instances herein alleged, RMAs existed between CTT and the Racing
16 Associations.

17 51. Pursuant to *CHRB Rule 2041 (Agreements to be Binding on Members)* each licensed
18 trainer, including Petitioner, who participates or seeks to participate in a race meet does so bound by
19 and subject to the terms of the required RMA between the CTT – as the official acknowledged
20 horsemen's organization – and the licensed racing association.

21 52. Pursuant to *CHRB Rule 2042 (Agreements to be Binding on Associations)* the signatory
22 licensed Racing Associations were similarly and equally bound by and subject to the terms of the
23 required RMA between themselves and the CTT.

24 53. Pursuant to *CHRB Rule 2045 (Prohibited Provisions of Horsemen's Agreements)* “[n]o
25 agreement between the association and the horsemen shall include provisions which...(4) Provisions
26 which may serve to exclude participation at the meeting by any individual holding a valid license
27 issued by the Board.”

28 54. Beginning June 22, 2019, the Racing Associations sequentially “ban” Petitioner

1 without good or valid cause, and without first providing him Fair Procedure.

2 55. The Racing Associations' actions were pre-textual and part of a calculated strategy to
3 redirect criticism and adverse attention from themselves to others, including Petitioner, as scapegoats.

4 56. On July 12, 2019, CTT filed a regulatory complaint with the CHRB requesting an
5 investigation of the exclusion of Hollendorfer from the summer race meet at Del Mar pursuant to
6 *California Code of Regulations, Title 4 (Business Regulations), Division 4 (California Horse Racing*
7 *Board), Article 22 (Horsemen's Organizations and Agreements), Rules 2043 (Adjudication of*
8 *Controversies Relating to Agreements) and 1414 (Appointment of Referee).*

9 57. Pursuant to *CHRB Rule 2043 (Adjudication of Controversies Relating to Agreements)*
10 Respondent "*shall immediately investigate*" any complaint alleging a violation of a provision of an
11 agreement between a horsemen's organization and a racing association and may refer the complaint to
12 the Board of Stewards or a referee for hearing.

13 58. On July 15, 2019, the *Hollendorfer v. DMTC* matter was filed in this Court.

14 59. Although *Rule 2403* had required Respondent to "immediately investigate" CTT's
15 Complaint, Respondent took no action nor did it even acknowledge the CTT's Complaint until after
16 this Court granted Petitioner and CTT a preliminary injunction on July 26, 2019, in the related
17 *Hollendorfer v. DMTC* matter.

18 60. On July 23, 2019, given the gravity of the harm that had resulted from his exclusion,
19 Petitioner – pursuant to *Business & Professions Code, §19573*, and *CHRB Rule 1765 (Complaints)* –
20 filed both statutory and regulatory complaints with Respondent.

21 61. Petitioner's **Statutory Complaint** requested Respondent immediately schedule the
22 hearing mandated by *Business & Professions Code, §19573*.

23 62. *Business & Professions Code, §19573*, provides, in relevant part, that:

24 Any person who, pursuant to a rule of the board, is excluded or ejected from any inclosure
25 where horse racing is authorized may apply to the board for a hearing on the question of
whether the rule is applicable to him.

26 The board shall hold the hearing either at its next regular meeting after receipt of the
27 application at the office of the board nearest the residence of the applicant or at such other
place and time as the board and the applicant may agree upon... [Emphasis added.]

1 63. On July 24, 2019, Respondent's legal counsel advised that although he had determined,
2 overnight, that Petitioner had in fact been excluded from the DMTC pursuant to a CHRB Rule –
3 *CHRB Rule 1989 (Removal or Denial of Access)* – the CHRB would nevertheless not conduct a
4 hearing of the Statutory Complaint. (A true and correct copy of counsel's letter is attached to the
5 Petition as **Exhibit A.**)

6 64. At the time this response and purported determination was provided, Respondent was
7 well aware that longstanding judicial precedent had established that:

- 8 a) *Business & Professions Code, §19573*, must be interpreted to include and require the
9 hearing of a bona fide complaint where evidence suggests the exclusion occurred
10 pursuant to "a CHRB Rule," particularly where it involved a licensee;
11 b) It was proper to take judicial notice of the fact that, by virtue of the CHRB's licensing
12 powers, racing associations enjoyed a quasi-monopoly that imposed on them "certain
13 obligations to which other land owners were not subject," particularly where their actions
14 denied or deprived licensees of longstanding occupational rights and privileges, and
15 substantial economic interests. *Greenberg v. Hollywood Park, Inc.* (1970) 7 Cal.App.3d
16 968, 977, citing *Pinsker v. Pacific Coast Soc. of Orthodontists*, 1 Cal. 3d 160; *Thompson*
17 *v. Moore Drydock Co.*, 27 Cal. 2d 595; *James v. Marinship Corp.*, 25 Cal. 2d 721; and
18 numerous other cases; and,
19 c) Absent a hearing or corresponding actions by Board members themselves on the
20 Statutory Complaint brought pursuant to *Business & Professions Code, §19573*, the
21 declination to do so by the Board's attorney or staff alone did not constitute a legally
22 valid administrative disposition of the Complaint, or official action by the CHRB.

23 65. Respondent was well aware that, with regard to the application of *Business &*
24 *Professions Code, §19573*, by precedent, it had been previously determined by a California Appellate
25 Court that:

26 ... the board attorney's determination that the board lacked jurisdiction to hold a
27 hearing resulted in no administrative disposition being made of the initial question of
28 plaintiff's right to be on the premises. By acquiescing in that attorney's advice, without
proceeding further to compel a hearing on that issue, plaintiff failed to exhaust his
administrative remedy with respect thereto. Code of Civil Procedure section 1085

1 anticipates an arbitrary or illegal refusal of a duly constituted board to hold a hearing.
2 The section authorizes resort to the writ of mandate "to compel the performance of an
3 act which the law specifically enjoins. ..." It follows that, although plaintiff invoked his
4 remedy, he did not exhaust it by resorting to the writ procedure to compel a hearing
5 before filing this action. While it is arguable that the format of the board rules itself
6 does not specifically authorize a hearing on the applicability of rule 1990, [predecessor
7 to *CHRB Rule 1989*] the statutory scheme outlined above is not so limited. Under
8 section 19572, supra, the board may, by rule, provide for exclusion or ejection of
9 persons coming under rule 1980 and also of "any other person whose presence in the
10 inclosure would, in the opinion of the board, be inimical to the interests of the state or
11 of legitimate horseracing, or both." Rule 1990 embraces this latter classification of
12 persons. Section 19573 provides for a hearing on the question of the applicability of "a"
13 rule to any person excluded or ejected. The jurisdiction of the board is therefore not
14 limited to exclusions under rule 1980.

15 *Morton v. Hollywood Park, Inc.* (1977) 73 Cal.App.3d 251, 255. [Clarification added.]

16 66. *Business & Professions Code, §19431*, requires that "[a]t least four members of the
17 board shall concur in...the exercise of any of the board's duties, powers, or functions."

18 67. Furthermore, Respondent's counsel did not address either basis of Petitioner's specific
19 Regulatory Complaint.

20 68. Petitioner's **Regulatory Complaint** was twofold, requesting Respondent immediately
21 investigate and schedule hearings relating to DMTC's:

22 a) Failure to acknowledge and/or honor existing RMA provisions that both
23 contractually limited a racing association's exclusionary rights and which otherwise
24 established procedures for the handling of disputed allocations or the withholding of
25 stalls to, or limitations on, individual CTT members (Thoroughbred
26 trainers/Petitioner); and,

27 b) Threats and refusal to accept valid race entries submitted by Petitioner, despite the
28 authority to do so being vested exclusively within the control of the CHRB's Board
of Stewards;

69. Pursuant to *Business & Professions Code, §19440(b)*, Respondent may delegate its
powers and duties only to the Stewards.

70. At all relevant times hereto, none of the Racing Associations were licensed or
authorized to act as Stewards under the *Horse Racing Law* or *CHRB Rules*.

1 71. Pursuant to *CHRB Rule 1402 (Controlling Authority)*, the *Horse Racing Law*, and the
2 rules and orders of the CHRB “supersede the conditions of a race or race meeting” and govern
3 Thoroughbred racing in the State.

4 72. Pursuant to *CHRB Rule 1436 (Duty of Licensed Association)*, each licensed racing
5 association “shall observe and enforce” the *CHRB Rules*.

6 73. Pursuant to *CHRB Rule 1437 (Conditions of a Race Meeting)*, no licensed racing
7 association may impose conditions on its race meeting that “conflict with the rules, regulations or
8 orders of the Board.”

9 74. Pursuant to *CHRB Rule 1542 (Power to Refuse Entry and Deny Eligibility)*, only the
10 stewards appointed by Respondent may, for good cause, refuse an entry to any race, or declare
11 ineligible to race, or order removed from the premises, any horse.

12 75. No other *CHRB Rule* exists which conveys or delegates to a racing association, in
13 whole or part, contemporaneous or independent authority to deny or refuse entries.

14 76. *CHRB Rule 1580 (Control over Entries and Declarations)* confirms that all entries and
15 declarations are under the direct supervision of the stewards, and they, and only they, may with or
16 without notice, refuse the horse entries of any person.

17 77. Petitioner is informed and believes that until the filing of his July 23, 2019, regulatory
18 Complaint, the Stewards’ exclusive control over the acceptance and/or refusal of horse entries had
19 been the accepted industry practice, and the longstanding unaltered application of the referenced
20 *CHRB Rules*.

21 78. To Petitioner’s knowledge and experience, over 40+ years as a trainer and the entry of
22 over 33,000 individual starters, other than determining whether an entry form was completed correctly
23 or an entered horse met the specified race conditions, no racing association personnel had ever
24 represented themselves to have the power or authority to independently accept or refuse a specific
25 entry, or to scratch a horse once entered.

26 79. On the same day – July 24th – Petitioner’s counsel responded to the CHRB’s purported
27 determination, by email and letter to its legal counsel, requesting clarification from the CHRB as to:

28 a) The factual and legal basis of its decision to deny the **Statutory Complaint**, as its

1 letter denying the requested hearing was brief and unclear, given the reliance on
2 *CHRB Rule 1989*; and,

3 b) Respondent's letter had left unanswered the handling of Mr. Hollendorfer's
4 contemporaneous **Regulatory Complaint**, under *CHRB Rule 1765 (Complaints)*.

5 (True and correct copies of the letter and email are attached to the Petition as **Exhibits B and C**,
6 respectively.)

7 80. On July 24, 2019, on Petitioner's behalf, CTT filed a second regulatory complaint with
8 the CHRB – as against LATC and PRA – based on their exclusion of Hollendorfer from Santa Anita
9 and Golden Gate.

10 81. Similarly, Respondent took no action on CTT's second regulatory complaint, nor even
11 acknowledged the same, until after a second lawsuit had been filed by Petitioner and CTT, in Alameda
12 County, on or about August 12, 2019.

13 82. On July 26, 2019, this Court granted Hollendorfer and CTT's request for a preliminary
14 injunction in the *Hollendorfer v DMTC* matter.

15 83. On September 26, 2019, Petitioner filed an urgent **Second Regulatory Complaint** with
16 Respondent; this one against the Los Angeles Turf Club, Inc. II (LATC). That complaint was based
17 on LATC's refusal to accept a valid race entry submitted to the Racing Office at Santa Anita earlier in
18 the day.

19 84. Petitioner's Second Regulatory Complaint was essentially identical in nature to a
20 portion of that submitted by him as against DMTC three months earlier on July 23, 2019. As of
21 September 26th, the race entry-related portion of his first Regulatory Complaint had either been
22 ignored or not investigated by the CHRB, and was as of then yet to be determined.

23 85. As was the case with DMTC, LATC representatives' refusal to accept a valid horse
24 entry constituted violations of *CHRB Rules 1436 (Duty of Licensed Association)*, *1542 (Power to*
25 *Refuse Entry and Deny Eligibility)*, and *1580 (Control over Entries and Declarations)*.

26 86. Alternatively, Petitioner requested that if Respondent's investigation determined that it
27 was the Stewards who had refused to accept Petitioner's entry, an immediate investigation of the
28 Stewards' actions be conducted, with a hearing scheduled thereafter before a qualified neutral hearing

1 officer so as to determine the legal and factual basis of any such action by the Stewards.

2 87. Specifically, Petitioner asserted that:

- 3 a) Any action taken by the Stewards would constitute "State action," and thus subject
4 to due process and equal protection requirements, both substantively and
5 procedurally;
- 6 b) The refusal to accept Petitioner's valid entries – by either the racing associations or
7 the Stewards – prevented Petitioner from engaging in his licensed occupation; and,
- 8 c) An urgent need for CHRB attention and action existed.

9 88. On October 5, 2019, having heard nothing of a substantive nature from the CHRB,
10 Petitioner inquired as to the status of this "urgent" Second Regulatory Complaint.

11 **D. RESPONDENT'S FAILURE TO PURSUE OR RENDER VALID ADMINISTRATIVE DISPOSITIONS**

12 89. At no point between September 26th and October 8, 2019, was Petitioner either
13 informed nor provided any notice of a meeting of or hearing before Respondent's Board members or
14 an independent hearing officer at which his Regulatory Complaints were scheduled to be heard or
15 heard and determined by at least four members of the Board, as was required by *Business &*
16 *Professions Code, §19431.*

17 90. On October 8, 2019, in two, two-line letters, Respondent's legal counsel nonetheless
18 represented that Respondent had determined that no regulations had been violated when Petitioner's
19 entries were refused.

20 91. Neither letter provided any factual or regulatory support for either purported
21 determination.

22 92. Though Respondent's October 8, 2019, letters purported to be administrative
23 determinations: neither included any factual or legal findings; were not supported by evidence; and,
24 made no effort to set forth findings that disclosed or revealed any analytical relationship between
25 evidence and the purported determination. (True and correct copies of counsel's letters are attached to
26 the Petition as **Exhibit D.**)

27 93. On October 9, 2019, given that the purported determinations were inconsistent with the
28 *Horse Racing Law*, longstanding industry practice and understanding, and prior applications of the

1 cited *Rules*, Petitioner requested Respondent clarify the factual and legal bases of its decisions.

2 94. Between October 9th and October 24, 2019, Petitioner was not informed of nor did
3 Respondent publish or provided notice of any meeting or hearing before the Board or an independent
4 hearing officer at which either of Petitioner's Regulatory Complaints were to be heard and determined
5 by at least four members of the Board, as was required by *Business & Professions Code §19431*.

6 95. On October 24, 2019, in apparent response to Petitioner's October 8th request for
7 clarification, Respondent's legal counsel advised that, regardless of *CHRB Rules 1402 (Controlling*
8 *Authority)*, *1436 (Duty of Licensed Association)*, and *1437 (Conditions of a Race Meeting)*, both
9 DMTC and LATC had "contractual authority" pursuant to their Stall Applications and RMAs to deny
10 Petitioner's race entries, notwithstanding the contrary provisions set out in *CHRB Rules 1542 (Power*
11 *to Refuse Entry and Deny Eligibility)*, *1580 (Control over Entries and Declarations)*, and *2045*
12 *(Prohibited Provisions of Horsemen's Agreements)*. (A true and correct copy of counsel's letter is
13 attached to the Petition as **Exhibit E.**)

14 96. Based on information and belief, Petitioner alleges that Respondent knew or reasonably
15 should have known that the personal opinion of its legal counsel suggesting that racing associations
16 may impose, via either Stall Applications or RMAs, race meet conditions that are inconsistent with or
17 contrary to existing valid *CHRB Rules* was:

18 a) Unlawful and expressly prohibited by *CHRB Rules 1402 (Controlling Authority)*
19 and *1437 (Conditions of a Race Meeting)*, and as such constituted a proposition for
20 which the CHRB had been reprimanded previously by the court, just a few years
21 earlier, in *De La Torre v. CHRB* (LACSC Case # BS154412). (A true and correct
22 copy of the court's ruling in *De La Torre* is attached to the Petition as **Exhibit F.**)

23 b) A blatant misrepresentation of the proper application of *CHRB Rules*; and,

24 c) Inconsistent with Respondent's general legal duties under the law.

25 97. Respondent's actions as herein described above were inconsistent with the
26 Legislature's clear mandate to the CHRB, namely, protecting the interests of the public and providing
27 uniformity of regulation within the horse racing industry. *Business & Professions Code, §19401*.

28 98. Respondent had and has a mandatory duty not only to comply with both state and

1 federal law, but to comply with its own regulations, as well as to provide reasonable supervision of its
2 agents, servants, and/or employees.

3 99. Moreover, Respondent's counsel opined that, with regard to what Respondent
4 previously identified and confirmed to be a suspended investigation of Petitioner's Regulatory
5 Complaint as it related to his exclusion from DMTC, Respondent nonetheless purported to determine
6 – without the benefit of a hearing – that DMTC had neither acted “arbitrarily” nor “capriciously.”

7 100. At the time Respondent's counsel made such representations, Respondent was fully
8 aware that the Court in San Diego in *Hollendorfer v. DMTC* had expressly reserved the determination
9 of that issue to an independent arbitrator, to be selected by the litigants or, absent their agreement, by
10 one appointed by Respondent, in good faith.

11 101. Based on a review of Respondent's public and executive session meeting records, no
12 record exists nor has Petitioner learned or been informed of any hearing or meeting before
13 Respondent's Board members or an independent hearing officer between July 22nd and October 24,
14 2019, at which either Petitioner's Regulatory or Statutory Complaints were scheduled to be heard or
15 heard and determined by at least four members of the Board, as required by *Business & Professions*
16 *Code*, §§19431 and/or 19573, or *CHRB Rules 1765 (Complaints)* and 2043 (*Adjudication of*
17 *Controversies Relating to Agreements*).

18 **PETITIONER'S EFFORTS TO EXHAUST HIS ADMINISTRATIVE REMEDIES**

19 102. Beginning on July 24th, and repeated on October 9th and 24th, and December 3, 2019, by
20 written communication, Petitioner's counsel requested impartial neutral hearing officers be appointed,
21 or alternatively that the CHRB Board itself, hear, consider, and determine Petitioner's bona fide
22 Statutory and Regulatory Complaints.

23 103. In either instance, a hearing was warranted by the facts, and expressly authorized either
24 by statute or regulation, including but not limited to, *Business & Professions Code*, §§19431 and/or
25 19573, and *CHRB Rule 1765(Complaints)*, based on *Rules 1402 (Controlling Authority)*, 1436 (*Duty*
26 *of Licensed Association*), 1437 (*Conditions of a Race Meeting*), 1542 (*Power to Refuse Entry and*
27 *Deny Eligibility*), 1580 (*Control over Entries and Declarations*), and 2043 (*Adjudication of*
28 *Controversies Relating to Agreements*).

1 104. Petitioner's Statutory and Regulatory Complaints and requests were bona fide, justified,
2 timely, and appropriate.

3 105. Petitioner also filed timely an appropriate claim with the Government Claims Program,
4 Office of Risk and Insurance Management, Department of General Services, pursuant to *Government*
5 *Code*, §§900, *et seq.*, on January 22, 2020.

6 106. Petitioner now brings this Petition seeking a peremptory writ of mandate requiring
7 Respondent's compliance with the law including, but not limited to, *Business & Professions Code*
8 §§19431 and/or 19573, and *CHRB Rule 1765*, by providing for fair and impartial hearings of each of
9 his Statutory and Regulatory Complaints, in accord with *Morton v. Hollywood Park, Inc. (1977) 73*
10 *Cal.App.3d 251*.

11 107. This action also seeks damages pursuant to *Code of Civil Procedure*, §1095 and
12 *Government Code*, §815.6 for the violations described herein. Respondent has failed, among other
13 things, to discharge its mandatory duties and to follow all laws and regulations appurtenant to its
14 authority.

15 108. Pursuant to *Business & Professions Code*, §§19420 and 19440(a)(4), the California
16 Legislature has vested Respondent with jurisdiction and supervision "over all persons or things having
17 to do with" horse racing activities conducted within the State, and expressly empowered it to
18 administer and enforce all laws, rules, and regulations affecting the parties and their actions, including
19 licensing.

20 109. To do so, the Legislature further required at least four CHRB Board members act or
21 concur in "the exercise of any of the board's duties, powers, or functions." *Business & Professions*
22 *Code*, §19431.

23 110. Respondent failed to do so in all respects, notwithstanding Petitioner's repeated
24 requests and other efforts to encourage it to do so.

25 111. At all times relevant hereto, Respondent was aware that its refusal to conduct hearings
26 of Petitioner's Complaints, as authorized by statute and regulation, would cause Petitioner to suffer
27 immediate additional material harm.

28 112. Respondent was further aware that the Racing Associations had implemented their bans

1 and excluded and denied access to Petitioner, all before and without providing Petitioner "Fair
2 Procedure" as was/is required by common law and relevant judicial precedent; *Greenberg v.*
3 *Hollywood Park, Inc.* (1970) 7 Cal.App.3d 968. See also, *Ezekial v. Winkley* (1977) 20 Cal.3d 267;
4 *Potvin v. Metropolitan Life Ins. Co.* (2000) 22 Cal.4th 1060; and, *Pinsker v. Pacific Coast Society of*
5 *Orthodontists* (1974) 12 Cal.3d 541.

6 113. In light of its allocation of race dates and the required submission of RMAs,
7 Respondent was aware that the Racing Associations enjoyed virtual monopolistic control over
8 Thoroughbred horse racing in the State, and that the required RMAs contained provisions setting forth
9 terms and conditions under which licensed Thoroughbred trainers' may be excluded and/or their
10 participation materially limited or prohibited, in violation of *CHRB Rule 2045 (Prohibited Provisions*
11 *of Horsemen's Agreements)*.

12 114. Rather than schedule the mandated hearings, Respondent has instead offered only the
13 assumptions and personal conclusions of its legal counsel both as to disputed factual matters and the
14 belief that his proposed application of *CHRB Rule 1989 (Removal or Denial of Access)* supersedes
15 precedential judicial determinations requiring private entities – such as racing associations – provide,
16 in good faith, meaningful Fair Procedure to occupational licensees before depriving them of
17 longstanding occupational rights and privileges, and substantial economic interests as justifications for
18 Respondent's refusal to hold the required hearings, in contravention of *Business & Professions Code,*
19 *§19573, Morton v. Hollywood Park, Inc.* (1977) 73 Cal.App.3d 251, and *Greenberg v. Hollywood*
20 *Park, Inc.* (1970) 7 Cal.App.3d 968; and/or in a manner inconsistent with *CHRB Rule*
21 *1765(Complaints)*.

22 115. *CHRB Rules 1402 (Controlling Authority), 1436 (Duty of Licensed Association), 1437*
23 *(Conditions of a Race Meeting), 1542 (Power to Refuse Entry and Deny Eligibility), 1580 (Control*
24 *over Entries and Declarations), 1989 (Removal or Denial of Access), 2041(Agreements to be Binding*
25 *on Members), 2042 (Agreements to be Binding on Associations), 2043 (Adjudication of Controversies*
26 *Relating to Agreements), and 2045 (Prohibited Provisions of Horsemen's Agreements)* are all clear
27 statements of regulatory law contrary to the personal opinions expressed by Respondent's legal
28 counsel.

1 116. Petitioner has – on at least three occasions – identified for Respondent California case
2 law and precedent confirming that the ability/right of racing associations to exclude/deny access to
3 licensed trainers is not absolute, and that the determinations by Respondent’s legal counsel alone does
4 not constitute an actual or valid administrative disposition of Petitioner’s Complaints by the CHRB.

5 117. As a consequence, as of the time of filing of this Petition, Respondent has yet to render
6 or make an administrative disposition of either Petitioner’s Statutory or Regulatory Complaints, in a
7 manner previously recognized by the Courts as valid in such matters.

8 118. Respondent’s failures to do so constitutes malfeasance and abuses of discretion and
9 authority.

10 119. Respondent’s conduct has caused Petitioner to suffer serious and substantial harm
11 including, but not limited to, the loss of longstanding occupational rights and privileges, and
12 significant economic interests directly relating to, and derived from, his occupation and licensed
13 status.

14 120. Furthermore, Petitioner has suffered significant reputational, emotional, and business
15 harm due to Respondent’s improper abrogation and/or delegation of its licensing authority to the
16 Racing Associations.

17 121. Respondent improperly delegated its ongoing regulatory duties and responsibilities to
18 private entities, as to activities over which Respondent – both by statute and regulation – has exclusive
19 jurisdiction, control, and plenary authority.

20 122. Petitioner also seeks redress for his attorneys’ fees and costs.

21 **BIAS AND CONFLICT OF INTEREST CONCERNS**

22 123. Based on information and belief, Petitioner alleges that throughout his ongoing period
23 of exclusion and Respondent’s purported investigation of the resulting Statutory and Regulatory
24 Complaints, Respondent abused its discretion and abrogated its duties and responsibilities as a public
25 regulatory agency by:

- 26 a) Suppressing relevant evidence and information;
27 b) Concealing its own conduct and involvement in exclusionary actions;
28 c) Denying the existence of actual and potential conflicts of interest that would

otherwise reasonably disqualify the participation of Board members, if not the agency, from investigatory processes and determinations;

d) In the ordinary course of prudent administrative practice, refusing to recognize and abide by controlling legal precedent and/or intentionally rendering legal and/or administrative opinions it knew to be inconsistent with the actual facts and/or controlling legal precedent; and

e) Misinterpreting and/or misapplying *CHRB Rules*, including but not limited to *CHRB Rule 1989 (Removal or Denial of Access)*, such that they exceeded Respondent's statutory rule-making and regulatory authority in order to attempt to improperly convey to private entities/the Racing Associations effective licensing authority in the form unlimited discretion and rights, powers, and/or authority to exclude and/or ban occupational licensees without Fair Procedure or recourse that those Associations otherwise were precluded from exercising under law.

124. Petitioner is further informed and believes, and on that basis alleges, that Respondent acted with bias and otherwise sought to, and did in fact, abrogate and delegate such licensing duties and responsibilities to private entities in contravention of the law including, but not limited to, *Business & Professions Code, §19440(a)(4)*.

125. By doing so, certain CHRB Board members who believed racing to be in a precarious and vulnerable position determined, for public perception reasons, it was 'in the industry's best interests' for Respondent to permit the Racing Associations to exclude and deny an individual licensee of occupational rights and privileges, and substantial economic interests, without a hearing, due process, or Fair Procedure, for any reason – and/or without legitimate reason or recourse.

126. Then CHRB Chair, Chuck Winner, publicly expressed Respondent's bias and predetermined support for the exclusionary actions undertaken by the Racing Associations.

127. In a July 10, 2019, article appearing in San Jose Mercury News, entitled *Horse Race Deaths: Another Track Bans Famed Bay Area Trainer*, Chairman Winner represented that such exclusions/bans were more expeditious alternatives to CHRB processes that follow due process and other constitutionally protected rights, procedures, and requirements. "It can take the horse racing

1 board months or even years to suspend or revoke a license” Winner said, whereas “the current system
2 allows track owners to take immediate action...” (A true and correct copy of the July 10, 2019, article
3 appearing in San Jose Mercury News, entitled *Horse Race Deaths: Another Track Bans Famed Bay*
4 *Area Trainer*, is attached to the Petition as **Exhibit G.**)

5 128. Instead of carrying out its statutory duties and responsibilities in a fair and equitable
6 manner, Respondent privately and unlawfully supported and encouraged the exclusionary acts on the
7 part of the Racing Associations in a manner that failed to either recognize or protect the rights of
8 Petitioner, as an individual occupational licensee, in a manner equal to that of the Racing Associations.

9 129. The CHRB Chair’s public statements acknowledged and admitted Respondent’s
10 deference to the Racing Associations’ exclusionary acts and constituted an admission as to the
11 abrogation and/or delegation of statutory licensing responsibility and authority to private entities, in
12 contravention of State law; i.e., *Business & Professions Code*, §19440(a)(4).

13 130. By mid-August 2019, through various media reports, Petitioner also learned of
14 previously undisclosed business and financial relationships between at least one CHRB Board member
15 and the management and ownership of four of the Racing Associations against whom Petitioner’s
16 regulatory complaints had been made.

17 131. Numerous follow-up reports and a later acknowledgment by Respondent’s then Vice
18 Chair confirmed the previously undisclosed business and financial relationships between her and the
19 management, their family members, and ownership of four of those Racing Associations.

20 132. Sworn statements later submitted by PRA representatives in related legal proceedings
21 in August also revealed the previously unreported direct involvement of Respondent’s board members
22 and staff in exclusionary actions against Petitioner undertaken without any of the notice, disclosure,
23 due process, and/or equal protections required of the CHRB by law, before or since such actions were
24 revealed.

25 133. Respondent’s failure to disclose or even acknowledge such involvement is of serious
26 concern, and further undermines necessary notions of impartiality, good faith, fair investigatory and
27 internal deliberative processes, as well as a commitment to the due process and equal protection rights
28 of licensees as was/is required of a state regulatory agency.

1 134. Those undisclosed acts, coupled with the prior business and financial arrangements,
2 reinforced an emerging appearance of bias and impropriety such that it undermined the sense of trust,
3 fairness, and impartiality in Respondent held by Petitioner, the public, numerous elected officials
4 including the Governor, and media.

5 135. On August 28, 2019, Petitioner's counsel directly questioned and expressed significant
6 concern as to Respondent's perceived bias, prejudgment, and a lack of objectivity toward Petitioner
7 and his complaints.

8 136. Specifically, Petitioner's counsel expressed concern to Respondent's Chief Investigator
9 that those recent disclosures revealed both a pattern of concealed acts and conduct, the appearance of
10 impropriety, and actual and potential conflicts of interest on the part of several CHRB board members
11 that both called into question the impartiality of the CHRB and undermined the integrity of the
12 investigation into Petitioner's exclusion from the Racing Associations.

13 137. Petitioner's counsel explained that without assurances that the investigation would be
14 conducted fairly and impartially, in good faith, by an independent administrative law judge(s), any
15 investigative conclusions reached by the CHRB as to the exclusionary aspects of Petitioner's Statutory
16 and Regulatory Complaints would be suspect, and not reached in compliance with the law.

17 138. As a result of that discussion, Petitioner's counsel understood Respondent's Chief
18 Investigator to have confirmed that the CHRB was suspending its investigation into Hollendorfer's
19 complaints, as they related to his exclusion.

20 139. On September 6, 2019, in response to a question relating to one of the CTT's regulatory
21 complaints, Petitioner's counsel reiterated and expanded on his questions and concerns with
22 Respondent's Chief Investigator, and confirmed the understanding that the CHRB's investigation of
23 the exclusionary aspects of Petitioner's Regulatory Complaints was suspended, pending a request
24 otherwise from Petitioner.

25 140. On September 12, 2019, the San Diego Union Tribune published an article entitled
26 *Lesson from horse racing's Justify, Triple Crown mess: Fix the CHRB*. The article, an indictment of
27 the CHRB's overall approach to regulating California's horse racing industry, states in pertinent part:

28 "(Conflict of interest) needs to be looked at in this era of open government that we try

to live by in California,” Fred Maas [CHRB Vice-Chair] said Thursday in an interview. “Candidly, it’s been a frustration of mine and it’s something that needs to be looked at before I would consider being reappointed if the governor, in his wisdom, decides that’s a decision he’d like to make.”

Consider that for a moment. A sitting member of the board is so concerned about real and perceived conflicts of interest that he is thinking about turning down a re-appointment if offered.

For context, Maas had mentioned that possibility to me before Justify’s mealtime laundry started waving in the public wind.

So that’s the damning reality of it, amid eroding faith during the most fragile period in industry history: Horse racing can’t be trusted to police itself.

* * *

“I don’t think there’s any question the public demands and deserves a dispassionate, detached board of public officials that are divorced of any conflicts,” Maas said.

* * *

Go back to the case of a horse named Fravel, a 3-year-old colt previously owned by board member and presumptive chairperson Madeline Auerbach, Stronach Group COO Tim Ritvo and Stacie Clark — the wife of Stronach Group racing-division President Mike Rogers.

When the situation became scrutinized — all those tangled interests, with the CHRB in an oversight role as TSG’s Santa Anita Park reeled from 30 horse deaths during its most recent meet — the sideways glances spread like a cold at a preschool. Ritvo quickly divested himself when details found the light of day and TSG, his employer, vowed to step up its role in managing those types of conflicts. [Emphasis added and clarification provided.]

(A true and correct of the article is attached to the Petition as **Exhibit H.**)

141. These conflicts of interest led California’s Governor to implement a series of reforms, beginning with the appointment of three new CHRB Commissioners — two of whom now serve as Chair and Vice-Chair — with no direct financial interest in the industry, noting “[w]e are pulling away from those with direct conflicts and pulling out a more objective oversight capacity.” (A true and correct copy of the September 23, 2019, New York Times article, *Gov. Gavin Newsom Says Horse Racing in California Needs Reform*, is attached to the Petition as **Exhibit I.**)

142. As a result of the foregoing, Petitioner was even more concerned about the CHRB’s bias, conflicts of interest, and improper delegation of licensing and oversight responsibilities to the Racing Associations.

143. In response to a later Public Records Act request, Petitioner recently obtained evidence showing the extent to which Respondent not only delegated its regulatory responsibility to the Racing

1 Associations, but actively coordinated with those entities as to their ongoing exclusionary efforts
2 against Petitioner.

3 144. On July 25, 2019, this Court issued its tentative ruling in *Hollendorfer v. DMTC*,
4 granting Hollendorfer's motion for a preliminary injunction.

5 145. At 3:15 p.m. that day, DMTC's President, Josh Rubinstein, forwarded the tentative
6 ruling to the CHRB Board members Chuck Winner and Vice-Chair Madeline Auerbach, along with its
7 Executive Director, Rick Baedeker, and legal counsel, Robert Brodnick. (A true and correct copy of
8 DMTC's email to the CHRB is attached to the Petition as Exhibit J.)

9 146. In that email, Mr. Rubinstein not only reported on the Court's tentative ruling, but
10 informed CHRB of the "next steps" that would be taken; i.e., that DMTC would "need to accept"
11 Hollendorfer's race entries; that "stall allocation goes to arbitration (potentially a CHRB officer)";
12 and, that DMTC was "working on a statement from us..."

13 147. Petitioner alleges that the email reflects a preliminary, additional and continuing level
14 of coordination between Respondent and the Racing Associations, and confirms both Respondent's
15 willingness to abrogate its licensing duties and responsibilities to those private entities, and to act with
16 bias toward Petitioner.

17 FIRST CAUSE OF ACTION

18 (Petition for Writ of Mandate – CCP §1085)

19 148. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

20 149. *Code of Civil Procedure, §1085(a)*, authorizes the court to issue a writ of mandate to
21 compel the performance of an act that the law specifically enjoins. Writ relief is available to compel a
22 public officer to perform a mandatory ministerial act.

23 150. Pursuant to *Code of Civil Procedure, §1085*, writ relief is also available to correct an
24 administrative decision that is arbitrary, capricious, entirely lacking in evidentiary support, contrary to
25 established public policy, unlawful, or procedurally unfair.

26 151. The Respondent failed to comply with the procedural and substantive requirements of
27 applicable law and regulation, including but not limited to:

28 a) Failed to make or render valid administrative determinations or dispositions, and/or

1 take any official action by the Board with regard to either Petitioner's Statutory and
2 Regulatory Complaints, in accord with *Business & Professions Code*, §19431;

3 b) Failed to conduct hearings as required by *Business & Professions Code*, §19573
4 following the exclusion of Petitioner, as a licensed trainer, pursuant to an
5 acknowledged rule of the Board – *CHRB Rule 1989 (Removal or Denial of Access)*
6 – in accord with *Morton v. Hollywood Park, Inc.* (1977) 73 Cal.App.3d 251; and
7 *Greenberg v. Hollywood Park, Inc.* (1970) 7 Cal.App.3d 968; *Pinsker v. Pacific*
8 *Coast Soc. of Orthodontists*, 1 Cal. 3d 160; *Thompson v. Moore Drydock Co.*, 27
9 Cal. 2d 595; and *James v. Marinship Corp.*, 25 Cal. 2d 721;

10 c) Failed to ensure, administratively, that the private entities it licensed to conduct
11 regulated business activities in the State, and to which it annually allocated control
12 over approximately 85+% of Thoroughbred race dates in California – a virtual
13 monopoly – provided to Petitioner and other occupational licensees a minimum of
14 "Fair Procedure" before taking action to exclude or deny access to such licensees,
15 including Petitioner, that deprived those licensees of their longstanding
16 occupational rights and privileges, and substantial economic interests, in a manner
17 contrary to the laws of the State of California;

18 d) By failing to follow the aforementioned *CHRB Rules*, processes, and procedures
19 applicable to the control, acceptance, facilitation, and/or refusal of valid horse
20 entries, Respondent acted arbitrarily and capriciously and did not proceed in the
21 manner required by law and regulation;

22 e) Offering as the basis for denying valid Complaints only unsupported personal
23 opinions of Respondent's legal counsel that were devoid and/or lacking of
24 evidentiary support, and analytical rationale that tied factual finding to specific
25 determinations, such that Respondent knew, or should have known, that such
26 opinions were contrary to specific *CHRB Rules* and established public policy,
27 unlawful, and procedurally unfair. (A true and correct copy of counsel's letters are
28 attached to the Petition as **Exhibit K.**); and,

1 f) Failed to reasonably adopt, interpret, and/or apply *CHRB Rules* – including *CHRB*
2 *Rule 1989 (Removal or Denial of Access)* – such that they exceeded Respondent’s
3 statutory rule-making and regulatory authority and constituted unlawful attempts to
4 convey to private entities – the Racing Associations – effective licensing authority
5 and, unlimited discretion and rights, powers, and/or authority to exclude and/or ban
6 occupational licensees without Fair Procedure or recourse that those Associations
7 otherwise were precluded from exercising under law.

8 152. Petitioner is a Thoroughbred trainer licensed by Respondent and is cognizant of its
9 *Rules* and of the *Horse Racing Law*.

10 153. By virtue of that *Law* and those *Rules*, Petitioner is required to have knowledge of and
11 act in conformance therewith.

12 154. Petitioner is also a lawful beneficiary of the protections in the *Horse Racing Law* and
13 *CHRB Rules*.

14 155. Petitioner has no plain, speedy, and/or adequate remedy other than the issuance of a
15 writ of mandate to invalidate Respondent’s actions.

16 156. Petitioner is beneficially interested in issuance of the Writ as, by virtue of Respondent’s
17 actions and/or failure to fulfill its legal duties, he was:

- 18 a) Effectively and materially deprived of his fundamental rights to practice his
19 licensed professions and “earn a living” by both the Racing Associations and
20 Respondent that licenses and regulates those Associations;
21 b) Excluded from, ‘banned,’ and/or denied access to the five primary Thoroughbred
22 race meets in the State operated by the Racing Associations, purportedly pursuant to
23 “a rule of the board,” without good cause, a hearing, due process, or Fair Procedure,
24 despite Petitioner’s good standing with both Respondent and the CTT, as a licensed
25 Thoroughbred trainer;
26 c) Unlawfully prevented and/or precluded by those Racing Associations from making
27 valid entries of horses qualified for and eligible to compete in the races for which
28 they were entered, in a manner that violated the *CHRB Rules* cited hereinabove;

- 1 d) Denied of longstanding occupational rights and privileges, and of substantial
2 economic interests, without Fair Procedure, by virtue of the Racing Associations'
3 exclusions/bans/denials of access and refusals to facilitate valid race entries, all to
4 Petitioner's detriment and harm;
- 5 e) Denied procedural and substantive due process and equal protection rights
6 guaranteed under the U.S. and State Constitutions, and of common law and
7 administrative rights and remedies provided for under the laws of the State of
8 California, as well as the rules and regulations cited hereinabove; and,
- 9 f) Subjected to the unreasonable adoption, interpretation, and application of *CHRB*
10 *Rules* – including *CHRB Rule 1989 (Removal or Denial of Access)* – such that
11 Respondent exceeded its statutory rule-making authority by conveying to private
12 entities, including racing associations, effective licensing authority and such other
13 rights, powers, and/or authority the associations otherwise were precluded from
14 exercising under law.

15 157. Under the law, Petitioner is entitled to a writ of mandate commanding Respondent to:

- 16 a) Recognize and accept its lawful rule-making authority limits the interpretation and
17 application of :
- 18 i. *CHRB Rule 1989 (Removal or Denial of Access)* so as to convey only a
19 qualified and limited right upon licensed racing associations to deny access to
20 occupational licensees if such racing association first provides to affected
21 licensee meaningful Fair Procedure, substantively and procedurally, and does
22 not otherwise act arbitrarily or capriciously toward that licensee or Procedure,
23 but in a manner that is consistent with common law and judicial precedent;
24 and,
- 25 ii. *CHRB Rule 2045 (Prohibited Provisions of Horsemen's Agreements)* so as to
26 require licensed racing associations not include or attempt to include in RMAs
27 and/or incorporated documents, any contractual provision that, directly or
28 indirectly, "may serve to exclude participation at the meeting by any

individual holding a valid license issued by the Board.”

- b) Conduct hearings before qualified neutral impartial hearing officers, as required by *Business & Professions Code*, §19573, as to the exclusions of Petitioner pursuant to *CHRB Rule 1989 (Removal or Denial of Access)* – from the racing associations and training facilities from which he was excluded and ‘banned:’ Del Mar Thoroughbred Club, Los Angeles Turf Club Inc., Los Angeles Turf Club Inc., II, Pacific Racing Association, and Pacific Racing Association II, and SLR Training Center Inc.;
- c) Conduct hearings in good faith before impartial, truly neutral hearing officers, in accord with *CHRB Rule 1765 (Complaints)*, as such relate to Petitioner’s Regulatory Complaints, based on relevant *CHRB Rules*, including: 1402 (*Controlling Authority*), 1436 (*Duty of Licensed Association*), 1437 (*Conditions of a Race Meeting*), 1542 (*Power to Refuse Entry and Deny Eligibility*), 1580 (*Control over Entries and Declarations*), 1989 (*Removal or Denial of Access*), 2041 (*Agreements to be Binding on Members*), 2042 (*Agreements to be Binding on Associations*), 2043 (*Adjudication of Controversies Relating to Agreements*), and 2045 (*Prohibited Provisions of Horsemen’s Agreements*); and,
- d) Following the hearings of such Complaints, to make or render valid administrative determinations by at least four members of the CHRB Board, in accord with *Business & Professions Code*, §19431.

158. As a result of the acts described herein with regard to the mandatory duties owed by Respondent, Petitioner has suffered damages flowing directly from seeking issuance of this writ pursuant to *Code of Civil Procedure*, §1095, in an amount to be determined at trial.

159. Petitioner further alleges that the flagrant defects in and of Respondent’s actions as alleged hereinabove were arbitrary and capricious, if not intentionally conducted with disregard for controlling law and regulation, and therefore entitle Petitioner to attorney’s fees under *California Government Code*, §800, and/or *Code of Civil Procedure*, §1021.5.

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1 time as the board and the applicant may agree upon..." [Emphasis added.]

2 166. *CHRB Rule 1765 (Complaints)* requires Respondent to refer to the CHRB Board, to be
3 investigated by the Board or its investigator, every complaint where there is sufficient reason to
4 believe such complaint is bona fide and subject to verification.

5 167. *CHRB Rule 1414 (Appointment of Referee)* authorizes Respondent to appoint any one
6 Commissioner, the Executive Director, a hearing officer assigned by OAL, or any other qualified
7 person to sit as a referee for the taking of evidence in any matter pending before the Board. That such
8 referee is required to report to the Board, by outlining all findings, with the Board then required to
9 determine the matter as if such evidence had been presented to the full Board.

10 168. *Business & Professions Code, §19431*, requires that "[a]t least four members of the
11 board shall concur in...the exercise of any of the board's duties, powers, or functions."

12 169. Respondent has a mandatory duty to follow all laws and regulations, which includes,
13 but is not limited to, those laws and rules pertaining to:

- 14 a) The CHRB's exclusive and plenary authority to license occupational participation
15 in horse racing activities in the State, and its obligation to avoid the abrogation of
16 delegation of the same to private racing associations, in accord with *Business &*
17 *Professions Code, §19440(a)(4)*;
- 18 b) The reasonable adoption, interpretation, and application of *CHRB Rules* – including
19 *CHRB Rules 1989 (Removal or Denial of Access)* and *2045 (Prohibited Provisions*
20 *of Horsemen's Agreements)* – such that they do not exceed Respondent's statutory
21 rule-making authority by conveying to private entities, including racing
22 associations, rights, powers, and/or authority the associations otherwise are
23 precluded from exercising under law.
- 24 c) A licensed racing association's limited right to deny an occupational licensee access
25 to an inclosure pursuant to *CHRB Rule 1989 (Removal or Denial of Access)*, per
26 *Greenberg v. Hollywood Park, Inc.* (1970) 7 Cal.App.3d 968, which is conditioned
27 upon considerations and meaningful procedures consistent with notions of common
28 law "Fair Procedure" and/or terms and conditions set forth in the required RMAs;

- 1 d) Prohibitions on a racing association's right or ability to insist on the inclusion of
2 any provision in a RMA and/or its incorporated documents that, directly or
3 indirectly, "may serve to exclude participation at the meeting by any individual
4 holding a valid license issued by the Board" in a manner consistent with *CHRB*
5 *Rule 2045 (Prohibited Provisions of Horsemen's Agreements)* and such other laws
6 of the State;
- 7 e) The conduct of meaningful impartial investigations, in good faith, that do not
8 improperly combine prosecutorial and advisory functions, and/or the
9 predetermination or prejudgment of issues. *Topanga Ass'n for a Scenic Community*
10 *v. County of Los Angeles* (1974) 11 Cal.3d 506, 515;
- 11 f) The scheduling of mandated hearings relating to the purported exclusions and/or
12 denials of access of an individual/licensee pursuant to "a rule of the board" by a
13 licensed racing association. *Business & Professions Code, §19573*, and *Morton v.*
14 *Hollywood Park, Inc.* (1977) 73 Cal.App.3d 251;
- 15 g) The appointment of qualified impartial referees/hearing officers, and the scheduling
16 of hearings in accord with and *CHRB Rules 1765 (Complaints)*, *1414 (Appointment*
17 *of Referee)*, and others, as they relate to regulatory complaints, based on relevant
18 *CHRB Rules*, subject to controlling judicial precedent; including but not limited to
19 *Greenberg v. Hollywood Park, Inc.* (1970) 7 Cal.App.3d 968; etc.;
- 20 h) The unassailable duty of ensuring licensed racing associations observe and enforce
21 the CHRB's rules, and ensure that no race meet condition set by that racing
22 association conflicts with the CHRB's rules. *CHRB Rules 1436 (Duty of Licensed*
23 *Association)*, *1437 (Conditions of a Race Meeting)*, and *2045 (Prohibited*
24 *Provisions of Horsemen's Agreements)*;
- 25 i) Recognition and preservation of the Stewards' exclusive and ongoing jurisdiction,
26 authority, and power over horse entries and the entry process, including but not
27 limited to, the exclusive authority and ability to refuse entries, deny eligibility, and
28 make declarations, particularly where such exclusive authority purportedly conflicts

1 with “house rules” asserted by racing associations. *CHRB Rules 1542 (Power to*
2 *Refuse Entry and Deny Eligibility)* and *1580 (Control over Entries and*
3 *Declarations)*;

4 j) Overseeing processes and procedures that ensure the binding nature and
5 enforcement of RMAs, and timely adjudication of controversies relating to such
6 agreements as between participating horsemen – individually and collectively – so
7 as to ensure disputes as to such agreements are resolved and determined impartially,
8 in good faith, in a manner consistent with relevant law and regulations, such that the
9 reasonable interpretation and enforcement of the agreements does not conflict with
10 express provisions of law or public policy, or are otherwise unconscionable. *Civil*
11 *Code, §§1667 and 1670.5*, and *CHRB Rules 2041 (Agreements to Be Binding on*
12 *Members)*, *2042 (Agreements to Be Binding on Associations)*, *2043 (Adjudication*
13 *of Controversies Relating to Agreements)*, and *2045 (Prohibited Provisions of*
14 *Horsemen’s Agreements)*;

15 k) Strict compliance with procedures and requirements relating to the making or
16 rendering of valid, fair, and impartial administrative determinations by at least four
17 members of the Board, which are free of bias and conflict, neither predetermined
18 nor improperly motivated, and that are supported by evidence and include findings
19 that are disclosed/explained in a manner that abridges “the analytic gap between the
20 evidence and the ultimate decision or order.” *Business & Professions Code,*
21 *§19431*, and, *Topanga Ass’n for a Scenic Community v. County of Los Angeles*
22 *(1974) 11 Cal.3d 506, 515*;

23 l) The taking of no actions against licensees – directly or indirectly – which deprive
24 them of any property or personal interest without first affording that licensee due
25 process and equal protection under the Constitution. *Barry v. Barchi*, 443 U.S. 55
26 (1979); and,

27 m) The avoidance of interfering – directly or indirectly – with an individual licensee’s
28 vested fundamental right to practice his or her profession, without ensuring the

1 protection of their constitutional rights. *Bixby v. Pierno*, 4 Cal.3d 130 (1971).

2 170. On July 23, 2019, Petitioner filed with Respondent both bona fide Statutory and
3 Regulatory Complaints pertaining to unlawful and improper attempts by DMTC to exclude/ 'ban' him
4 from its licensed race meet, and otherwise deny Petitioner of his longstanding occupational rights and
5 privileges, and substantial economic interests, as well as the purported "refusal to accept" valid horse
6 entries independent of any actions taken by the Stewards. Petitioner's complaints were proper and
7 filed timely pursuant to *Business & Professions Code*, §19573, and *CHRB Rule 1765 (Complaints)*.

8 171. On July 24, 2019, Respondent admitted that it determined overnight that DMTC did in
9 fact exclude and/or deny Petitioner access based on a "rule of the board;" specifically citing *CHRB*
10 *Rule 1989 (Removal or Denial of Access)*.

11 172. Nonetheless, Respondent denied Petitioner's **Statutory Complaint** and request for the
12 hearing mandated by *Business & Professions Code*, §19573.

13 173. Respondent denied the Statutory Complaint despite being informed of and otherwise
14 fully aware of the language of the statute itself, and of judicial – appellate court – precedent
15 confirming the necessity and propriety of such a hearing; *Greenberg v. Hollywood Park, Inc.* (1970) 7
16 Cal.App.3d 968, and *Morton v. Hollywood Park, Inc.* (1977) 73 Cal.App.3d 251.

17 174. On October 8, 2019, three-plus months after the Petitioner's initial **Regulatory**
18 **Complaint** was filed, Respondent's legal counsel represented, in two, two-line letters, that the CHRB
19 had determined no regulations had been violated when two racing associations – DMTC and LATC II,
20 independent of any action by the Stewards, refused and denied Petitioner's valid horse entries. (True
21 and correct copies of counsel's letters are attached to the Petition as **Exhibit L**.)

22 175. On October 24, 2019, in response to a request for clarification of those determinations,
23 Respondent's legal counsel represented that, pursuant to the Racing Associations' Stall Applications
24 and RMAs, those associations purportedly obtained "contractual authority" to deny Petitioner's race
25 entries. (A true and correct copy of counsel's letter is attached to the Petition as **Exhibit M**.)

26 176. The clarification provided conflicted with *CHRB Rules 1402 (Controlling Authority)*,
27 *1436 (Duty of Licensed Association)*, *1437 (Conditions of a Race Meeting)*, *1542 (Power to Refuse*
28 *Entry and Deny Eligibility)* and *1580 (Control over Entries and Declarations)*, and constituted both an

1 improper waiver of a current valid rule, per *CHRB Rule 1406 (Suspension of Rule)*, and the unlawful
2 delegation of CHRB authority to private racing associations to the extent Respondent permitted those
3 associations to enforce house rules that directly conflicted with existing valid *CHRB Rules* intended to
4 govern the acceptance and/or denial of race entries.

5 177. Respondent's refusal to conduct hearings and/or render actual administrative
6 dispositions consistent both with the controlling rules and *Business & Professions Code, §19431*,
7 constituted acts:

- 8 a) Inconsistent with or otherwise in excess of Respondent's authority and jurisdiction;
- 9 b) Reflecting prejudicial abuses of discretion;
- 10 c) Lacking impartiality;
- 11 d) Reflecting predetermination and prejudgment of the issues;
- 12 e) In denial of reasonable opportunities to be heard;
- 13 f) Rendering its administrative actions devoid of findings or otherwise not supported
14 by evidence; and/or,
- 15 g) That did not set forth nor disclose findings "to bridge the analytic gap between the
16 raw evidence and the ultimate decision or order" as required by *Topanga Ass'n for*
17 *a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

18 178. The particular risk of Respondent failing to do so was the exercise of illegal, abusive,
19 and random discretion, resulting in the denial of due process, equal protection, and fair procedure to
20 Petitioner, and to other licensees similarly situated.

21 179. Based on the foregoing, Petitioner is informed and believes that Respondent has:

- 22 a) Neglected and ignored its statutory and regulatory duties and responsibilities;
- 23 b) Acted in excess of its jurisdiction and authority;
- 24 c) Abused its discretion;
- 25 d) Failed to disclose, acknowledge, and/or meaningfully address actual and apparent
26 conflicts of interest among decision-makers such that those conflicts undermined
27 the integrity of their actions and the public's trust and confidence in Respondent's
28 competence, candor, and impartiality;

- 1 e) Acted with bias and partiality, reflecting predetermination and prejudgment of
2 issues and outcomes;
- 3 f) Repeatedly denied fair and reasonable opportunities for the hearing of bona fide
4 complaints based on facts subject to verification, involving serious matters
5 pertaining to constitutionally recognized and protected personal and property
6 interests and rights;
- 7 g) Sought to avoid its legal obligations to regulate and prevent the Racing
8 Associations from circumventing valid *CHRB Rules* because certain members of its
9 Board personally perceived such actions to be expedient in light of more significant
10 industry challenges, in direct contradiction of prior judicial warnings and direction
11 including, but not limited to, *De La Torre v. CHRB* (LACSC Case # BS154412);
- 12 h) Refused to willingly offer or disclose evidence revealing bias toward and
13 involvement in such exclusionary acts by CHRB Board members and staff, and
14 which were otherwise inconsistent with the pre-textual factual and legal findings
15 offered by Respondent's legal counsel and misrepresented to be administrative
16 determinations by the Board, despite the clear requirements of *Business &*
17 *Professions Code, §19431*; and,
- 18 i) Failed to set forth or disclose findings – reached without hearings or meetings of the
19 Board – of disputed factual matters relating to Petitioner's exclusions by Racing
20 Associations notwithstanding his bona fide Regulatory Complaints, relevant and
21 controlling *CHRB Rules*, and clear RMA provisions that expressly address the
22 conditions under which licensed Thoroughbred trainers may be excluded or denied.
23 Respondent's failure to explain or disclose "the analytic and logical processes
24 between any purported evidence and the ultimate decision or order" was
25 inconsistent with its obligations under the law, as expressed in *Topanga Ass'n for a*
26 *Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, and *Kahn v. Los*
27 *Angeles City Employees' Retirement System*, (2010) 187 Cal. App 4th 98, 106.
- 28 180. Based on information and belief, Petitioner alleges that Respondent's acts as alleged

1 hereinabove are part of an ongoing pattern of conduct and disregard for the law that was/is calculated
2 to deprive occupational licensees of their due process and equal protection rights.

3 181. Pursuant to *Evidence Code*, §§452, 452.5, and 453, Petitioner requests the Court take
4 judicial notice that:

- 5 a) A factually and legally similar matter is presently pending in Orange County Superior
6 Court, entitled *Kriple v. CHRB (OCSC Case No. 30-2019-01056627-CU-WM-CJC)*;
7 b) The petitioner therein – Zvi Kriple – is a licensed horse trainer;
8 c) The respondent therein is the CHRB, the same as Respondent herein;
9 d) Petitioner therein alleges he was improperly excluded by a racing association for
10 arbitrary and capricious reasons;
11 e) Respondent asserted that as a private entity, the racing association had the absolute right
12 to exclude the petitioner/licensee pursuant to *CHRB Rule 1989 (Removal or Denial of*
13 *Access)*;
14 f) On February 26, 2020, the Court therein granted Mr. Kriple's pro per petition for writ of
15 mandate as against the CHRB;
16 g) In granting petitioner's writ, the court therein found that:

17 The California Horse Racing Board claims that it has no jurisdiction in the
18 matter because Los Alamitos Race Course is a privately-run business and may
19 exclude anyone it wishes from its own property. Therefore, it asserts it has no
20 legal duty to conduct an investigation into the matter.

21 **The court rejects the California Horse Racing Board's position here for two**
22 **independent and discreet reasons.**

23 First, the Board relies on language within Rule 1989 (formerly Rule 1990) that a
24 race course may exclude anyone at its discretion. But that rule was adopted
25 based on statutory authority that allowed the Board to set rules regarding the
26 proper exclusion of "disruptive persons." **When the Board adopted language**
27 **to expand the rule to allow the licensee to remove anyone at its discretion,**
28 **the Board clearly exceeded its statutory, rule-making authority.**

Second – and more importantly – the Board is constitutionally charged with
implementing and enforcing the law equally within its constitutional and
statutory jurisdiction.

When a licensed trainer who seeks to exercise his rights under his license is
excluded from a licensed race course, the jurisdiction of the Board is necessarily
invoked. This is especially true where, as here, the race course will not tell the
licensed trainer why he has been excluded.

1 There does not appear to be any constitutional, statutory, or case authority that
2 requires the California Horse Racing Board to conduct a hearing on the
3 petitioner's claim simply because he has been excluded. (See *Greenberg v.*
4 *Hollywood Turf Club* (1970) 7 Cal.App.3d 968, 979-980.) But it is required to
investigate whether the petitioner has been excluded under a Board rule and,
depending upon its findings, conduct any required administrative hearing.

5 For example, let us assume Los Alamitos Race Course excluded the petitioner
6 because it disagreed with the Board's decision not to suspend or revoke
7 petitioner's license because of the unproven animal cruelty charge. The race
8 course would essentially be usurping the power and jurisdiction of the Board to
9 determine who should have a license. The California Horse Racing Board
would have a vested interest in seeing that its orders are respected. The
petitioner would clearly have a right to hearing in that case.

10 ...where a licensed horse trainer complains that a licensed race course has
11 arbitrarily excluded the trainer from pursuing his livelihood, the California Horse
12 Racing Board has a legal duty to investigate the matter and, based upon a good
faith investigation, to determine whether, in its discretion, it should hold a
hearing on the claim.

13 Whether to hold a hearing here must be made in good faith after a meaningful
14 review of the internal findings, including a review of the duties and obligations
15 of the California Board of Horse Racing and Los Alamitos Race Course
pursuant to any legally binding contracts, memoranda of understanding, or other
binding agreements between them.

16 The court further finds that petitioner has made a prima facie showing that the
17 exclusion here was arbitrary and capricious. If Los Alamitos Race Course
18 excluded petitioner because of the small claims judgment or an unproven charge
of animal cruelty, the California Horse Racing Board could find the exclusion
usurped the Board's exclusive, constitutional and statutory authority.

19 (A true and correct copy of the Court's Minute Order is attached to the Petition as Exhibit N.)
20

21 182. Petitioner further alleges that longstanding conflicts of interest exist that perpetuate
22 Respondent's recurring abuse of discretion and power in favor of certain racing associations over other
23 licensees, both occupational and otherwise.

24 183. The Racing Associations have for many years, and at all times relevant hereto,
25 regularly invited individual CHRB members and staff, including legal counsel, and their family
26 members/guests to attend high profile race days and events as "VIP guests" of those Racing
27 Associations in special accommodations – either the 'Directors' Room' or private suites – where the
28 'open bar' and all food and beverages are provided complimentary, courtesy of the host racing

1 association.

2 184. Access to such accommodations is “by invitation only,” controlled by the host racing
3 associations, and is generally limited to track ownership and corporate directors, racing association
4 executives, and their guests.

5 185. Over the years, such private invitation and access practices have provided those private
6 racing associations extraordinary access to CHRB board members and senior staff, which has been
7 exploited to cultivate favoritism, foster private business relationships, and to engage in ex parte
8 communications intended to predispose both Respondent’s Board members and staff to positions and
9 objectives on regulatory, legislative, disciplinary, and public issues, as well as private business matters
10 favored and sought by those racing associations.

11 186. No official record of such communications is maintained, and lax regard for open
12 meeting laws such as the Bagley-Keene Act occurs with regularity.

13 187. Petitioner has no plain, speedy, and/or adequate remedy to obtain Respondent’s
14 compliance with the law other than the relief sought by this Petition.

15 188. Under *Code of Civil Procedure*, §1094.5, Petitioner is entitled to a writ of
16 administrative mandamus reversing Respondent’s purported administrative decisions and, at a
17 minimum, ordering the fair and good faith hearing of Petitioner’s Statutory and Regulatory
18 Complaints before qualified impartial ‘hearing officers’ as such relate to the:

- 19 a) Exclusions and/or denials of access undertaken by the Racing Associations; and,
20 b) Refusals to accept valid race entries by those same Racing Associations.

21 189. Respondent’s acts as herein alleged constituted abuses of discretion that caused
22 Petitioner to suffer damage and harm, including but not limited to, damage and harm flowing directly
23 from the need to seek issuance of a writ pursuant to *Code of Civil Procedure*, §1095, in an amount to
24 be determined at trial.

25 190. Petitioner further alleges that the flagrant defects of Respondent’s actions alleged above
26 were arbitrary and capricious, and entitle Petitioner to attorneys’ fees under *California Government*
27 *Code* §800 and/or *Code of Civil Procedure*, §1021.5, and *Kahn v. Los Angeles City Employees’*
28 *Retirement System*, (2010) 187 Cal. App 4th 98, 106.

THIRD CAUSE OF ACTION

(Statutory Violation, Government Code §815.6)

191. Petitioner incorporates by reference all preceding paragraphs as if fully set forth herein.

192. *Government Code, §815.6*, provides in pertinent part that, when acting under a mandatory duty imposed by legislative enactment, a public entity (agency) may be held liable for injuries proximately caused by its failure to reasonably and diligently discharge the assigned duty.

193. Respondent had a mandatory duty to have knowledge of, abide by, and act in good faith and in accordance with all of the laws and regulations pertaining to horse racing in the State, as well as those generally relating to the operation of a State agency, and to the rights and obligations of those individuals and entities it licenses and regulates.

194. Petitioner asserts such knowledge extends to longstanding judicial precedent and trial court rulings of significance in which Respondent was an interested and participating party.

195. Based on information and belief, Petitioner alleges that Respondent knew or reasonably should have known that the personal opinions of its legal counsel did not constitute valid administrative actions or dispositions by the CHRB, in accord with *Business & Professions Code, §19431*.

196. Based on information and belief, Petitioner further alleges that Respondent knew or reasonably should have known that the personal opinion of its legal counsel in refusing to schedule and/or denying a hearing on Petitioner's bona fide Statutory Complaint as mandated by *Business & Professions Code, §19573*, and interpreted by *Greenberg v. Hollywood Park, Inc. (1970) 7 Cal.App.3d 968* and *Morton v. Hollywood Park, Inc. (1977) 73 Cal.App.3d 251*, was a blatant violation of that particular statute, inconsistent with Respondent's general legal duties under the law, and did not constitute a lawful and valid administrative disposition or action by the CHRB under *Business & Professions Code, §19431*.

197. Based on information and belief, Petitioner further alleges that Respondent knew or reasonably should have known that the personal opinion of its legal counsel suggesting that the Racing Associations may impose, in either RMAs or Stall Applications, conditions relating to the entry of horses that are inconsistent with or contrary to valid existing *CHRB Rules* was:

- 1 a) Unlawful and expressly prohibited by *CHRB Rules 1402 (Controlling Authority)*,
2 *1406 (Suspension of Rule)*, and *1437 (Conditions of a Race Meeting)*, a position
3 judicially confirmed to the CHRB just a few years earlier by the court in *De La*
4 *Torre v. CHRB* (LACSC Case # BS154412);
5 b) A blatant misrepresentation of the proper application of the *CHRB's Rules*;
6 c) Inconsistent with Respondent's general legal duties under the law; and,
7 d) Did not constitute a lawful and valid administrative disposition or action by the
8 CHRB under *Business & Professions Code, §19431*.

9 198. Pursuant to *Evidence Code, §§452, 452.5, and 453*, Petitioner requests the Court take
10 judicial notice that:

- 11 a) A factually and legally similar matter was determined by the Los Angeles County
12 Superior Court in 2016, in the case entitled *De La Torre v. CHRB* (LACSC Case #
13 BS154412);
14 b) The petitioner therein – Gustavo De La Torre – was a licensed horse owner;
15 c) The respondent therein was the CHRB, the same as Respondent herein;
16 d) Petitioner therein alleged that a “house rule” imposed by a racing association
17 conflicted with several valid existing *CHRB Rules*, and that by permitting the racing
18 association to enforce the “house rules” the CHRB had failed to discharge its
19 mandatory public duty in enforcing valid regulations; i.e., the existing *CHRB Rules*;
20 e) The Court therein granted the petition for writ of mandate as against the CHRB;
21 f) In granting the writ, the court therein found that the:

22 * * *

23 CHRB committed a prejudicial abuse of discretion in that it failed in the
24 manner required by law in that Business and Professions (“B&P”) Code
25 section 19440 and the above referenced regulations each require the
rescission of a house rule which seeks to occupy the same legal space as a
state agency regulation or public law.

26 * * *

27 The CHRB may delegate its powers and duties only to stewards, and [racing
association] is not an authorized steward. See B&P Code §19440(b)

28 (A true and correct copy of the Court's Minute Order is attached to the Petition as **Exhibit O.**)

1 199. The CHRB claims that because the Racing Associations are private business entities
2 Respondent has no jurisdiction as to the Associations' exclusion of Petitioner or as to their purported
3 refusal to "accept" his valid race entries as alleged herein.

4 200. Respondent's actions as described hereinabove were inconsistent with the Legislature's
5 clear mandate to the CHRB; namely, protecting the interests of the public and providing uniformity of
6 regulation within the horse racing industry. *Business & Professions Code, §19401*.

7 201. Respondent had a mandatory duty not only to comply with both state and federal law
8 but to comply with its own regulations, as well as to provide reasonable supervision of its agents,
9 servants, and/or employees.

10 202. Respondent had further mandatory duties to:

11 a. Take no action against a licensee – directly or indirectly – which deprived them of any
12 property or personal interest without first affording that licensee due process and equal
13 protection under the constitution. *Barry v. Barchi*, 443 U.S. 55 (1979);

14 b. Avoid interfering – directly or indirectly – with an individual's vested fundamental
15 right to practice his or her profession, without similarly protecting their constitutional
16 rights. *Bixby v. Pierno*, 4 Cal.3d 130 (1971); and,

17 c. Discharge its mandatory duties so as to require the Racing Associations to:

18 i. Rescind any and all house rules, stall applications, or RMA provisions that
19 conflicted with existing *CHRB Rules* pertaining to the acceptance of race
20 entries;

21 ii. Rescind any and all stall application and/or RMA provisions that may serve to
22 exclude the participation at a race meeting of any individual holding a valid
23 license issued by the Board per *CHRB Rule 2045(4) (Prohibited Provisions of*
24 *Horsemen's Agreements)*; and,

25 iii. Participate, in good faith, expeditiously in all hearings and other procedures
26 required to fairly and impartially adjudicate the disputes and controversies
27 relating to their sequential exclusions of Petitioner.

28 d. Reasonably adopt, interpret, and/or apply *CHRB Rules* – including *CHRB Rule 1989*

1 (*Removal or Denial of Access*) – such that they did not exceed Respondent’s statutory
2 rule-making and regulatory authority by attempting to convey to private entities,
3 specifically racing associations, unlimited discretion and rights, powers, and/or
4 authority to exclude and/or ban occupational licensees without Fair Procedure or
5 recourse that those associations otherwise were precluded from exercising under law.

6 203. Respondent negligently failed to adequately regulate the Racing Associations, exceeded
7 its statutory rule-making authority, and unlawfully abrogated and delegated its statutory and regulatory
8 duties to those Associations so as to deprive Petitioner of his due process and equal protection rights
9 under the law, all to Petitioner’s great detriment.

10 204. Respondent further negligently: failed to adequately supervise its agents, servants, and
11 employees who, in turn, failed to discharge mandatory duties; directed and supervised biased and
12 predetermined investigations; and, encouraged – directly and implicitly – unconstitutional and illegal
13 actions and conduct towards Petitioner, all to Petitioner’s great detriment.

14 205. As a direct and proximate result of the above-described conduct, Petitioner has suffered
15 and continues to suffer damages including, but not limited to, business losses, reputational losses,
16 embarrassment, the loss of goodwill, loss of prospective advantage and opportunity, and other
17 damages which were clearly foreseeable to the Respondent.

18 PRAAYER

19 WHEREFORE, Petitioner respectfully requests this Court:

20 AS TO EACH CAUSE OF ACTION WHERE AND AS APPLICABLE

- 21 1. Enter judgment against Respondent, CHRB;
- 22 2. Grant the peremptory Petitions for Writ of Mandamus by ordering:
 - 23 a. The CHRB set for hearing, before impartial neutral hearing officers, Petitioner’s
24 Statutory Complaints filed pursuant to *Business & Professions Code, §19573*,
25 pertaining to:
 - 26 i. The limited right of the Racing Associations to exclude or deny access to
27 Petitioner, as an occupational licensee, pursuant to *CHRB Rule 1989 (Removal or*
28 *Denial of Access)*, in accord with *Morton v. Hollywood Park, Inc. (1977) 73*

1 Cal.App.3d 251, *Greenberg v. Hollywood Park, Inc.* (1970) 7 Cal.App.3d 968;
2 and,

- 3 ii. The limited right of the Racing Associations to exclude or deny access to
4 Petitioner, as an occupational licensee, pursuant to *CHRB Rule 1989 (Removal or*
5 *Denial of Access)*, where such exclusion or denial deprives the licensees of
6 longstanding occupational rights and privileges, and substantial economic
7 interests, in light of their legal obligation to first provide meaningful notions of
8 common law Fair Procedure, substantively and procedurally.
- 9 b. The CHRB set for hearing, before impartial neutral hearing officers, Petitioner's
10 *Regulatory Complaints* filed pursuant to *CHRB Rule 1765 (Complaints)*, pertaining to:
- 11 i. The rights of the Racing Associations, as licensed private entities engaged in a
12 regulated business that enjoy a virtual monopoly over racing opportunities in the
13 State, to independently deny and deprive other licensees of their longstanding
14 occupational rights and privileges, and substantial economic interests, without
15 first providing any form of actual and meaningful substantive or procedural
16 "Fair Procedure;" and,
- 17 ii. The Racing Associations' failure to follow *CHRB Rules*, processes, and
18 procedures applicable to the control, acceptance, facilitation, and/or refusal of
19 valid horse entries.
- 20 c. Directing Respondent to order the Racing Associations to:
- 21 i. Rescind any and all house rules, stall applications, or RMA provisions that
22 conflict with valid existing *CHRB Rules* relating to the acceptance of race
23 entries;
- 24 ii. Rescind any and all stall applications and/or RMA provisions that may serve to
25 exclude the participation at a race meeting of any individual holding a valid
26 license issued by the Board per *CHRB Rule 2045(4) (Prohibited Provisions of*
27 *Horsemen's Agreements)*; and,
- 28 iii. Participate expeditiously, in good faith, in all hearings and other procedures

1 required to fairly and impartially adjudicate the disputes and controversies
2 relating to their sequential exclusions of Petitioner.

3 d. Following such hearings, the CHRB make or render valid administrative determinations
4 or dispositions, and/or take official action with regard to Petitioner's bona fide
5 Statutory and Regulatory Complaints, in accord with *Business & Professions Code*,
6 §19431.

7 3. Award Petitioner damages per *Code of Civil Procedure*, §1095, incidental to and flowing from
8 the Writs of Mandamus;

9 4. Award Petitioner special and general damages according to proof;

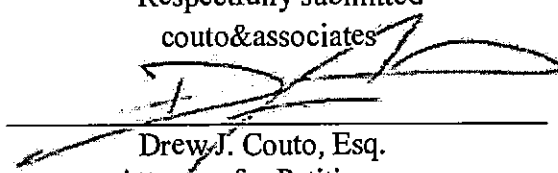
10 5. Award Petitioner attorney's fees pursuant to *Code of Civil Procedure*, §§1021.5 and 1028.5, and
11 *Government Code*, §800, or any other applicable law;

12 6. Award Petitioner costs of suit herein; and,

13 7. Award Petitioner any such other and further relief as the court deems just and proper.

14 Dated: 4/15/2020

Respectfully submitted
couto&associates

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17 Drew J. Couto, Esq.
18 Attorney for Petitioner
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EXHIBIT A

CALIFORNIA HORSE RACING BOARD

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(916) 263-6000 Fax (916) 263-6042



July 24, 2019

Couto & Associates
755 West A St., Suite 100
San Diego, CA 92101

SUBJECT: Request for Hearing

Dear Mr. Couto:

I am in receipt of your letter sent to Chairman Winner on July 23, 2019, regarding your complaint against Del Mar Thoroughbred Club. Pursuant to California Horse Racing Board (CHRB or Board) Rule 1989, Removal or Denial of Access, "Any person may be removed or denied access for any reason deemed appropriate by [an] association, fair or simulcast facility notwithstanding the fact that such reason is not specified in the rules." Furthermore, CHRB Rule 1485, License Subject to Conditions and Agreements, states that "Possession of a license does not confer any right upon the holder thereof to employment at or participation in a race meeting or to be within the inclosure." These regulations reflect the Board's longstanding position on this issue.

Accordingly, the Board will not grant a hearing on the basis of an association's action under Rule 1989.

Cordially,

A handwritten signature in black ink, appearing to read "R. Brodnik".

Robert Brodnik
Staff Counsel
California Horse Racing Board

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EXHIBIT B

COUTO & ASSOCIATES

July 24, 2019
Sent via Email

URGENT MATTER

California Horse Racing Board
Mr. Robert Brodnik, Esq., Staff Counsel
1010 Hurley Way
Suite 300
Sacramento, CA 95825

RE: DMTC'S EXCLUSION OF JERRY HOLLENDORFER

Dear Mr. Brodnik,

Reference is made to your letter to me dated July 24, 2019, advising that the CHRB will not grant the hearing requested pursuant to *Business & Professions Code, §19573*, based on its overnight determination that the racing association's action occurred under *CHRB Rule 1989 (Removal or Denial of Access)*.

The Purpose of this letter is twofold.

First, to point out that yesterday's letter to the Board constituted both a request for hearing or hearings under *Business & Professions Code, §19573*, and separately under *CHRB Rule 1765 (Complaints)*, with the latter based on the seven separate *Rule* violations identified in the letter. Therefore, are we correct in assuming your letter only addresses the request for hearing pursuant to the *Code*?

Second, today's response confirmed the CHRB determined and understood Mr. Hollendorfer's exclusion from and denial of access to DMTC to have occurred pursuant to *CHRB Rule 1989*. As a consequence, we request the Board clarify why Mr. Hollendorfer's exclusion pursuant to *Rule 1989* does not require the hearing mandated by *Business & Professions Code, §19573*?

Is the Board suggesting that a "denial of access" occurring under *CHRB Rule 1989* does not constitute an 'exclusion' or 'ejection' of the type for which *Business & Professions Code, §19573* mandates a hearing?

If it does, can the Board please provide any authority or case citations supporting that suggestion?

Is it the Board's position that *Morton v. Hollywood Park, Inc.* (1977) 73 CalApp3d 248, 254, does not clearly reflect that *Business & Professions Code, §19573* "provides for a hearing on the question of the applicability of 'a' rule to any person excluded or ejected. The jurisdiction of the board is therefore not limited to exclusions under [Rule] 1980."

Additionally, is it fair to note that the CHRB has been informed, and therefore is fully aware, that DMTC's purported privileges under *CHRB Rule 1989* are subject to mitigating and limiting provisions set forth in Sections V and VI of its 2019 Race Meet Agreement with CTT, as required by the CHRB?

Can you please advise whether, based on all of the information provided and its independent knowledge of the general facts, the CHRB understands and recognizes that the exclusion of or denial of

access to Mr. Hollendorfer of his longstanding occupational rights and privileges is causing him substantial economic damage?

Is it the CHRB's position that, as the regulator of such activity and parties, it has no legal duty to ensure that any such action taken by a licensed racing association, as against another licensee, with regard to licensed activities, is done in a manner consistent with the laws of the State?

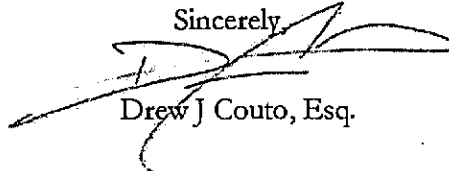
Is it the CHRB's position that the procedure established by the California Legislature in *Business & Professions Code, §19573*, was not intended to provide persons such as Mr. Hollendorfer, at a minimum, some degree of due process or Fair Procedure consistent with those minimum standards as set forth by this State's Supreme Court in the *Ezekial* and *Marinship-Pinsker* line of cases cited in yesterday's letter, before he may be so deprived?

We ask the CHRB to promptly respond to these requests for clarification. We are hopeful that such good faith and meaningful efforts will negate any need to seek judicial intervention.

Should the CHRB have any questions about this letter, please do not hesitate to contact me.

Thank you for your anticipated attention, cooperation, and consideration.

Sincerely,



Drew J Couto, Esq.

CC: CIT

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EXHIBIT C

Drew Couto

From: Drew Couto
Sent: Wednesday, July 24, 2019 12:21 PM
To: Brodnik, Robert@CHRB
Cc: 'Charles Winner'; Madeline; Baedeker, Rick@CHRB; McDonough, John@CHRB; Alan Balch; Darrell Vienna
Subject: RE: Hollendorfer - Urgent Request for Immediate Hearing
Attachments: CHRB Letter 190724.pdf

Good afternoon Robert.

Thank you for the prompt response.

Attached is a letter requesting clarification from the CHRB, as its letter denying the requested hearing was brief, somewhat unclear, and left unanswered the handling of Mr. Hollendorfer's contemporaneous Complaint under CHRB Rule 1765.

Thank you for your anticipated prompt consideration and response.

Drew J. Couto, esq.

couto&associates

858.354.3739

619.544.0101 fax

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Any disclosure, copying, or distribution of the message, or the taking of any action based on it, is strictly prohibited.

From: Brodnik, Robert@CHRB <rjbrodnik@chrb.ca.gov>
Sent: Wednesday, July 24, 2019 8:51 AM
To: Drew Couto <drew@coutoesq.com>
Cc: 'Charles Winner' <cwinner@winnr.com>; Madeline <doomicus99@aol.com>; Baedeker, Rick@CHRB <RMBaedeker@chrb.ca.gov>; McDonough, John@CHRB <JMcDonough@chrb.ca.gov>
Subject: Hollendorfer - Urgent Request for Immediate Hearing

Mr. Couto,

Attached is a response to your request sent on behalf of Mr. Hollendorfer.

All the best,

Robert Brodnik

Staff Counsel

California Horse Racing Board

1010 Hurley Way, Suite 300

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EXHIBIT D

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



October 8, 2019

Drew Couto
Attorney for Jerry Hollendorfer

SUBJECT: Complaint re: Del Mar Thoroughbred Club

Dear Mr. Couto,

The California Horse Racing Board (CHRB) has conducted a thorough investigation into the accusations made against the Del Mar Thoroughbred Club by licensee Jerry Hollendorfer.

At the conclusion of our investigation, we have found no regulations that have been violated by the Del Mar Thoroughbred Club pertaining to your complaint. Accordingly, the CHRB will not be filing a complaint against the Del Mar Thoroughbred Club at this time.

Cordially,

Robert Brodnik
Staff Counsel, California Horse Racing Board

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



October 8, 2019

Drew Couto
Attorney for Jerry Hollendorfer

SUBJECT: Complaint re: LATC and LATC II

Dear Mr. Couto,

The California Horse Racing Board (CHRB) has conducted a thorough investigation into the accusations made against the Los Angeles Turf Club by licensee Jerry Hollendorfer.

At the conclusion of our investigation, we have found no regulations that have been violated by the Los Angeles Turf Club pertaining to your complaint. Accordingly, the CHRB will not be filing a complaint against the Los Angeles Turf Club at this time.

Cordially,

Robert Brodnik
Staff Counsel, California Horse Racing Board

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EXHIBIT E

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



October 24, 2019

Drew Couto
Attorney for Jerry Hollendorfer

J. Christopher Jaczko
Attorney for Del Mar Thoroughbred Club

SUBJECT: Complaint re: Del Mar Thoroughbred Club

Dear Counsels,

The California Horse Racing Board (CHRB) has conducted a thorough investigation into the accusations made against the Del Mar Thoroughbred Club (DMTC) by licensee Jerry Hollendorfer.

At the conclusion of our investigation, we have found no regulations that have been violated by the Del Mar Thoroughbred Club pertaining to the complaint. Accordingly, the CHRB will not be filing a complaint against the Del Mar Thoroughbred Club at this time.

In reaching that conclusion, the CHRB considered the following CHRB rules and reached the following conclusions as to each:

1. 1527: General Authority of Stewards: While the stewards are granted general authority and supervision over all licensees, the track also has authority to make stall and race entry decisions pursuant to the Stall Application and the Race Meet Agreement. This section was not violated by the DMTC.
2. 1542: Power to Refuse Entry and Deny Eligibility: While the stewards are granted authority to refuse entry to a race, declare ineligible to race or order removed from the premises, any horse, the Stall Application and Race Meet Agreement additionally give the DMTC the authority to make stall and race entry decisions. This section was not violated by the DMTC.
3. 1580: Control over Entries and Declarations: All entries and declarations are under the supervision of the stewards. Additionally, the Stall Application and Race Meet Agreement gives the DMTC the authority to make stall and race entry decisions. This section was not violated by the DMTC.

4. 1587: Entries Survive with Transfer: No evidence was presented to support a violation of this section.
5. 2041: Entries to be Binding on Members: The Race Meet Agreement between the DMTC and the California Thoroughbred Trainers (CTT) was not violated by the DMTC. Based on the evidence collected, their decision to deny stalls to Mr. Hollendorfer does not appear to be "arbitrary or capricious".
6. 2042: Agreements to be Binding on Associations: The Race Meet Agreement between the DMTC and the CTT was not violated by the DMTC. Based on the evidence collected, their decision to deny stalls to Mr. Hollendorfer does not appear to be "arbitrary or capricious".
7. 2043: Adjudication of Controversies Relating to Agreements: This section states that a complaint may be filed with the Board for any violations of agreements between a horsemen's organization and a racing association. A complaint was filed and withdrawn by the CTT. There was no violation of this section.
8. 2045: Prohibited Provisions of Horsemen's Agreements: This rule states that no agreement between the association and the horsemen shall include provisions that are in conflict with Horse Racing Law. No evidence was presented to support a violation of this section. The DMTC's decision to deny stalls to Mr. Hollendorfer does not appear to be "arbitrary or capricious".

Cordially,

Robert Brodnik
Staff Counsel, California Horse Racing Board

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EXHIBIT F

Petitioner Gustavo De La Torre ("De La Torre") seeks a writ of mandate compelling Respondent California Horse Racing Board ("CHRB" or the "Board") to discharge its mandatory duty to require Respondent Los Alamitos Quarter Horse Racing Association ("LARC") to rescind its house rule banning clenbuterol.

The court has read and considered the moving papers, oppositions, and replies, and renders the following tentative decision.

A. Statement of the Case

Petitioner De La Torre commenced this proceeding on April 2, 2015. The operative pleading is the First Amended Petition ("FAP") filed on July 21, 2015. The FAP alleges in pertinent part as follows.

Petitioner is licensed by Respondent CHRB as a horse owner. Petitioner has used his CHRB license to engage in the horse racing industry throughout California and Los Angeles County. He races primarily at Los Alamitos Racetrack. The Los Alamitos Racetrack and its managing association, Respondent LARC, are each licensees of the CHRB and come under its jurisdiction.

On December 17, 2014, the CHRB approved a license application from LARC for a race meet beginning December 26, 2014 and ending December 21, 2015. As part of that licensing approval, CHRB also approved the imposition of a "house rule" prepared solely by LARC and imposed on all licensees wishing to race at the Los Alamitos Racetrack during the race meeting.

The house rule serves, among other things, to disqualify any trainer's horse which tests positive for any amount of authorized medications clenbuterol and albuterol through hair follicle testing. The house rule conflicts directly with CHRB Regulations which allow the use of clenbuterol and albuterol for therapeutic purposes. It also conflicts with CHRB regulations in that it attempts to penalize licensees based on hair testing, a test which does not trigger an enforcement action under CHRB Rules.

The house rule conflicts with several CHRB Rules including 1402, 1436, 1437, 1580, 1844 and 2045. The CHRB noted in Rule 1844 that clenbuterol and albuterol used appropriately can safeguard the health of the horse and therefore has authorized rather than banned their use. Respondent CHRB has failed to discharge its mandatory public duty in enforcing CHRB Rules 1402, 1437 and 2045 which would have prohibited the imposition of the house rule.

CHRB committed a prejudicial abuse of discretion in that it failed to proceed in the manner required by law in that Business and Professions ("B&P") Code section 19440 and the above-referenced regulations each require the rescission of a house rule which seeks to occupy the same legal space as a state agency regulation or public law. The petition is a challenge to Respondent CHRB's decision to approve and allow implementation of the house rule as part of LARC's licensing. LARC has failed, as a licensee of the CHRB, to comply with CHRB Rules 1436 and 1437 which mandates that all licensees shall follow, obey, and enforce the rules.

On March 30, 2015, LARC disqualified Petitioner's horse "Runaway Fire" from

participating in a \$175,000 Derby for which it was otherwise eligible because of unauthorized, illegal hair testing of the horse. The horse returned negative blood and urine tests after each of its races. The race is restricted to three year old horses and occurred on April 4, 2015. Petitioner lost this racing opportunity as a result of the house rule and CHRB's failure to intervene and enforce its Rules against LARC.

B. Standard of Review

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." CCP §1085(a).

A traditional writ of mandate under CCP section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance. Id. at 584 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

A ministerial act is one that is performed by a public officer "without regard to his or her own judgment or opinion concerning the propriety of such act." Ellena v. Department of Insurance, (2014) 230 Cal.App.4th 198, 205. It is "essentially automatic based on whether certain fixed standards and objective measures have been met." Sustainability of Parks, Recycling & Wildlife Legal Defense Fund v. County of Solano Dept. of Resource Mgmt., (2008) 167 Cal.App.4th 1350, 1359.

Where a duty is not ministerial and the agency has discretion, mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Manjares v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. Id. at 371. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.

No administrative record is required for traditional mandamus to compel performance of a ministerial duty or as an abuse of discretion.

C. Governing Law¹

1. The CHRB's Authority

B&P Code section 19400-705 is known as California's "Horse Racing Law". The CHRB has jurisdiction over, and supervision of, horse racing meets where wagering on results is conducted (hereinafter, "horse racing"), and over all persons or things having to do with the operation of such meetings. B&P Code §19420. The CHRB has "all powers necessary and proper to enable it to carry out fully and effectually" the Horse Racing Law. The "[r]esponsibilities of the board shall include, but not be limited to. . . administration and enforcement of all laws, rules, and regulations affecting horse racing." B&P Code §19440. The CHRB is authorized to prescribe rules, regulations and conditions under which all horse racing shall be conducted in the State. B&P Code §19562.

CHRB Rule² 1402 (Controlling Authority) provides in pertinent part that:

The laws, rules and orders of the Board supersede the conditions of a race meeting and govern thoroughbred, harness, quarter horse, appaloosa, Arabian, paint and mule racing. The stewards may enforce rules or conditions set forth by breed registry organization if such rules or conditions are not inconsistent with rules of the Board.

2. Local Authority

Rule 1436 (Duty of Licensed Association) provides that each association "...shall observe and enforce the [CHRB] rules."

Rule 1437 (Conditions of a Race Meeting) provides:

"The association may impose conditions for its race meeting as it may deem necessary, provided, however, that such conditions may not conflict with the rules, regulations and orders of the Board, that such conditions are published in the condition book or otherwise made available to all licensees participating in its race meeting, that such conditions are posted on the association bulletin board, and a

¹ Petitioner asks the court to judicially notice 16 exhibits. The CHRB Rules (Exs. 1-9), a June 7, 2012 CHRB memorandum (Ex. 13), two out-of-state published decisions (Exs. 14-15) and a Kentucky Attorney General opinion (Ex. 16) are judicially noticed. Evid. Code §452(b), (c), (d). The partial transcripts of CHRB committees (Exs. 10-11) are not official records and the request is denied. (However, they are attached without objection as evidence to LARC's opposition and have been considered.)

The CHRB asks the court to judicially notice a California Office of Administrative Law ("OAL") emergency action. The request is granted. Evid. Code §452(c).

In a second request, Petitioner asks the court to judicially notice another CHRB rule and an OAL determination concerning an underground regulation. The request is granted. Evid. Code §452(c).

² Hereinafter, the CHRB Rules shall be sometimes referred to as the "Rules".

copy of the conditions filed with the Board. The association may also impose requirements, qualifications or requisites for its race meeting as it may deem appropriate."

Rule 1870 (Conditions of Meeting Binding upon Licensees) provides:

"The Board.... provides that all associations, officials, horsemen, owners, trainers. . ., who have accepted directly or indirectly, with reasonable advance notice, the conditions under which said association engages and plans to conduct such race meeting, shall be bound thereby."

Rule 2040 (Horsemen's Organizations for Owners and Trainers) provides:

"The Board recognizes the need for horse owners and trainers to negotiate and to covenant with racing associations regarding the conditions of each race meeting,... and other matters relating to the welfare, benefits and prerogatives of the parties to the agreement."

Rule 2045 (Prohibited Provisions of Horsemen's Agreements) provides:

"No agreement between the [racing] association and the horseman shall include provisions that conflict with the Horse Racing Law, the rules of the [CHRB], or usurp the authority of the [CHRB].... [including] provisions which may serve to exclude participation at the meeting by any individual holding a valid CHRB license." Rule 2045 (Pet. Reply RJN Ex. 1).

3. Testing

B&P Code section 19577 provides for blood or urine testing of racing horses:

(a) (1) Any blood or urine test sample required by the board to be taken from a horse that is entered in any race shall be divided or taken in duplicate, if there is sufficient sample available after the initial test sample has been taken. The initial test sample shall be referred to as the official test sample....

Rule 1843 (Medications, Drugs and Other Substances) provides:

It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of ail drugs, medications and drug substances foreign to the horse. In this context:

(a) No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse except as hereinafter expressly

provided.

Rule 1844 (Authorized Medication) provides:

Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to race provided that:

...

(e) Official urine test samples may contain one of the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels:

(3) Albuterol; 1 nanograms per milliliter

(6) Clenbuterol; 140 picograms per milliliter

(g) Official blood test samples shall not contain any of the drug substances or their metabolites or analogs listed in subsection (e) (1)(12).

Rule 1858 (Test Sample Required) provides:

Blood and urine samples shall be taken daily from the winner of every race. . . Every horse within the inclosure or entered in any race is subject to testing and no owner, trainer, or other person having the care of a horse shall refuse to submit it for testing when directed by the Equine Medical Director, the stewards, or the official veterinarian.

A finding by the stewards that an official test sample from a horse participating in any race contained a prohibited drug substance shall require disqualification of that horse from the race in which it participated. Rule 1859.5.

D. Statement of Facts³

1. Clenbuterol

"Doping" in horses is defined as the application of drugs for better performance, and it is illegal in most countries and the State of California. Pet. Ex., pp. 28, 36; Rule 1843. In recent years, the growth and development of some horses has been accelerated by the use of anabolic drugs. Pet. Ex., p.28. Random tests for illegal drug application often do not yield positive results because treatment is discontinued early enough to avoid urine and blood detection. *Id.* In 2008, the CHRB adopted a regulation that banned the use of anabolic steroids in horse racing. Arthur Decl. ¶3; Rule 1844. As a result of that ban, the use of alternative drugs that have steroid-like side effects became rampant. *Id.*

Clenbuterol is a bronchodilator that has been approved for use for horses affected with airway obstruction. Arthur Decl. ¶4. Clenbuterol is a beta-2 agonist and has a muscle building effect that mimics anabolic steroids. *Id.* Although not its intended therapeutic purpose, at high

³ The court has ruled on Petitioner's evidentiary objections, interlineating the original evidence where an objection was sustained. The vast majority of objections were overruled.

doses clenbuterol increases muscle mass. Id. Quarter horses engage in sprint racing, and thus, the preferred body type is a well-muscled horse. Arthur Decl. ¶5. Clenbuterol abuse occurs when the drug is not used for its intended purpose, and instead is used as a replacement for banned anabolic steroids. Arthur Decl. ¶6. Urine and blood tests are not effective for testing long-term use of clenbuterol because it cannot be detected in horse urine later than fourteen to seventeen days after withdrawal, and is undetectable in blood between four and seven days after its last application. Arthur Decl. ¶7; Pet. Exs., p.28.

2. Clenbuterol Abuse at Los Alamitos

In 2010, representatives from Los Alamitos Racetrack (hereinafter, "LARC") and the Pacific Coast Quarter Horse Racing Association ("PCQHRA") began expressing concerns to the CHRB about what they perceived as unfair racing at LARC. Arthur Decl. ¶8. In response to these concerns, the CHRB conducted testing at LARC for their 2010 signature end of season races. Arthur Decl. ¶9. A total of 72 blood samples were obtained and tested. Id. Of these samples, every sample contained detectable levels of clenbuterol in the horse's blood. Id. As clenbuterol can be detected in blood for no more than four to seven days, the CHRB's testing indicated that all of the tested horses had recently been administered clenbuterol. Id.

3. CHRB Action Regarding Clenbuterol

In July 2011, the CHRB implemented Rule 1844.1, which allowed the CHRB to temporarily suspend the authorized administration to a horse entered to a race of any drug, substance or medication. Arthur Decl. ¶10. In October 2011, pursuant to Rule 1844.1, the CHRB approved a joint request by LARC and the PCQHRA to restrict the use of clenbuterol at LARC by prohibiting for one year its presence at any level in test samples collected from horses that race. Arthur Decl. ¶11. In July 2012, pursuant to Rule 1844.1, the CHRB suspended the authorized threshold level of clenbuterol for all breeds at all tracks in California. Arthur Decl. ¶12. In 2012, the CHRB conducted testing at LARC and found that no horses tested positive for clenbuterol. Arthur Decl. ¶13.

In the fiscal year 2013-14, clenbuterol abuse began to surface again at LARC and the CHRB's testing revealed thirteen violations. Arthur Decl. ¶14. On February 28, 2014, in response to the rise of unlawful clenbuterol use at LARC, the CHRB implemented and enforced the provisions of a Memorandum drafted by the CHRB's Equine Medical Director, Dr. Rick Arthur, entitled "Instructions Pursuant to Rule 1855, Medication Procedures and Related Instructions." Arthur Decl. ¶15, CHRB Exs., pp. 6-7. The Memorandum described procedures for how and when quarter horses should be placed on the Veterinarian's List after clenbuterol is prescribed to or detected in a horse, as well as the procedure for removing a horse from the list once it tests clear of clenbuterol. Id. In September 2014, Rule 1844 was amended to reduce the threshold for clenbuterol from 5 nanograms per milliliter to 140 picograms per milliliter in urine. Arthur Decl. ¶16. There were no clenbuterol violations in the fiscal year 2014-15. Arthur Decl. ¶18.

On July 14, 2015, the CHRB found that an emergency existed requiring the implementation of emergency regulations pursuant to Government ("Govt.") Code section 11346.1(a)(2). Arthur Decl. ¶19; CHRB Exs., pp. 8-11. The broad objective of the emergency regulations was to protect quarter horses from the unregulated and potentially harmful administration of clenbuterol, as well as to protect the wagering public from unfair advantages gained by trainers and owners who

illegitimately enhance the performance of their horses using clenbuterol. Id. The anticipated benefit of these regulations was that quarter horses receiving clenbuterol would not be permitted to race in California, protecting both the horse from potential injury and the public from negative perceptions of horse racing. CHRB Exs., p.10.

The emergency regulations de-authorized any detectable level of clenbuterol in a quarter horse's official urine test sample. Arthur Decl. ¶19; CHRB Exs., pp. 8-11. The emergency regulations also required that any quarter horse that is prescribed or otherwise tests positive for clenbuterol in a blood, urine, or other official test sample, be placed on the Veterinarian's List until clenbuterol is no longer detected in the horse's blood or urine by an official test sample. Id. Finally, the emergency regulations required veterinarians to report all clenbuterol prescriptions for quarter horses, and trainers to report all clenbuterol administration to quarter horses. Id. On July 31, 2015, the emergency regulations became effective and were set to expire on January 28, 2016. Arthur Decl. ¶20. On January 26, 2016, the OAL re-adopted the emergency regulations, which will expire on April 25, 2016. Arthur Decl. ¶20; CHRB Exs., p.27.

In addition to the emergency regulations, the CHRB proposed to permanently amend Rule 1844, to revise subsection 1844(e) to remove clenbuterol from the list of drug substances that may be detected in an official urine test sample in quarter horses. Arthur Decl. ¶21; CHRB Exs., pp. 37-55. The CHRB also proposed to permanently add Rule 1866.1 to require that a quarter horse that is prescribed or otherwise tests positive for clenbuterol in an official test sample to be placed on the Veterinarian's List until clenbuterol is no longer detected by an official test sample. Id. A public hearing on the proposed amendments is scheduled for February 25, 2016. Resp. Exs., p.37.

4. LARC Action Regarding Clenbuterol

In addition to the actions taken by the CHRB to combat clenbuterol abuse, in May 2014 LARC, with PCQHRA support, established internal policies concerning clenbuterol use in quarter horses at the race track by banning the use of clenbuterol and using hair testing to enforce the ban. Allred Decl. ¶3. In furtherance of this rule, all trainers were required to sign the Acknowledgement of Conditions which specifically identified clenbuterol as a zero tolerance drug, specified that hair testing by the CHRB or LARC could be required at any time, and provided that all races are governed by conditions published by the track. Allred Decl. ¶4.

On January 8, 2015, Mario Loza ("Loza"), Runaway Fire's trainer, executed the Acknowledgment of Conditions for the Stabling of Horses at Los Alamitos Race Course ("Acknowledgement of Conditions"). Allred Decl. ¶6; CHRB Exs., pp. 1-5. The Acknowledgment of Conditions outlines the obligations of a trainer in connection with the use of space at Los Alamitos Racetrack for race meets at Los Alamitos Racetrack. CHRB Exs., pp. 1-5. Paragraph 9 of the Acknowledgment of Conditions expressly provides, "There will be a zero tolerance for clenbuterol..." and that "[u]rine, blood, and/or hair testing either by CHRB or Track may be required at any time." Resp. Ex. at p.3. Paragraph 10 of the Acknowledgment of Conditions expressly provides: "All race and eligibility for races shall be governed by conditions published by the Track, and by the CHRB if appropriate." Id.

In mid-November 2014, LARC published a document providing conditions for horses nominated for 2015 and 2016 futurities. Allred Decl. ¶5; Resp. Ex. at p.135. These conditions provided:

Important information for owners and trainers with horses nominated for 2015 and 2016 futurities and derbies at Los Alamitos Race Course:

1. The trials for futurities, derbies, and other races with the time trials will be conducted in the usual manner with post race testing by the California Horse Racing Board. All qualifiers (top ten) will also be blood and hair tested within 24 hours after the trials. At the discretion of LARC several other horses may be tested (i.e. qualifiers 11-15.) Testing will be done by the UC Davis Equine Analytical Chemistry Laboratory. Horses with positive tests for "zero tolerance" drugs, including, but not limited to Clenbuterol, Albuterol, Zilpaterol, and Ractopamine, will receive a "non time" and will not participate in the final event.

2. For "Invitational" States (i.e. Champion of Champions, Robert Boniface LARC Championship etc.) pre race hair and blood testing will be done about 14 days prior to the race by LARC utilizing the UC Davis Equine Analytical Chemistry Laboratory.

We are confident that these measures will insure the integrity of the major stakes at Los Alamitos. We are doing our utmost to insure a level playing field for all of our good horsemen.

5. CHRB Approval of the House Rule

On December 17, 2014, a CHRB committee held a public meeting open to public comment. At the meeting, the committee considered whether LARC's decision to ban clenbuterol in horses conflicted with the CHRB rule, which (at the time) allowed a threshold amount, and the permissibility of hair testing imposed by LARC to enforce the ban. CHRB Exs., pp.56-103.

Edward Allred ("Allred") is the owner and Chairman of LARC. Pet. Ex., pp. 10-11. He is an active participant, owner, and breeder of horses competing at LARC races and was the owner and/or breeder of horses that competed in the 2015 \$175,000 El Primero Del Ano Derby ("Derby") and the qualifying races for the Derby. He was the breeder of the winner of the Derby. Pet. Exs., p. 27; Vienna Decl. ¶14. At the committee meeting, Allred testified about the impact of clenbuterol on horses at Los Alamitos Racetrack. Resp. Ex. at pp. 61-64; Pet. Ex. at p.3. He explained that trainers know how to withdraw from clenbuterol in time to beat a post-race blood test, and thus, the necessity of hair testing to enforce LARC's rule banning clenbuterol. *Id.* Allred stated that he would not submit his application for the 2015 LARC race meeting if he could not implement a house rule that excluded horses from participation based upon such a hair-follicle test. Pet. Exs., p. 4. Allred further stated that the house rule would involve hair analysis for albuterol, clenbuterol, Ractopamine, and Zilpaterol. Pet. Exs., p.7.

Allred emphasized that LARC could not take action on anyone's license for a clenbuterol violation, acknowledging that is the CHRB's job. CHRB Ex., p. 86. Rather, if a horse tests positive for clenbuterol based on a failed hair test, that horse simply will not be permitted to race at high stakes races at LARC. *Id.* Arthur testified about the effects of clenbuterol on horses because of its anabolic (steroid-like) effects. CHRB Exs., pp. 64-67.

Counsel for Petitioner raised concerns that LARC could not impose private rules that

conflicted with CHRB rules. CHRB Exs., pp. 69-75, 79, 82-83. Dan Schiffer testified on behalf of the PCQHRA, representing that its members determined the house rule is in the best interest of the horsemen and racing at LARC. CHRB Exs., p. 100.

On December 18, 2014, the Board considered the LARC house rule. CHRB Exs., pp. 119-133. The CHRB committee reported its support for approval of the LARC house rule. Pet. Exs., p.14. The Board determined that the house rule was permissible because it did not contradict the CHRB Rules, and furthered their intent. CHRB Exs., pp. 120, 123-24; Pet. Exs., p. 12. The Board indicated that acceptance of the LARC house rule did not mean that the CHRB was giving "carte blanche" to any association or track seeking to impose any house rule they wish. CHRB Exs., p. 121. The Board acknowledged that violation of the house rule did not necessarily mean that a violator would be sanctioned by the CHRB. CHRB Exs., p.125. Rather, any penalty would be between LARC and the trainer. CHRB Exs., p.126.

The American Quarter Horse Association ("AQHA") is the breed registry organization for quarter horse racing in the United States. Blodgett Decl. ¶2. A "quarter horse" is any horse that meets the requirements of and is registered by the AQHA. B&P Code §19413.5. As of January 2016, in an effort to further the safety and welfare of quarter horses, horsemen and the industry, and to assure fairness of competition, the AQHA began implementing hair testing to enforce its strict clenbuterol rules for its Racing Challenge program, beginning with the Regional qualifying races and all Championship races. Blodgett Decl. ¶¶ 9-10. The AQHA strongly supports the hair testing protocol put into place at Los Alamitos Racetrack to combat clenbuterol abuse. Blodgett Decl. ¶12.

6. Application of House Rule to Petitioner

Petitioner is an owner of quarter horses and licensed in that capacity by the CHRB. De La Torre Decl. ¶¶ 2-3. He was a regular participant in quarter horse racing conducted by LARC. De La Torre Decl. ¶3. The horse "Runaway Fire" was partially owned and raced by World Champion Racing Stables, LLC which is Petitioner's registered stable name. De La Torre Decl. ¶¶ 4, 7.

On March 15, 2015, Runaway Fire competed in a 400-yard derby trial in which he finished third. De La Torre Decl. ¶8; Allred Decl. ¶7. The time Runaway Fire achieved in the derby trial qualified him to participate in the Derby which was to be run on April 4, 2015. De La Torre Decl. ¶¶ 8-9. Allred also was the owner or breeder of one or more horses qualified for the race. Pet. Ex. at p.27; Vienna Decl. ¶14.

Following the trial, pursuant to the Acknowledgement of Conditions signed by Runaway Fire's trainer, Loza, LARC ordered hair and blood samples to be taken from the horses with the 12 fastest times. Allred Decl. ¶8; CHRB Exs., pp.1-4. Loza did not give permission for the removal of hair samples and did not witness the sampling. Loza Decl. ¶13. Runaway Fire was the only horse of the 12 that tested positive for clenbuterol via hair sample. Allred Decl. ¶9. After testing positive, Runaway Fire received a "non time" and was not permitted to participate in the final. Allred Decl. ¶10. There was no report that official CHRB blood or urine samples taken from Runaway Fire following the running of the qualifying derby trial contained clenbuterol. Loza Decl. ¶14.

On March 30, 2015, Petitioner's counsel sent an email to CHRB Chairman Charles Winner requesting that the CHRB intervene in this matter because of the illegality of the house rule, order Allred to cease his interference with the rights of other CHRB licensees and to reinstate the results

of the derby trial. Pet. Exs., pp. 22-25; Vienna Decl. ¶5. On March 30, 2015, CHRB Chairman Winner refused the request and advised that the courts were the appropriate jurisdiction for this matter. Pet. Exs., p.26; Vienna Decl. ¶6.

On April, 1, 2015, the entry of Runaway Fire into the Derby was refused by LARC Racing Secretary Ron Church. Loza Decl. ¶11.

E. Analysis

Petitioner argues that the LARC house rule is an impermissible delegation of the CHRB's authority to regulate horse races in California. In the alternative, Petitioner contends that the LARC house rule is improper because it conflicts with the CHRB Rules and does not further their intent.

1. Mootness

On July 31, 2015, the CHRB adopted an emergency regulation pursuant to Govt. Code sections 11346.1 and 11349.6 amending Rule 1844 (Authorized Medication) to prohibit any detectable level of clenbuterol in a quarter horse's official urine test sample:

"Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to the race provided that: (e) Official urine test samples may contain one of the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels: (6) clenbuterol; 140 picograms per milliliter, except in quarter horses the amount of clenbuterol cannot exceed 0 picograms per milliliter." CHRB Exs., pp. 27, 29-31.

A second emergency regulation, Rule 1866.1, required that a quarter horse prescribed or otherwise testing positive for clenbuterol in a blood, urine or other official test sample must be placed on the Veterinarian's List until clenbuterol is no longer detected in the horse's blood or urine by an official test sample. Veterinarians also must report all clenbuterol prescriptions for quarter horses, and trainers must report all clenbuterol administrations to quarter horses. CHRB Exs., pp. 33-34. The CHRB initiated a separate rulemaking action to make both emergency regulations permanent through rulemaking in compliance with Govt. Code section 11346.1(e). CHRB Exs., pp. 37-55.

The CHRB contends that the FAP is moot because the CHRB now temporarily prohibits any detectable level of clenbuterol in an official urine sample and a pending rulemaking action would make the emergency regulations permanent. Thus, according to the CHRB, any potential conflict between the LARC house rule and the CHRB Rules has been resolved. CHRB Opp. at 9-10.

As Petitioner points out (Reply at 6-8), the emergency regulations say nothing about albuterol, which is banned by LARC's house rule. Additionally, the house rule uses a hair-follicle test, not the blood or urine test authorized under the CHRB rules. Clenbuterol remains in the hair follicle for up to 360 days, while it is undetectable in urine after 30 days. Thus, a horse that tests negative for clenbuterol using a urine test may still test positive for clenbuterol using a hair test. The potential conflict between the LARC house rule and the CHRB rules still exist because even

under the emergency regulations, a horse could be qualified under the CHRB rules and disqualified under the LARC house rule. The FAP is not moot.

2. Improper Delegation

The CHRB considered the LARC house rule over the course of two days in December 2014. CHRB Exs., pp. 56-134. The CHRB permitted the house rule because the lower medication limit furthered the intent of the CHRB's rules. CHRB Exs., p. 121.

At the December 17, 2014 CHRB committee meeting, LARC's owner advocated:

"DR. ALLRED: ...the race course and our horsemen are both requesting that the lower limit of Clenbuterol be omitted and that zero tolerance would be the rule for quarter horses. I'm not sure it wouldn't be a good idea for other horses as well, but we're not going to address that. ¶The way the Clenbuterol is apparently utilized, nobody but a pretty inexperienced track person, trainer, would ever have a positive Clenbuterol with blood. They use Clenbuterol over a long period of time....it's a muscle building (drug), basically. And it's outlawed in human bodybuilding contests. It has been for many years. It's outlawed in baseball. It's outlawed -- it isn't allowed anywhere....We want it outlawed completely. We're told that probably six months would be a good rule of thumb, no guarantees, but six months of being off Clenbuterol will clear the system." LARC Opp. Ex. I, pp. 51-52.

CHRB's Equine Medical Director, Dr. Arthur, stated:

"I will say Clenbuterol does have a good medical use; but since we've restricted its use in the last year, veterinarians have told me that they don't miss it that much...This is a major problem in quarter horse racing. There is no question that our current regulations do not address the problem that quarter horse racing has in California and elsewhere....So long as [LARC] doesn't lower our standards, you know you can have twice as much Clenbuterol as we allow, I don't see any problem with it. And it's something that is vitally needed in quarter horse racing....It is an issue that is really a major problem, and our regulations can't solve it." *Id.*, pp. 54-55.

At the full CHRB meeting the next day, December 18, 2014, the CHRB considered LARC's house rule:

"[The house rule] seeks to bar any use of Clenbuterol in respect to quarter horse racing, even though we have a rule which permits for all breeds a certain limit on the amount of Clenbuterol that can be used....The extent to which a house rule can be different than a rule of the CHRB. And I think that there was a conclusion that was reached, and that was that that house rule ought to go on. But there was not any real agreement as to exactly what the rationale was. So I think that I speak for myself, Commissioner Rosenberg and for Counsel Miller, that there is a -- we're sympathetic to the position that if a house rule in no way contradicts the official

CHRB rule but, in fact, seems to implement it in a favorable way, then that ought to be accepted....The question is when is, when is it inconsistent and when is it consistent or indeed helpful." LARC Ex. J, p. 38.

The Board discussed whether the house rule furthers the intent of the CHRB Rule. Id., p.42. A Commissioner noted that the mere fact of a violation of the house rule would not subject the offender to CHRB sanctions. Id., p. 43. The Board's counsel agreed that it does not enforce local house rules. Id., p. 44. Dr. Arthur explained that the house rule "will give the Board and the quarter horse industry an opportunity to look at alternative ways to regulate...Clenbuterol in quarter horses. ¶Very likely it's going to involve regulations to include hair testing as part of our regulatory structure, but this gives us time to work through this issue." Id., p. 55. The Board approved a motion to permit the house rule. Id., pp. 53, 55.

Petitioner argues that the CHRB approval of the LARC house rule was an improper delegation of its authority. According to Petitioner, the Board is the only body that can adopt and implement rules on medication. See B&P Code §19562. The CHRB may delegate its powers and duties only to stewards, and LARC is not an authorized steward. See B&P Code §19440(b). A racing association may impose conditions for its racing as necessary, so long as they do not conflict with Board Rules. Rule 1437. CHRB Rules supersede the conditions of a race meeting. Rule 1402. Mot. at 4-6.

Petitioner further argues that the Board has in place a comprehensive framework for the collection, testing, and enforcement of rules concerning medications. The Horse Racing Law permits an official test sample of blood or urine, and a split of that sample if possible. B&P §19577. Clenbuterol and albuterol are permissible in limited specified amounts. Rule 1844. A finding that an official test sample contains a prohibited substance requires disqualification of the horse from the race in which it participated. Rule 1859.5. Mot. at 4-6.

Yet, argues Petitioner, the LARC house rule provides that the mere detection of any level of clenbuterol after hair follicle testing disqualifies the horse from running at LARC events. While clenbuterol cannot be detected in blood or urine after 30 days, it remains in hair and can be detected for up to 360 days. Pet. Ex., p. 28. The mere detection of clenbuterol in a hair sample does not mean that the horse raced under the drug's influence or had its performance enhanced; only a blood or urine test can do that. Indeed, a CHRB memorandum advises that a horse will not have a positive blood or urine test if clenbuterol usage is stopped 21 days before testing. Pet. Ex., p. 21. The LARC house rule essentially bans the use of clenbuterol and albuterol, unlike the CHRB Rule 1844, and disqualifies horse that are in compliance with CHRB Rules.

Moreover, CHRB rule 1859.5 requires a finding by CHRB stewards of a prohibited substance in an official test sample as a condition precedent to disqualification of a horse. A hair sample is not an official test sample. See B&P Code §19577. Hair testing is not a basis for disqualification under the Rules. LARC's house rule provides none of the protections of an official test, including notice, clean and sterile collection equipment, chain of custody, and a split sample for the horse owner to test. Mot. at 7-8, 10.

Petitioner finally argues that the CHRB improperly delegated to LARC the more restrictive testing for clenbuterol as a work around because compliance with the APA would take at least a year. The CHRB openly viewed the house rule as a new regulation, but without the notice, public participation, hearing, and review by OAH that compliance with the APA would involve. Mot. at

12-13. Yet, CHRB cannot delegate rulemaking authority to private parties possessing a pecuniary interest in the formulation and application of the rule any more than the legislature can delegate absolute legislative discretion to an administrative agency. See State Board v. Thrift-D-Lux Cleaners, (1953) 40 Cal.2d 436, 448. Mot. at 12-13.

There is some validity to Petitioner's argument that CHRB has improperly delegated to LARC the authority to impose more restrictive conditions for clenbuterol while the Board goes through the APA process for a new permanent rule. However, as CHRB points out, Rule 1437 permits a race association to impose additional conditions for participation in the race meeting so long as those conditions do not conflict with the Board's Rules, regulations, and orders. It would not be an improper delegation of CHRB's duties for it to consider whether a proposed house rule conflicts with its Rules for medication testing and enforcement. The CHRB did just that on December 18, 2014. The best means of analyzing the issue, then, is whether LARC's house rule impermissibly conflicts with the CHRB's Rules.

3. Does the House Rule Conflict with the CHRB Rules?

As discussed *ante* with respect to delegation, Petitioner contends that the LARC house rule conflicts with the CHRB Rules on clenbuterol because the house rule (1) requires hair follicle testing instead of the official testing of blood or urine; (2) disqualifies horses that would be qualified under the CHRB Rules; and (3) does not provide for any testing safeguards.

By analogy, the law concerning the preemption of local ordinances applies to the relationship of the CHRB Rules and LARC's house rule. State law preempts any local ordinance or regulation that "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." Sherwin-Williams Co. v. City of Los Angeles, (*"Sherwin-Williams"*) (1993) 4 Cal.4th 893, 897. A regulation contradicts state law when it is inimical to or cannot be reconciled with state law. O'Connell v. City of Stockton, (2007) 41 Cal.4th 1061, 1068. A contradiction does not exist when the state law provides a general concept and the local ordinance or regulation reasonably interprets or defines the general concept. County of Tulare v. Nunes, (2013) 215 Cal.App.4th 1188, 1202. Even if the state law and the ordinance apply to similar subject areas, there is no contradiction so long as the regulation "does not prohibit what the statute commands or command what it prohibits." Sherwin-Williams, *supra*, 4 Cal.4th at 902. However, when a state law contains a specific provision, the regulation or ordinance may not contradict that provision in any way. Ex Parte Daniels, (1920) 183 Cal. 636, 641-48.

The CHRB found that the LARC house rule is consistent with the intent of its Rules. In support of its finding, the CHRB now relies on the general rule that an agency's interpretation of its own regulations is entitled to great weight unless unauthorized or clearly erroneous. See Communities for a Better Environment v. State Water Resources Board, (2003) 109 Cal.App.4th 1089, 1107. CHRB Opp. at 12.

Although the Board's interpretation is entitled to great weight, its interpretation of the intent of its Rules, particularly Rule 1844, is erroneous because CHRB Rules are not general, they are specific and may not be contradicted. Previously, Rule 1844 permits a limited amount of clenbuterol and albuterol as detectible in a horse's blood or urine. It did not outright ban usage of those drugs, which have a medical purpose. Now Rule 1866.1 more restrictively requires that a quarter horse prescribed or otherwise testing positive for clenbuterol in a blood, urine or other official test must be placed on the Veterinarian's List until clenbuterol is no longer detected in the

horse's blood or urine by an official test sample. However, Rule 1866.1 still permits clenbuterol to be used upon prescription of a CHRB-licensed veterinarian so long as it does not show up in a quarter horse's blood or urine test. CHRB Exs., p. 30. As Petitioner has demonstrated, this rule directly conflicts with the LARC house rule because a horse that has no clenbuterol in a blood or urine sample still will have clenbuterol present in a hair sample. A horse's blood or urine will clear clenbuterol in no more than 21 days, but its hair will show clenbuterol for up to a year.

LARC's more restrictive rule conflicts with CHRB's specific Rules. The house rule effectively bans the use of clenbuterol, as its owner admitted at the December 17, 2014 CHRB committee meeting. Yet, CHRB's Rules permit the use of clenbuterol so long as it does not affect the quarter horse's race as demonstrated by a blood or urine test. Albuterol also is banned by the house rule, and yet the CHRB Rules 1866.1 and 1844 still permit its limited use as reflected in blood or urine tests.

The Board concluded, and its opposition argues, that LARC's house rule is consistent with its Rules because it furthered their intent. CHRB Opp. at 11-12. But they do not. The intent of the Board's rules is to protect the integrity of horse racing, the health of the horse, and the interests of the public by controlling the use of drugs with racing horses. Rule 1843. The CHRB did so previously in Rule 1844 by permitting small amounts of clenbuterol and albuterol from a blood or urine test. The Board's emergency regulations further limit clenbuterol – but not albuterol – by effectively prohibiting its use without a prescription and within 21 days of a race. Thus, even now the Board's intent is to permit some usage of both drugs. LARC's house rule is inconsistent with that intent.

The CHRB's mistake in approving the house rule on December 18, 2014 lies in the fact that its commissioners accepted and relied upon the testimony that clenbuterol abuse was adversely affecting quarter horse racing, assumed that they would be moving forward with a more restrictive rule or outright ban of the drug, and felt the house rule was consistent with their assumption. It may have been, but it was not consistent with their existing Rule 1844. And the Board's assumption that it would be banning clenbuterol did not come to a complete fruition; emergency Rules 1866.1 and 1844 as amended do not completely ban clenbuterol. Nor did the Board even address albuterol in its rulemaking.

It is worth noting that in 2011 the CHRB concluded that any LARC house rule suspending the use of clenbuterol would be inconsistent with Rule 1402. Pet. Exs., p. 20. The CHRB opposition argues that the Board's earlier position is irrelevant in light of Rule 1866.1, but this is not true because clenbuterol is not subject to an outright ban in the Board's Rules. The 2011 statement is an admission by the CHRB that any house rule regulating the amount of clenbuterol would be inconsistent with the Rules.⁴

Apart from the permissible amounts of clenbuterol and albuterol, the LARC house rule provides for hair testing. CHRB notes that hair testing in horses is a well-developed technique to test for clenbuterol in horses. Arthur Decl. ¶22. Rule 1859 provides for the taking of urine, blood,

⁴ The CHRB relies on analogies to other statutory schemes in which a maximum is imposed – e.g., speed limits, BAC while driving, smoking in enclosed places – but permit more extensive local regulation. CHRB Opp. at 14. Petitioner properly rebuts these situations, which are not analogous because they involve different statutory schemes, less comprehensive regulation, or permit local regulation by ordinance. See Reply at 8-9.

or other official test samples, and contemplates other types of testing as permissible. CHRB Opp. at 12-13. Similarly, LARC argues that the CHRB rules do not prohibit the use of a hair follicle test, specifically allowing such a test for jockeys and drivers. LARC Opp. at 12-13, Ex. F, p.4. Neither Respondent responds to Petitioner's arguments regarding the lack of equivalence in the testing protocols of notice, split, and chain of custody.

Neither the Horse Racing Law nor the Board's Rules permit hair testing of horses. B&P Code section 19577(a)(1) provides only for blood or urine testing of racing horses with a split sample if feasible. The first sample shall be referred to as the official sample and the second as the split sample. CHRB Rule 1859 provides only for the taking of "urine, blood, or other official test samples..." This Rule contemplates that forms of testing besides urine or blood may be permitted as official test samples. Thus, the Board may have the power to approve other forms of official sample testing. But CHRB has promulgated no rule permitting a hair sample as an official sample. Without one, the LARC house rule is inconsistent with Rule 1859.⁵

Finally, the house rule is inconsistent with the CHRB test procedures concerning notice, chain of custody, and a split if feasible. Respondents do not contend otherwise.

The LARC house rule conflicts with the CHRB Rules and is invalid.

4. The Acknowledgement of Conditions

The CHRB recognizes the need for racing associations to enter into agreements with owners and trainers regarding the conditions of each race meeting. Rule 2040. The CHRB expressly permits a racing association, such as LARC to impose conditions for its race meeting as necessary, so long as they do not conflict with the CHRB's rules and regulations. Rule 1437. A racing association's conditions are binding on all licensees, including owners, provided the licensees are given reasonable advance notice. Rule 1870.

Based on these Rules, Respondents argue that Petitioner is bound by the terms of LARC's Acknowledgment of Conditions, including the no tolerance policy for clenbuterol, because Petitioner's trainer Loza signed it. CHRB Opp. at 11.

While LARC is entitled to enter into agreements with owners and trainers, those agreements may not conflict with CHRB Rules:

"No agreement between the [racing] association and the horseman shall include provisions that conflict with the Horse Racing Law, the rules of the [CHRB], or usurp the authority of the [CHRB].... [including] provisions which may serve to exclude participation at the meeting by any individual holding a valid CHRB license." Rule 2045 (Pet. Reply RJN Ex. 1).

As discussed above, the LARC house rule is invalid because there is a conflict between the LARC house rule and CHRB Rule 1866.1, 1844, and 1859. The Acknowledgement of Conditions

⁵ The CHRB relies on its authority under Rule 1402 to enforce rules or conditions of breed registry organizations if not inconsistent with those of the Board, and notes that the AQHA has begun implementing hair testing to combat clenbuterol use. Blodgett Decl., ¶¶9-10. CHRB Opp. at 13. This argument suffers from the same defect – the CHRB may have the authority to approve hair testing as an official test, but has not done so.

cannot be used to avoid the invalidity, because Rule 2045 specifically proscribes agreements that conflict with CHRB rules.

Petitioner did not contract away his ability to challenge the LARC house rule when Loza signed the Acknowledgement of Conditions.

F. Conclusion

The petition for writ of mandate is granted. A writ shall issue directing the CHRB to set aside its approval of the LARC house rule. Although Petitioner also seeks a writ against LARC to set aside its house rule, none can issue because LARC does not have a mandatory ministerial duty. However, Petitioner is entitled to declaratory and injunctive relief against both the CHRB and LARC against enforcement of the LARC house rule.

Petitioner's counsel is ordered to prepare a proposed judgment and a writ, serve it on Respondents' counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for April 21, 2016 at 9:30 a.m.

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EXHIBIT G

BREAKING NEWS | Invasive peach fruit flies found in Palo Alto

News > California News - News

Horse race deaths: Another track bans famed Bay Area trainer

The lawyer for Jerry Hollendorfer says Del Mar won't let hall of fame trainer run horses



Bay Area trainer Jerry Hollendorfer, right, will not be allowed to run horses at the Del Mar summer season, his lawyer said. (Keith Birmingham, Pasadena Star-News/SCNG)

By ELLIOTT ALMOND | calmond@bayareanewsgroup.com | Bay Area News Group
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Hall of fame trainer Jerry Hollendorfer, who was banned from running horses at two California racetracks last month, has now been told he cannot run horses at a third track, Del Mar, which opens its summer season July 17.

Hollendorfer's lawyer, Drew Couto, told this news organization Wednesday that the third ban puts the trainer's 40-year career in jeopardy.

Couto, who is based in San Diego, said Hollendorfer has about 60 horses he plans to run at the Sonoma County Fairgrounds in Santa Rosa for the competitions there Aug. 1-4 and Aug. 8-11.

But, Couto said, "When racing finishes in Santa Rosa, Jerry has no place to go in Northern California."

He added, "Sixty horses have to be dispersed. The owners have to move them, sell them. That's just a practical reality."

Couto said he thinks Del Mar officials banned Hollendorfer earlier this week because they decided they could not risk the public outcry. He said the track actively encouraged Hollendorfer to enter horses in its races when the Stronach Group, which owns Santa Anita Park and Golden Gate Fields in Albany, banned Hollendorfer last month from both tracks. The ban came after a fourth horse trained by him died at Santa Anita while racing or training.

"They don't think they can absorb the public relations risk," said Couto, formerly the president of the Thoroughbred Owners of California. "That's our perception of what we've been told."

Del Mar officials did not immediately reply to messages asking for comment.

Hollendorfer could not immediately be reached for comment Wednesday.

The horse racing industry has faced a backlash this year with growing awareness of how many thoroughbreds die during racing and training across the country. Santa Anita saw 30 horses die during its season that ran from late December to June.

Golden Gate Fields had nine racing and training fatalities from late December to June, according to the California Horse Racing Board. Two of the deaths were horses that Hollendorfer had trained.

After being banned from Santa Anita and Golden Gate, Hollendorfer also was barred by the New York Racing Association. Hollendorfer, 75, of Port Richmond, ranks third among all-time among trainers, with 7,622 race wins.

He got his start on Bay Area tracks four decades ago.

Couto said Del Mar officials are being forced into making a public relations move.

"They feel they are boxed into a corner," he said. "They are getting a lot of pressure from a lot of angles to say something."

He said he is trying to find a pragmatic solution for his client, "one that prevents Jerry from losing his entire business."

Couto said the California Horse Racing Board, which is the body that licenses trainers, does not have any pending actions against Hollendorfer.

Chuck Winner, the racing board's chairman, said Wednesday individual track owners have the right to accept or reject any licensee.

"But as far as the CHRB is concerned, Hollendorfer is a licensed trainer," he said.

Winner said the track owners have made decisions "based on their view of the number of catastrophic injuries that came out of the Hollendorfer barn."

He continued, "If you take the view the safety of the horse is paramount at this point, you look at every situation and you make a judgement."

Winner added that it can take the horse racing board months or even years to suspend or revoke a license. He said the current system allows track owners to take immediate action for the safety of the horses.

Winner said that while he understands the rationale for the bans it "doesn't mean I agree with it."

Couto said Hollendorfer has not been given a hearing, nor has he been told of any specific allegations against him. "In a circumstance like this, one would hope no matter who it is they'd at least have some fair process," Couto said.

In an interview last month, Hollendorfer told this new organization that he was not given any reason for being banned at Santa Anita and Golden Gate Fields.

Alex Waldrop, president and chief executive of the National Thoroughbred Racing Association, an industry group that promotes racing, said Wednesday that tracks historically have had the right to ban anyone whose presence was deemed detrimental to the horses or the sport. Waldrop added that state courts have since limited what track owners can do.

The hard-line stance against Hollendorfer has some California racing officials worried.

"This isn't about Jerry Hollendorfer, this is about due process," said Tom Doutrich, secretary of California Authority of Racing Fairs. "It's very concerning to a lot of people whose livelihoods are on the line."

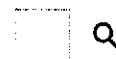
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EXHIBIT H

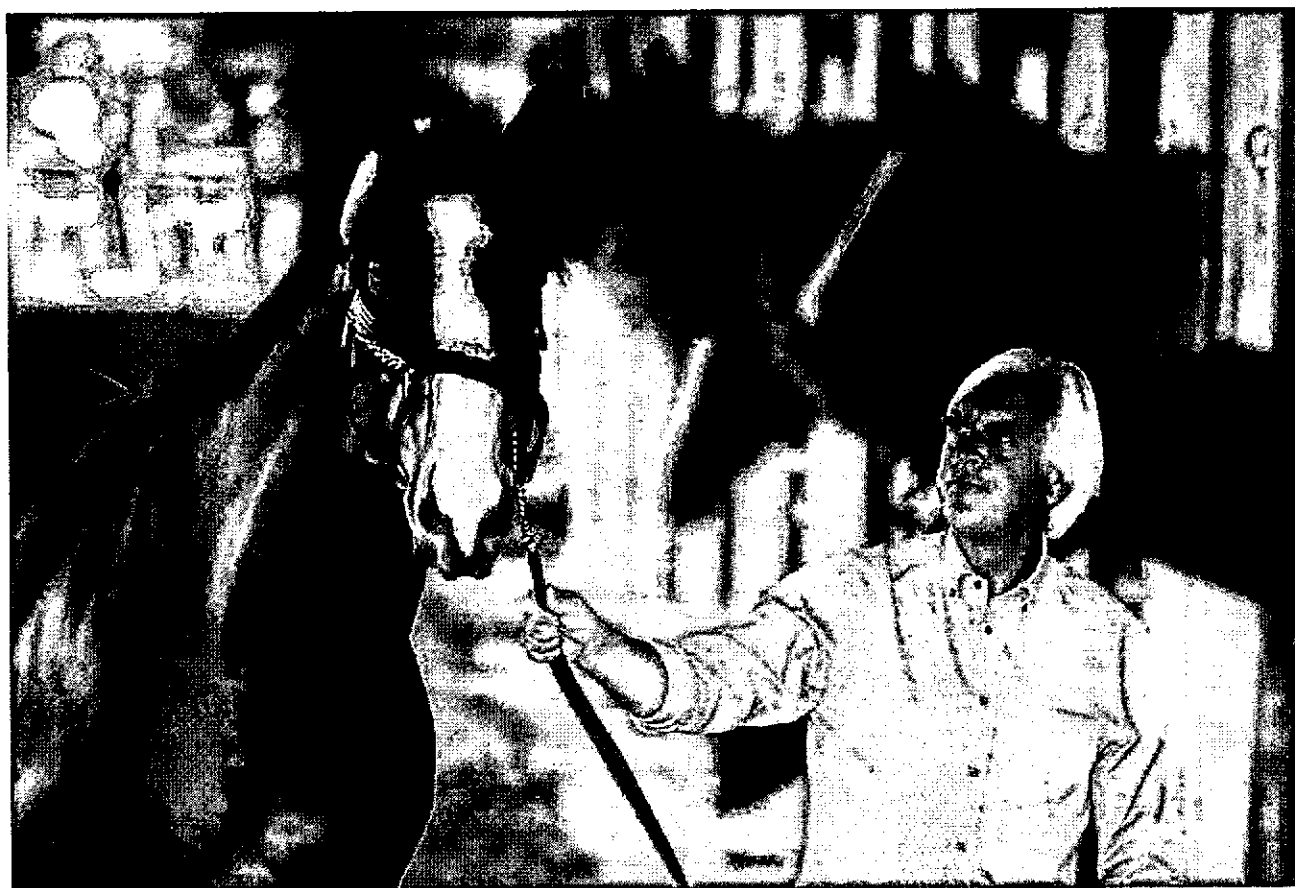


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SPORTS COLUMNISTS

Column: Lesson from horse racing's Justify, Triple Crown mess: Fix CHRB



Trainer Bob Baffert walks Justify around the barn June 6, 2018, at Belmont Park. (Julio Cortez/AP)

Conflicts of interests and perceptions cause one California Horse Racing Board member to call for changes

By BRYCE MILLER
COLUMNIST

SEP. 12, 2019
4:10 PM

As the situation with 2018 Triple Crown winner Justify and a breathlessly-debated drug test revealed by the New York Times mushroomed into an international mess, a clear takeaway was lost.

Those entrenched argued whether a test the horse failed, later confirmed by a second test, amounted to unintentional feed contamination. They debated whether 300 nanograms of the substance identified was too much to ignore, or too little to matter. They wrestled with timelines used to settle similar cases.

Until this week, Justify's predicament remained in the shadows.

Meanwhile, something more obvious rose above the doping-or-no-doping din. The California Horse Racing Board needs rethought, re-examined, reshaped and re-everythinged. At the absolute very least, re-somethinged. Moving forward without a full, impartial re-think about structure, personnel and procedure feels negligent.

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Need convincing? Listen to a member of the board itself.

"(Conflict of interest) needs to be looked at in this era of open government that we try to live by in California," Fred Maas said Thursday in an interview. "Candidly, it's been a frustration of mine and it's something that needs to be looked at before I would consider being reappointed if the governor, in his wisdom, decides that's a decision he'd like to make."

Consider that for a moment. A sitting member of the board is so concerned about real and perceived conflicts of interest that he is thinking about turning down a re-appointment if offered. For context, Maas had mentioned that possibility to me before Justify's mealtime laundry started waving in the public wind.

So that's the damning reality of it, amid eroding faith during the most fragile period in industry history: Horse racing can't be trusted to police itself.



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That's different than saying it *can't* do the job. It's saying things have gotten to the point where confidence has taken enough broadside cannon balls to leave confidence listing.

"I don't think there's any question the public demands and deserves a dispassionate, detached board of public officials that are divorced of any conflicts," Maas said.

That's admirable and a necessary target, but all but impossible in the current construct. For one, the statute that created the board begs for experience in racing. For another, the industry is rife with interconnected interests.

Take the case of Justify. When former CHRB chairperson Chuck Winner served in a decision-making capacity, he owned a minority share in a horse Justify's trainer, Bob Baffert, worked with as well. The horse, Justinian, had not raced at the time and his only competition to date was a seventh-place finish at Del Mar on Aug. 31 that generated \$351.

Winner maintains he not only checked with CHRB lawyers before being involved in the Justify decision because of that connection, but also revealed the potential conflict to the Times reporter.

"I don't have A, B and C (connection to Baffert)," Winner told me. "I had one horse and it was a minority interest. I wasn't the decision-maker in any way on that horse. And I did go to counsel, as I always do if there are any questions."

Credit to Winner for the explanation. That's a healthy start. The biggest issue, routinely, is perception based on a lack of transparency. The more conversations and decisions that slip into private, executive session leave the public uneasy and unassured.

Go back to the case of a horse named Fravel, a 3-year-old colt previously owned by board member and presumptive chairperson Madeline Auerbach, Stronach Group COO Tim Ritvo and Stacie Clark — the wife of Stronach Group racing-division President Mike Rogers.

When the situation became scrutinized — all those tangled interests, with the CHRB in an oversight role as TSG's Santa Anita Park reeled from 30 horse deaths during its most recent meet — the sideways glances spread like a cold at a preschool. Ritvo quickly divested himself when details found light of day and TSG, his employer, vowed to step up its role in managing those types of conflicts.

The situation with Fravel was a pebble causing barely a ripple compared to Justify. No one from Gulfstream Park to Churchill Downs hardly bothered to pause. Attention paid to CHRB work related to a Triple Crown winner, however, bubbled from the "Today" show, CBS News, CNN and countless others.

Though probably going too far based on the information, no sense of how perception matters reverberated more than a headline in the British publication The Guardian: "Justify drug test cover-up deals immense blow to U.S. racing."

The story, though, raised solid points about a fractured American system. In England and France, for example, there are single oversight groups for the sport — rather than the mismatched set of state-by-state regulatory pockets here.

Doubts about oversight can linger for all. When asked how the public can be confident positive tests were not covered up or brushed under the barn rug at Del Mar after the situation involving Justify, Del Mar Thoroughbred Club President Josh Rubinstein pointed the question a different direction.

"The state of (California) as the regulator is responsible for the testing and the public disclosure of results," Rubinstein relayed via text during an overseas trip.

The CHRB's absence of transparency in the Justify case is beyond troubling for the CHRB. When asked why the board unanimously decided to support moving on, as reported in the Times, Maas walked a tightrope that hinted it might have unfolded differently.

"Without violating any closed-session rules, it's fair to say what was presented to us was an open-and-closed investigation that had come to a conclusion," Maas said. "That's about as much as I can say."

That's the thorny no-win scenario when transparency takes the day off, particularly when a Triple Crown winner is called into question.

Maas said the structure of the board needs to change, suggesting a governor-appointed commissioner empowered to act in emergency situations. He also said the CHRB should stand alone and "not (be) subject to the whims of another agency."

"We need to compete in a national and international sport, but we're also a regulatory body that needs to be governed by the laws of California," Maas said. "I think there's a way to structure our board where it can accomplish both of those things."

Asked whether he's OK with the amount of things that slide to executive session or are not shared publicly, as was the case with Justify, Maas did not hesitate.

"No, I'm not in favor of anything that doesn't air these issues in the appropriate forum and let the public participate," he said. "I think the only way we maintain credibility, and I'm speaking generally now, is to open our kimono and let people understand that we're essentially well-

intentioned volunteers who want to do what's in the best interest of horse racing, the horses, the jockeys, the back-stretch workers and the industry.

"But when you close the kimono, people (assume) lots of ill motive, especially when they know there are conflicts involved. And that's just untenable in this day and age."

Openness aside, the how-to of sorting potential board conflicts remains the stickiest part.

"The intention of the legislature was to have people on the board who know something about racing," Winner said. "Just like every other board. Lawyers are on the bar. Medical doctors are on medical boards. Vets are on the vet boards. You have to know something about what you're doing. Or at least you should."

Fair enough. There are ways to consider changes, though.

What about involvement with a national oversight body, freed of regional conflicts? What about more stringent policies on recusals? What about involving some retired experts without current financial interests?

And on and on.

Status quo is not the answer, not with the pinch horse racing finds itself in now. The situation with Justify added a giant megaphone for those worries.

The task for Gov. Gavin Newsom and the legislature should be clear.

Do something.

SPORTS COLUMNISTS LATEST HORSE RACING COLUMNISTS SPORTS

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EXHIBIT I

Gov. Gavin Newsom Says Horse Racing in California Needs Reform

Newsom says the deaths of 30 horses at Santa Anita Park are a “disgrace.” He pledged changes to the board that allowed Triple Crown winner Justify to race despite a failed drug test.



By Joe Drape and Alan Blinder

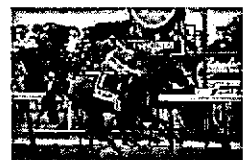
Published Sept. 23, 2019 Updated Sept. 24, 2019, 7:45 a.m. ET

Gov. Gavin Newsom of California said Monday that horse racing is dangerously close to being out of business in his state and suggested he would curb horse owners and breeders with direct financial interests in the sport from serving on its regulatory board.

With Santa Anita Park returning for its fall season on Friday after 30 horses had to be euthanized on its premises over six months, and on the heels of the revelation that 2018 Triple Crown champion Justify had failed a drug test before the Kentucky Derby that regulators made disappear, Newsom said he was going to appoint a new leader to the regulatory board and hold the group accountable on matters of drugs, safety and integrity.

“What happened last year was unacceptable, and all of the excuses be damned. We own that going into the next season, and we’re going to have to do something about it,” Newsom said at a meeting with reporters for The New York Times. “I’ll tell you, talk about a sport whose time is up unless they reform. That’s horse racing. Incredible abuses to these precious animals and the willingness to just to spit these animals out and literally take their lives is a disgrace.”

Justify Failed a Drug Test Before Winning the Triple Crown Sept. 11, 2019



California racing officials spent four months investigating Justify’s failed drug test in the 2018 Santa Anita Derby that should have prevented the horse from starting in the Kentucky Derby. The delay was long enough for Justify to not only compete in the Derby, but also win it, along with the Preakness and Belmont Stakes.

After the Triple Crown winner's breeding rights had been sold for \$60 million, the California board — whose chairman at the time, Chuck Winner, had employed Bob Baffert as a trainer — disposed of the inquiry behind closed doors. It happened in an executive session, an approach the board's executive director had not previously taken during his five-and-a-half-year term.

Winner left the board the day before The Times reported how a lack of transparency kept the failed test from the public. Two other commissioners, including co-chair Madeline Auerbach, own and breed horses with trainers and jockeys that they regulate.

In a letter to The Times released on social media, a lawyer for Baffert, W. Craig Robertson III, said that Justify's positive test for the banned substance scopolamine had been the result of "environmental contamination." The explanation given was that Justify ate jimson weed. Robertson offered no evidence of contamination; neither did California regulators when offered the opportunity to respond.

Scopolamine can be used to help make a horse more efficient by clearing its airway and optimizing its heart rate. Cases involving the substance have resulted in disqualifications, purse reimbursements, fines and suspensions over the decades.

The quantity of the drug found in Justify suggested that it was not the result of feed or bedding contamination and that it was intended to enhance performance, according to Dr. Rick Sams, who ran the drug lab for the Kentucky Horse Racing Commission from 2011 to 2018.

Newsom has recently appointed three commissioners with no direct financial ties to the sport and said he will use the same standard for the upcoming appointment of a new chairman.

"We are pulling away from those with direct conflicts and pulling out a more objective oversight capacity," he said.

The Los Angeles district attorney is investigating the deaths at Santa Anita, and the state legislature has held hearings and considered changes to improve how horses are treated and tracks regulated.

Newsom also said the public is far more aware of the abuses and ample death toll in the sport — 10 horses a week die on American racetracks, according to the Jockey Club, a figure considered conservative because not every race venue reports fatalities during training hours.

"The more you realize what's really going on, the more intolerant you become of certain behaviors," Newsom said. "If you don't reform yourself, you're going to get run over and others are going to reform for you in ways that you don't like."

More Horse Racing Coverage

30 Racehorses Have Died at This Track Since Dec. 26 June 6, 2019



Justify Failed a Drug Test Before Winning the Triple Crown June 6, 2019

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EXHIBIT J

From: [REDACTED]
To: [REDACTED]
Subject: Re: Hollendorfer Ruling
Date: Thursday, July 25, 2019 3:26:06 PM

-----Original Message-----

From: Josh Rubinstein <Josh@dmtr.com>
To: Chuck Winner (cw@wintr.com) <cw@wintr.com>; Madeline Auerbach (doomicus99@aol.com) <doomicus99@aol.com>; Rick Baedeker (RMBaedeker@chrb.ca.gov) <RMBaedeker@chrb.ca.gov>; Brodnik, Robert J <rjbrodnik@chrb.ca.gov>
Sent: Thu, Jul 25, 2019 3:15 pm
Subject: Hollendorfer Ruling

FYI...the judge's tentative ruling - attached - in the Jerry Hollendorfer matter came out today in favor of Hollendorfer. While our attorney believes he may be able to sway the judge in person tomorrow, we need to be prepared that the ruling stays as is. What this means/next steps if the ruling does not change:

- We will need to accept entries from Hollendorfer beginning on Saturday (possibly Friday, pending the time ruling is official)
- Stall allocation goes to arbitration (potentially a CHRB hearing officer)
- Working on a statement from us ("disappointed with the judge's decision, but we must abide...horse and rider safety continues to be our number one priority...) that will be released tmrw.

Please let me know if you have any questions or would look like to discuss.

Thanks,

Josh

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EXHIBIT K

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



July 24, 2019

Couto & Associates
755 West A St., Suite 100
San Diego, CA 92101

SUBJECT: Request for Hearing

Dear Mr. Couto:

I am in receipt of your letter sent to Chairman Winner on July 23, 2019, regarding your complaint against Del Mar Thoroughbred Club. Pursuant to California Horse Racing Board (CHRB or Board) Rule 1989, Removal or Denial of Access, "Any person may be removed or denied access for any reason deemed appropriate by [an] association, fair or simulcast facility notwithstanding the fact that such reason is not specified in the rules." Furthermore, CHRB Rule 1485, License Subject to Conditions and Agreements, states that "Possession of a license does not confer any right upon the holder thereof to employment at or participation in a race meeting or to be within the inclosure." These regulations reflect the Board's longstanding position on this issue.

Accordingly, the Board will not grant a hearing on the basis of an association's action under Rule 1989.

Cordially,

A handwritten signature in black ink, appearing to read "R. Brodnik".

Robert Brodnik
Staff Counsel
California Horse Racing Board

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



October 8, 2019

Drew Couto
Attorney for Jerry Hollendorfer

SUBJECT: Complaint re: Del Mar Thoroughbred Club

Dear Mr. Couto,

The California Horse Racing Board (CHRB) has conducted a thorough investigation into the accusations made against the Del Mar Thoroughbred Club by licensee Jerry Hollendorfer.

At the conclusion of our investigation, we have found no regulations that have been violated by the Del Mar Thoroughbred Club pertaining to your complaint. Accordingly, the CHRB will not be filing a complaint against the Del Mar Thoroughbred Club at this time.

Cordially,

Robert Brodnik
Staff Counsel, California Horse Racing Board

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



October 8, 2019

Drew Couto
Attorney for Jerry Hollendorfer

SUBJECT: Complaint re: LATC and LATC II

Dear Mr. Couto,

The California Horse Racing Board (CHRB) has conducted a thorough investigation into the accusations made against the Los Angeles Turf Club by licensee Jerry Hollendorfer.

At the conclusion of our investigation, we have found no regulations that have been violated by the Los Angeles Turf Club pertaining to your complaint. Accordingly, the CHRB will not be filing a complaint against the Los Angeles Turf Club at this time.

Cordially,

Robert Brodnik
Staff Counsel, California Horse Racing Board

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1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



October 24, 2019

Drew Couto
Attorney for Jerry Hollendorfer

J. Christopher Jaczko
Attorney for Del Mar Thoroughbred Club

SUBJECT: Complaint re: Del Mar Thoroughbred Club

Dear Counsels,

The California Horse Racing Board (CHRB) has conducted a thorough investigation into the accusations made against the Del Mar Thoroughbred Club (DMTC) by licensee Jerry Hollendorfer.

At the conclusion of our investigation, we have found no regulations that have been violated by the Del Mar Thoroughbred Club pertaining to the complaint. Accordingly, the CHRB will not be filing a complaint against the Del Mar Thoroughbred Club at this time.

In reaching that conclusion, the CHRB considered the following CHRB rules and reached the following conclusions as to each:

1. 1527: General Authority of Stewards: While the stewards are granted general authority and supervision over all licensees, the track also has authority to make stall and race entry decisions pursuant to the Stall Application and the Race Meet Agreement. This section was not violated by the DMTC.
2. 1542: Power to Refuse Entry and Deny Eligibility: While the stewards are granted authority to refuse entry to a race, declare ineligible to race or order removed from the premises, any horse, the Stall Application and Race Meet Agreement additionally give the DMTC the authority to make stall and race entry decisions. This section was not violated by the DMTC.
3. 1580: Control over Entries and Declarations: All entries and declarations are under the supervision of the stewards. Additionally, the Stall Application and Race Meet Agreement gives the DMTC the authority to make stall and race entry decisions. This section was not violated by the DMTC.

4. 1587: Entries Survive with Transfer: No evidence was presented to support a violation of this section.
5. 2041: Entries to be Binding on Members: The Race Meet Agreement between the DMTC and the California Thoroughbred Trainers (CTT) was not violated by the DMTC. Based on the evidence collected, their decision to deny stalls to Mr. Hollendorfer does not appear to be "arbitrary or capricious".
6. 2042: Agreements to be Binding on Associations: The Race Meet Agreement between the DMTC and the CTT was not violated by the DMTC. Based on the evidence collected, their decision to deny stalls to Mr. Hollendorfer does not appear to be "arbitrary or capricious".
7. 2043: Adjudication of Controversies Relating to Agreements: This section states that a complaint may be filed with the Board for any violations of agreements between a horsemen's organization and a racing association. A complaint was filed and withdrawn by the CTT. There was no violation of this section.
8. 2045: Prohibited Provisions of Horsemen's Agreements: This rule states that no agreement between the association and the horsemen shall include provisions that are in conflict with Horse Racing Law. No evidence was presented to support a violation of this section. The DMTC's decision to deny stalls to Mr. Hollendorfer does not appear to be "arbitrary or capricious".

Cordially,

Robert Brodnik
Staff Counsel, California Horse Racing Board

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EXHIBIT L

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



October 8, 2019

Drew Couto
Attorney for Jerry Hollendorfer

SUBJECT: Complaint re: Del Mar Thoroughbred Club

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Cordially,

Robert Brodnik
Staff Counsel, California Horse Racing Board

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
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October 8, 2019

Drew Couto
Attorney for Jerry Hollendorfer

SUBJECT: Complaint re: LATC and LATC II

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Cordially,

Robert Brodnik
Staff Counsel, California Horse Racing Board

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EXHIBIT M

CALIFORNIA HORSE RACING BOARD

1010 Hurley Way, Suite 300
Sacramento, CA 95825
www.chrb.ca.gov
(916) 263-6000 Fax (916) 263-6042



October 24, 2019

Drew Couto
Attorney for Jerry Hollendorfer

J. Christopher Jaczko
Attorney for Del Mar Thoroughbred Club

SUBJECT: Complaint re: Del Mar Thoroughbred Club

Dear Counsels,

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At the conclusion of our investigation, we have found no regulations that have been violated by the Del Mar Thoroughbred Club pertaining to the complaint. Accordingly, the CHRB will not be filing a complaint against the Del Mar Thoroughbred Club at this time.

In reaching that conclusion, the CHRB considered the following CHRB rules and reached the following conclusions as to each:

1. 1527: General Authority of Stewards: While the stewards are granted general authority and supervision over all licensees, the track also has authority to make stall and race entry decisions pursuant to the Stall Application and the Race Meet Agreement. This section was not violated by the DMTC.
2. 1542: Power to Refuse Entry and Deny Eligibility: While the stewards are granted authority to refuse entry to a race, declare ineligible to race or order removed from the premises, any horse, the Stall Application and Race Meet Agreement additionally give the DMTC the authority to make stall and race entry decisions. This section was not violated by the DMTC.
3. 1580: Control over Entries and Declarations: All entries and declarations are under the supervision of the stewards. Additionally, the Stall Application and Race Meet Agreement gives the DMTC the authority to make stall and race entry decisions. This section was not violated by the DMTC.

4. 1587: Entries Survive with Transfer: No evidence was presented to support a violation of this section.
5. 2041: Entries to be Binding on Members: The Race Meet Agreement between the DMTC and the California Thoroughbred Trainers (CTT) was not violated by the DMTC. Based on the evidence collected, their decision to deny stalls to Mr. Hollendorfer does not appear to be "arbitrary or capricious".
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Cordially,

Robert Brodnik
Staff Counsel, California Horse Racing Board

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EXHIBIT N

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 02/26/2020

TIME: 03:22:00 PM

DEPT: C22

JUDICIAL OFFICER PRESIDING: Glenn Salter

CLERK: Celida Elias

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Nestor Peraza

CASE NO: 30-2019-01056627-CU-WM-CJC CASE INIT.DATE: 03/13/2019

CASE TITLE: **Kriple vs. California Horse Racing Board**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 73233053

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on 2/18/20 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Petitioner Zvi Kriple filed a petition for writ of mandate to compel respondent California Horse Racing Board to conduct an investigation, and hold a hearing, on his allegations that he was unfairly singled out and excluded from practicing his profession as a horse trainer at Los Alamitos Race Course. (Code Civ. Proc., § 1085.)

Venue

Respondent California Horse Racing Board concedes the Orange County Superior Court is the proper venue for this proceeding.

Standing

The court finds petitioner has standing to maintain this petition because he held, at the time of the alleged exclusion, a valid license to train and race horses at tracks licensed by respondent.

It is unclear whether he continues to hold such a license, but the court believes he does not. The court finds that even if petitioner does not have a current license from the California Horse Racing Board, he has standing to maintain this petition because: (a) he seeks judicial relief based on his possession of a valid license when the California Horse Racing Board refused to act; and (b) it is his intent to pursue his livelihood with a valid license once he is no longer excluded by Los Alamitos Race Course.

Statute of Limitations

DATE: 02/26/2020

MINUTE ORDER

DEPT: C22

Page 1
Calendar No.

The court finds the petition is not barred by the statute of limitations. The alleged exclusion and duty of the California Horse Racing Board to investigate, and then conduct a hearing, on petitioner's claim is ongoing.

Requests for Judicial Notice

The objections of the respondent to the petitioner's four requests for judicial notice are SUSTAINED, and the requests are DENIED.

Moreover, trial court records in a superior court case in San Diego County involving Del Mar Race Course and another party are not relevant here. Similarly, no adequate showing has been made that a 2015 agreement involving Los Alamitos Race Course, that on its face ends in 2015, is relevant here.

The respondent's objections to those requests are therefore SUSTAINED.

Legislative History

The California Horse Racing Board submitted legislative history concerning the adoption of certain rules. The plaintiff's objection to the legislative history is OVERRULED.

Evidence

The only evidence before the court are the undisputed facts alleged in the initial, verified petition. At the hearing, petitioner emphasized that he had been a licensed horse trainer for a long time and had trained horses at Los Alamitos Race Course in the past. He recently sought to train and race horses at that race course but was excluded by Los Alamitos Race Course without reason.

He conceded that Los Alamitos Race Course is privately owned but stated it cannot race horses without a license from the California Horse Racing Board and a meet agreement.

He also conceded that the Rules of the California Horse Racing Board allow Los Alamitos Race Course to exclude certain people involved in gambling. But he stated that he was not in the class of people who may be excluded, that he has not been precluded by the California Horse Racing Board from entering meet premises at any location, and that any exclusion from Los Alamitos Race Course may not be arbitrary.

In its answer, respondent does not dispute the basic facts alleged, but challenges petitioner's application of the law to those facts.

Counsel then advised the court as to the following: Los Alamitos Race Course is the business entity that operates the facilities; it formed Los Alamitos Racing Association, which is the licensed entity. The Association thereafter applied to the California Horse Racing Board for meet dates.

The court further understood from counsel that the California Horse Racing Board interprets its adopted rules to permit a privately-owned and operated race course to exclude anyone it chooses for any reason and that the Board has no legal duty to provide the excluded person with a hearing.

Analysis

The California Horse Racing Board is constitutionally created. Statutes have been enacted to effectuate

the role of the Board. Exercising its rule-making authority, the Board has adopted rules that govern the persons who operate under its powers and are licensed by it. The jurisdiction of the Board is plenary. Petitioner advised the California Horse Racing Board that he was a licensed trainer who was singled out by Los Alamitos Race Course for exclusion. He asked the Board to investigate and conduct a hearing. Petitioner insists Los Alamitos Race Course will not tell him why he has been excluded. When quizzed by the court, petitioner stated he had no idea why he had been excluded from pursuing his livelihood there. He could only speculate that: One, he obtained a small claims judgment against Los Alamitos Race Course and his exclusion was in retaliation for that; Two, he had been charged with animal cruelty at one point in time but was innocent of the charge and the California Horse Racing Board never suspended his license.

The California Horse Racing Board claims that it has no jurisdiction in the matter because Los Alamitos Race Course is a privately-run business and may exclude anyone it wishes from its own property. Therefore, it asserts it has no legal duty to conduct an investigation into the matter.

The court rejects the California Horse Racing Board's position here for two independent and discreet reasons.

First, the Board relies on language within Rule 1989 (formerly Rule 1990) that a race course may exclude anyone at its discretion. But that rule was adopted based on statutory authority that allowed the Board to set rules regarding the proper exclusion of "disruptive persons." When the Board adopted language to expand the rule to allow the licensee to remove anyone at its discretion, the Board clearly exceeded its statutory, rule-making authority.

Second—and more importantly—the Board is constitutionally charged with implementing and enforcing the law equally within its constitutional and statutory jurisdiction.

When a licensed trainer who seeks to exercise his rights under his license is excluded from a licensed race course, the jurisdiction of the Board is necessarily invoked. This is especially true where, as here, the race course will not tell the licensed trainer why he has been excluded.

There does not appear to be any constitutional, statutory, or case authority that requires the California Horse Racing Board to conduct a hearing on the petitioner's claim simply because he has been excluded. (See *Greenberg v. Hollywood Turf Club* (1970) 7 Cal.App.3d 968, 979-980.) But it is required to investigate whether the petitioner has been excluded under a Board rule and, depending upon its findings, conduct any required administrative hearing.

For example, let us assume Los Alamitos Race Course excluded the petitioner because it disagreed with the Board's decision not to suspend or revoke petitioner's license because of the unproven animal cruelty charge. The race course would essentially be usurping the power and jurisdiction of the Board to determine who should have a license. The California Horse Racing Board would have a vested interest in seeing that its orders are respected. The petitioner would clearly have a right to hearing in that case.

Findings and Conclusions

The court concludes that where a licensed horse trainer complains that a licensed race course has arbitrarily excluded the trainer from pursuing his livelihood, the California Horse Racing Board has a legal duty to investigate the matter and, based upon a good faith investigation, to determine whether, in its discretion, it should hold a hearing on the claim.

Whether to hold a hearing here must be made in good faith after a meaningful review of the internal findings, including a review of the duties and obligations of the California Board of Horse Racing and Los Alamitos Race Course pursuant to any legally binding contracts, memoranda of understanding, or other

binding agreements between them.

The court further finds that petitioner has made a *prima facie* showing that the exclusion here was arbitrary and capricious. If Los Alamitos Race Course excluded petitioner because of the small claims judgment or an unproven charge of animal cruelty, the California Horse Racing Board could find the exclusion usurped the Board's exclusive, constitutional and statutory authority.

The record here does not reflect that the California Horse Racing Board satisfied its initial legal duty to investigate and make a considered decision as to whether the petitioner was entitled to a hearing.

Order

The petition for writ of traditional mandate is GRANTED.

A writ of mandate shall issue to compel respondent California Horse Racing Board is ORDERED to conduct a good faith investigation into petitioner's claim that Los Alamitos Race Course arbitrarily and capriciously excluded him from pursuing his livelihood.

Petitioner shall prepare the appropriate traditional Writ of Mandate under Code of Civil Procedure section 1085 and serve the signed writ on respondent.

Respondent shall file and serve a Return within 30 days of service of the signed and filed writ, and it shall file and serve a report as to the status of the investigation within 120 days of the service of the writ.

The clerk shall give notice to the parties.

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EXHIBIT O

Petitioner Gustavo De La Torre ("De La Torre") seeks a writ of mandate compelling Respondent California Horse Racing Board ("CHRB" or the "Board") to discharge its mandatory duty to require Respondent Los Alamitos Quarter Horse Racing Association ("LARC") to rescind its house rule banning clenbuterol.

The court has read and considered the moving papers, oppositions, and replies, and renders the following tentative decision.

A. Statement of the Case

Petitioner De La Torre commenced this proceeding on April 2, 2015. The operative pleading is the First Amended Petition ("FAP") filed on July 21, 2015. The FAP alleges in pertinent part as follows.

Petitioner is licensed by Respondent CHRB as a horse owner. Petitioner has used his CHRB license to engage in the horse racing industry throughout California and Los Angeles County. He races primarily at Los Alamitos Racetrack. The Los Alamitos Racetrack and its managing association, Respondent LARC, are each licensees of the CHRB and come under its jurisdiction.

On December 17, 2014, the CHRB approved a license application from LARC for a race meet beginning December 26, 2014 and ending December 21, 2015. As part of that licensing approval, CHRB also approved the imposition of a "house rule" prepared solely by LARC and imposed on all licensees wishing to race at the Los Alamitos Racetrack during the race meeting.

The house rule serves, among other things, to disqualify any trainer's horse which tests positive for any amount of authorized medications clenbuterol and albuterol through hair follicle testing. The house rule conflicts directly with CHRB Regulations which allow the use of clenbuterol and albuterol for therapeutic purposes. It also conflicts with CHRB regulations in that it attempts to penalize licensees based on hair testing, a test which does not trigger an enforcement action under CHRB Rules.

The house rule conflicts with several CHRB Rules including 1402, 1436, 1437, 1580, 1844 and 2045. The CHRB noted in Rule 1844 that clenbuterol and albuterol used appropriately can safeguard the health of the horse and therefore has authorized rather than banned their use. Respondent CHRB has failed to discharge its mandatory public duty in enforcing CHRB Rules 1402, 1437 and 2045 which would have prohibited the imposition of the house rule.

CHRB committed a prejudicial abuse of discretion in that it failed to proceed in the manner required by law in that Business and Professions ("B&P") Code section 19440 and the above-referenced regulations each require the rescission of a house rule which seeks to occupy the same legal space as a state agency regulation or public law. The petition is a challenge to Respondent CHRB's decision to approve and allow implementation of the house rule as part of LARC's licensing. LARC has failed, as a licensee of the CHRB, to comply with CHRB Rules 1436 and 1437 which mandates that all licensees shall follow, obey, and enforce the rules.

On March 30, 2015, LARC disqualified Petitioner's horse "Runaway Fire" from

participating in a \$175,000 Derby for which it was otherwise eligible because of unauthorized, illegal hair testing of the horse. The horse returned negative blood and urine tests after each of its races. The race is restricted to three year old horses and occurred on April 4, 2015. Petitioner lost this racing opportunity as a result of the house rule and CHRB's failure to intervene and enforce its Rules against LARC.

B. Standard of Review

"A writ of mandate may be issued by any court to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled, and from which the party is unlawfully precluded by such inferior tribunal, corporation, board, or person." CCP §1085(a).

A traditional writ of mandate under CCP section 1085 is the method of compelling the performance of a legal, ministerial duty. Pomona Police Officers' Assn. v. City of Pomona, (1997) 58 Cal.App.4th 578, 583-84. Generally, mandamus will lie when (1) there is no plain, speedy, and adequate alternative remedy, (2) the respondent has a duty to perform, and (3) the petitioner has a clear and beneficial right to performance. *Id.* at 584 (internal citations omitted). Whether a statute imposes a ministerial duty for which mandamus is available, or a mere obligation to perform a discretionary function, is a question of statutory interpretation. AIDS Healthcare Foundation v. Los Angeles County Dept. of Public Health, (2011) 197 Cal.App.4th 693, 701.

A ministerial act is one that is performed by a public officer "without regard to his or her own judgment or opinion concerning the propriety of such act." Ellena v. Department of Insurance, (2014) 230 Cal.App.4th 198, 205. It is "essentially automatic based on whether certain fixed standards and objective measures have been met." Sustainability of Parks, Recycling & Wildlife Legal Defense Fund v. County of Solano Dept. of Resource Mgmt., (2008) 167 Cal.App.4th 1350, 1359.

Where a duty is not ministerial and the agency has discretion, mandamus relief is unavailable unless the petitioner can demonstrate an abuse of that discretion. Mandamus will not lie to compel the exercise of a public agency's discretion in a particular manner. American Federation of State, County and Municipal Employees v. Metropolitan Water District of Southern California, (2005) 126 Cal.App.4th 247, 261. It is available to compel an agency to exercise discretion where it has not done so (Los Angeles County Employees Assn. v. County of Los Angeles, (1973) 33 Cal.App.3d 1, 8), and to correct an abuse of discretion actually exercised. Maniara v. Newton, (1966) 64 Cal.2d 365, 370-71. In making this determination, the court may not substitute its judgment for that of the agency, whose decision must be upheld if reasonable minds may disagree as to its wisdom. *Id.* at 371. An agency decision is an abuse of discretion only if it is "arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair." Kahn v. Los Angeles City Employees' Retirement System, (2010) 187 Cal.App.4th 98, 106. A writ will lie where the agency's discretion can be exercised only in one way. Hurtado v. Superior Court, (1974) 11 Cal.3d 574, 579.

No administrative record is required for traditional mandamus to compel performance of a ministerial duty or as an abuse of discretion.

C. Governing Law¹

1. The CHRB's Authority

B&P Code section 19400-705 is known as California's "Horse Racing Law". The CHRB has jurisdiction over, and supervision of, horse racing meets where wagering on results is conducted (hereinafter, "horse racing"), and over all persons or things having to do with the operation of such meetings. B&P Code §19420. The CHRB has "all powers necessary and proper to enable it to carry out fully and effectually" the Horse Racing Law. The "[r]esponsibilities of the board shall include, but not be limited to. . . administration and enforcement of all laws, rules, and regulations affecting horse racing." B&P Code §19440. The CHRB is authorized to prescribe rules, regulations and conditions under which all horse racing shall be conducted in the State. B&P Code §19562.

CHRB Rule² 1402 (Controlling Authority) provides in pertinent part that:

The laws, rules and orders of the Board supersede the conditions of a race meeting and govern thoroughbred, harness, quarter horse, appaloosa, Arabian, paint and mule racing. The stewards may enforce rules or conditions set forth by breed registry organization if such rules or conditions are not inconsistent with rules of the Board.

2. Local Authority

Rule 1436 (Duty of Licensed Association) provides that each association "...shall observe and enforce the [CHRB] rules."

Rule 1437 (Conditions of a Race Meeting) provides:

"The association may impose conditions for its race meeting as it may deem necessary, provided, however, that such conditions may not conflict with the rules, regulations and orders of the Board, that such conditions are published in the condition book or otherwise made available to all licensees participating in its race meeting, that such conditions are posted on the association bulletin board, and a

¹ Petitioner asks the court to judicially notice 16 exhibits. The CHRB Rules (Exs. 1-9), a June 7, 2012 CHRB memorandum (Ex. 13), two out-of-state published decisions (Exs. 14-15) and a Kentucky Attorney General opinion (Ex. 16) are judicially noticed. Evid. Code §452(b), (c), (d). The partial transcripts of CHRB committees (Exs. 10-11) are not official records and the request is denied. (However, they are attached without objection as evidence to LARC's opposition and have been considered.)

The CHRB asks the court to judicially notice a California Office of Administrative Law ("OAL") emergency action. The request is granted. Evid. Code §452(c).

In a second request, Petitioner asks the court to judicially notice another CHRB rule and an OAL determination concerning an underground regulation. The request is granted. Evid. Code §452(c).

² Hereinafter, the CHRB Rules shall be sometimes referred to as the "Rules".

copy of the conditions filed with the Board. The association may also impose requirements, qualifications or requisites for its race meeting as it may deem appropriate."

Rule 1870 (Conditions of Meeting Binding upon Licensees) provides:

"The Board.... provides that all associations, officials, horsemen, owners, trainers... who have accepted directly or indirectly, with reasonable advance notice, the conditions under which said association engages and plans to conduct such race meeting, shall be bound thereby."

Rule 2040 (Horsemen's Organizations for Owners and Trainers) provides:

"The Board recognizes the need for horse owners and trainers to negotiate and to covenant with racing associations regarding the conditions of each race meeting,... and other matters relating to the welfare, benefits and prerogatives of the parties to the agreement."

Rule 2045 (Prohibited Provisions of Horsemen's Agreements) provides:

"No agreement between the [racing] association and the horseman shall include provisions that conflict with the Horse Racing Law, the rules of the [CHRB], or usurp the authority of the [CHRB].... [including] provisions which may serve to exclude participation at the meeting by any individual holding a valid CHRB license." Rule 2045 (Pet. Reply RJN Ex. 1).

3. Testing

B&P Code section 19577 provides for blood or urine testing of racing horses:

(a) (1) Any blood or urine test sample required by the board to be taken from a horse that is entered in any race shall be divided or taken in duplicate, if there is sufficient sample available after the initial test sample has been taken. The initial test sample shall be referred to as the official test sample....

Rule 1843 (Medications, Drugs and Other Substances) provides:

It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the horse. In this context:

(a) No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse except as hereinafter expressly

provided.

Rule 1844 (Authorized Medication) provides:

Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to race provided that:

...

(e) Official urine test samples may contain one of the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels:

(3) Albuterol; 1 nanograms per milliliter

(6) Clenbuterol; 140 picograms per milliliter

(g) Official blood test samples shall not contain any of the drug substances or their metabolites or analogs listed in subsection (e) (1)(12).

Rule 1858 (Test Sample Required) provides:

Blood and urine samples shall be taken daily from the winner of every race. . . Every horse within the inclosure or entered in any race is subject to testing and no owner, trainer, or other person having the care of a horse shall refuse to submit it for testing when directed by the Equine Medical Director, the stewards, or the official veterinarian.

A finding by the stewards that an official test sample from a horse participating in any race contained a prohibited drug substance shall require disqualification of that horse from the race in which it participated. Rule 1859.5.

D. Statement of Facts³

1. Clenbuterol

"Doping" in horses is defined as the application of drugs for better performance, and it is illegal in most countries and the State of California. Pet. Ex., pp. 28, 36; Rule 1843. In recent years, the growth and development of some horses has been accelerated by the use of anabolic drugs. Pet. Ex., p.28. Random tests for illegal drug application often do not yield positive results because treatment is discontinued early enough to avoid urine and blood detection. Id. In 2008, the CHRB adopted a regulation that banned the use of anabolic steroids in horse racing. Arthur Decl. ¶3; Rule 1844. As a result of that ban, the use of alternative drugs that have steroid-like side effects became rampant. Id.

Clenbuterol is a bronchodilator that has been approved for use for horses affected with airway obstruction. Arthur Decl. ¶4. Clenbuterol is a beta-2 agonist and has a muscle building effect that mimics anabolic steroids. Id. Although not its intended therapeutic purpose, at high

³ The court has ruled on Petitioner's evidentiary objections, interlineating the original evidence where an objection was sustained. The vast majority of objections were overruled.

doses clenbuterol increases muscle mass. *Id.* Quarter horses engage in sprint racing, and thus, the preferred body type is a well-muscled horse. Arthur Decl. ¶5. Clenbuterol abuse occurs when the drug is not used for its intended purpose, and instead is used as a replacement for banned anabolic steroids. Arthur Decl. ¶6. Urine and blood tests are not effective for testing long-term use of clenbuterol because it cannot be detected in horse urine later than fourteen to seventeen days after withdrawal, and is undetectable in blood between four and seven days after its last application. Arthur Decl. ¶7; Pet. Exs., p.28.

2. Clenbuterol Abuse at Los Alamitos

In 2010, representatives from Los Alamitos Racetrack (hereinafter, "LARC") and the Pacific Coast Quarter Horse Racing Association ("PCQHRA") began expressing concerns to the CHRB about what they perceived as unfair racing at LARC. Arthur Decl. ¶8. In response to these concerns, the CHRB conducted testing at LARC for their 2010 signature end of season races. Arthur Decl. ¶9. A total of 72 blood samples were obtained and tested. *Id.* Of these samples, every sample contained detectable levels of clenbuterol in the horse's blood. *Id.* As clenbuterol can be detected in blood for no more than four to seven days, the CHRB's testing indicated that all of the tested horses had recently been administered clenbuterol. *Id.*

3. CHRB Action Regarding Clenbuterol

In July 2011, the CHRB implemented Rule 1844.1, which allowed the CHRB to temporarily suspend the authorized administration to a horse entered to a race of any drug, substance or medication. Arthur Decl. ¶10. In October 2011, pursuant to Rule 1844.1, the CHRB approved a joint request by LARC and the PCQHRA to restrict the use of clenbuterol at LARC by prohibiting for one year its presence at any level in test samples collected from horses that race. Arthur Decl. ¶11. In July 2012, pursuant to Rule 1844.1, the CHRB suspended the authorized threshold level of clenbuterol for all breeds at all tracks in California. Arthur Decl. ¶12. In 2012, the CHRB conducted testing at LARC and found that no horses tested positive for clenbuterol. Arthur Decl. ¶13.

In the fiscal year 2013-14, clenbuterol abuse began to surface again at LARC and the CHRB's testing revealed thirteen violations. Arthur Decl. ¶14. On February 28, 2014, in response to the rise of unlawful clenbuterol use at LARC, the CHRB implemented and enforced the provisions of a Memorandum drafted by the CHRB's Equine Medical Director, Dr. Rick Arthur, entitled "Instructions Pursuant to Rule 1855, Medication Procedures and Related Instructions." Arthur Decl. ¶15, CHRB Exs., pp. 6-7. The Memorandum described procedures for how and when quarter horses should be placed on the Veterinarian's List after clenbuterol is prescribed to or detected in a horse, as well as the procedure for removing a horse from the list once it tests clear of clenbuterol. *Id.* In September 2014, Rule 1844 was amended to reduce the threshold for clenbuterol from 5 nanograms per milliliter to 140 picograms per milliliter in urine. Arthur Decl. ¶16. There were no clenbuterol violations in the fiscal year 2014-15. Arthur Decl. ¶18.

On July 14, 2015, the CHRB found that an emergency existed requiring the implementation of emergency regulations pursuant to Government ("Govt.") Code section 11346.1(a)(2). Arthur Decl. ¶19; CHRB Exs., pp. 8-11. The broad objective of the emergency regulations was to protect quarter horses from the unregulated and potentially harmful administration of clenbuterol, as well as to protect the wagering public from unfair advantages gained by trainers and owners who

illegitimately enhance the performance of their horses using clenbuterol. Id. The anticipated benefit of these regulations was that quarter horses receiving clenbuterol would not be permitted to race in California, protecting both the horse from potential injury and the public from negative perceptions of horse racing. CHRB Exs., p.10.

The emergency regulations de-authorized any detectable level of clenbuterol in a quarter horse's official urine test sample. Arthur Decl. ¶19; CHRB Exs., pp. 8-11. The emergency regulations also required that any quarter horse that is prescribed or otherwise tests positive for clenbuterol in a blood, urine, or other official test sample, be placed on the Veterinarian's List until clenbuterol is no longer detected in the horse's blood or urine by an official test sample. Id. Finally, the emergency regulations required veterinarians to report all clenbuterol prescriptions for quarter horses, and trainers to report all clenbuterol administration to quarter horses. Id. On July 31, 2015, the emergency regulations became effective and were set to expire on January 28, 2016. Arthur Decl. ¶20. On January 26, 2016, the OAL re-adopted the emergency regulations, which will expire on April 25, 2016. Arthur Decl. ¶20; CHRB Exs., p.27.

In addition to the emergency regulations, the CHRB proposed to permanently amend Rule 1844, to revise subsection 1844(e) to remove clenbuterol from the list of drug substances that may be detected in an official urine test sample in quarter horses. Arthur Decl. ¶21; CHRB Exs., pp. 37-55. The CHRB also proposed to permanently add Rule 1866.1 to require that a quarter horse that is prescribed or otherwise tests positive for clenbuterol in an official test sample to be placed on the Veterinarian's List until clenbuterol is no longer detected by an official test sample. Id. A public hearing on the proposed amendments is scheduled for February 25, 2016. Resp. Exs., p.37.

4. LARC Action Regarding Clenbuterol

In addition to the actions taken by the CHRB to combat clenbuterol abuse, in May 2014 LARC, with PCQHRA support, established internal policies concerning clenbuterol use in quarter horses at the race track by banning the use of clenbuterol and using hair testing to enforce the ban. Allred Decl. ¶3. In furtherance of this rule, all trainers were required to sign the Acknowledgment of Conditions which specifically identified clenbuterol as a zero tolerance drug, specified that hair testing by the CHRB or LARC could be required at any time, and provided that all races are governed by conditions published by the track. Allred Decl. ¶4.

On January 8, 2015, Mario Loza ("Loza"), Runaway Fire's trainer, executed the Acknowledgment of Conditions for the Stabling of Horses at Los Alamitos Race Course ("Acknowledgment of Conditions"). Allred Decl. ¶6; CHRB Exs., pp. 1-5. The Acknowledgment of Conditions outlines the obligations of a trainer in connection with the use of space at Los Alamitos Racetrack for race meets at Los Alamitos Racetrack. CHRB Exs., pp. 1-5. Paragraph 9 of the Acknowledgment of Conditions expressly provides, "There will be a zero tolerance for clenbuterol..." and that "[u]rine, blood, and/or hair testing either by CHRB or Track may be required at any time." Resp. Ex. at p.3. Paragraph 10 of the Acknowledgment of Conditions expressly provides: "All race and eligibility for races shall be governed by conditions published by the Track, and by the CHRB if appropriate." Id.

In mid-November 2014, LARC published a document providing conditions for horses nominated for 2015 and 2016 futurities. Allred Decl. ¶5; Resp. Ex. at p.135. These conditions provided:

Important information for owners and trainers with horses nominated for 2015 and 2016 futurities and derbies at Los Alamitos Race Course:

1. The trials for futurities, derbies, and other races with the time trials will be conducted in the usual manner with post race testing by the California Horse Racing Board. All qualifiers (top ten) will also be blood and hair tested within 24 hours after the trials. At the discretion of LARC several other horses may be tested (i.e. qualifiers 11-15.) Testing will be done by the UC Davis Equine Analytical Chemistry Laboratory. Horses with positive tests for "zero tolerance" drugs, including, but not limited to Clenbuterol, Albuterol, Zilpaterol, and Ractopamine, will receive a "non time" and will not participate in the final event.
2. For "Invitational" States (i.e. Champion of Champions, Robert Boniface LARC Championship etc.) pre race hair and blood testing will be done about 14 days prior to the race by LARC utilizing the UC Davis Equine Analytical Chemistry Laboratory.

We are confident that these measures will insure the integrity of the major stakes at Los Alamitos. We are doing our utmost to insure a level playing field for all of our good horsemen.

5. CHRB Approval of the House Rule

On December 17, 2014, a CHRB committee held a public meeting open to public comment. At the meeting, the committee considered whether LARC's decision to ban clenbuterol in horses conflicted with the CHRB rule, which (at the time) allowed a threshold amount, and the permissibility of hair testing imposed by LARC to enforce the ban. CHRB Exs., pp.56-103.

Edward Allred ("Allred") is the owner and Chairman of LARC. Pet. Ex., pp. 10-11. He is an active participant, owner, and breeder of horses competing at LARC races and was the owner and/or breeder of horses that competed in the 2015 \$175,000 El Primero Del Ano Derby ("Derby") and the qualifying races for the Derby. He was the breeder of the winner of the Derby. Pet. Exs., p. 27; Vienna Decl. ¶14. At the committee meeting, Allred testified about the impact of clenbuterol on horses at Los Alamitos Racetrack. Resp. Ex. at pp. 61-64; Pet. Ex. at p.3. He explained that trainers know how to withdraw from clenbuterol in time to beat a post-race blood test, and thus, the necessity of hair testing to enforce LARC's rule banning clenbuterol. *Id.* Allred stated that he would not submit his application for the 2015 LARC race meeting if he could not implement a house rule that excluded horses from participation based upon such a hair-follicle test. Pet. Exs., p. 4. Allred further stated that the house rule would involve hair analysis for albuterol, clenbuterol, Ractopamine, and Zilpaterol. Pet. Exs., p.7.

Allred emphasized that LARC could not take action on anyone's license for a clenbuterol violation, acknowledging that is the CHRB's job. CHRB Ex., p. 86. Rather, if a horse tests positive for clenbuterol based on a failed hair test, that horse simply will not be permitted to race at high stakes races at LARC. *Id.* Arthur testified about the effects of clenbuterol on horses because of its anabolic (steroid-like) effects. CHRB Exs., pp. 64-67.

Counsel for Petitioner raised concerns that LARC could not impose private rules that

conflicted with CHRB rules. CHRB Exs., pp. 69-75, 79, 82-83. Dan Schiffer testified on behalf of the PCQHRA, representing that its members determined the house rule is in the best interest of the horsemen and racing at LARC. CHRB Exs., p. 100.

On December 18, 2014, the Board considered the LARC house rule. CHRB Exs., pp. 119-133. The CHRB committee reported its support for approval of the LARC house rule. Pet. Exs., p.14. The Board determined that the house rule was permissible because it did not contradict the CHRB Rules, and furthered their intent. CHRB Exs., pp. 120, 123-24; Pet. Exs., p. 12. The Board indicated that acceptance of the LARC house rule did not mean that the CHRB was giving "carte blanche" to any association or track seeking to impose any house rule they wish. CHRB Exs., p. 121. The Board acknowledged that violation of the house rule did not necessarily mean that a violator would be sanctioned by the CHRB. CHRB Exs., p.125. Rather, any penalty would be between LARC and the trainer. CHRB Exs., p.126.

The American Quarter Horse Association ("AQHA") is the breed registry organization for quarter horse racing in the United States. Blodgett Decl. ¶2. A "quarter horse" is any horse that meets the requirements of and is registered by the AQHA. B&P Code §19413.5. As of January 2016, in an effort to further the safety and welfare of quarter horses, horsemen and the industry, and to assure fairness of competition, the AQHA began implementing hair testing to enforce its strict clenbuterol rules for its Racing Challenge program, beginning with the Regional qualifying races and all Championship races. Blodgett Decl. ¶¶ 9-10. The AQHA strongly supports the hair testing protocol put into place at Los Alamitos Racetrack to combat clenbuterol abuse. Blodgett Decl. ¶12.

6. Application of House Rule to Petitioner

Petitioner is an owner of quarter horses and licensed in that capacity by the CHRB. De La Torre Decl. ¶¶ 2-3. He was a regular participant in quarter horse racing conducted by LARC. De La Torre Decl. ¶3. The horse "Runaway Fire" was partially owned and raced by World Champion Racing Stables, LLC which is Petitioner's registered stable name. De La Torre Decl. ¶¶ 4, 7.

On March 15, 2015, Runaway Fire competed in a 400-yard derby trial in which he finished third. De La Torre Decl. ¶8; Allred Decl. ¶7. The time Runaway Fire achieved in the derby trial qualified him to participate in the Derby which was to be run on April 4, 2015. De La Torre Decl. ¶¶ 8-9. Allred also was the owner or breeder of one or more horses qualified for the race. Pet. Ex. at p.27; Vienna Decl. ¶14.

Following the trial, pursuant to the Acknowledgement of Conditions signed by Runaway Fire's trainer, Loza, LARC ordered hair and blood samples to be taken from the horses with the 12 fastest times. Allred Decl. ¶8; CHRB Exs., pp.1-4. Loza did not give permission for the removal of hair samples and did not witness the sampling. Loza Decl. ¶13. Runaway Fire was the only horse of the 12 that tested positive for clenbuterol via hair sample. Allred Decl. ¶9. After testing positive, Runaway Fire received a "non time" and was not permitted to participate in the final. Allred Decl. ¶10. There was no report that official CHRB blood or urine samples taken from Runaway Fire following the running of the qualifying derby trial contained clenbuterol. Loza Decl. ¶14.

On March 30, 2015, Petitioner's counsel sent an email to CHRB Chairman Charles Winner requesting that the CHRB intervene in this matter because of the illegality of the house rule, order Allred to cease his interference with the rights of other CHRB licensees and to reinstate the results

of the derby trial. Pet. Exs., pp. 22-25; Vienna Decl. ¶5. On March 30, 2015, CHRB Chairman Winner refused the request and advised that the courts were the appropriate jurisdiction for this matter. Pet. Exs., p.26; Vienna Decl. ¶6.

On April, 1, 2015, the entry of Runaway Fire into the Derby was refused by LARC Racing Secretary Ron Church. Loza Decl. ¶11.

E. Analysis

Petitioner argues that the LARC house rule is an impermissible delegation of the CHRB's authority to regulate horse races in California. In the alternative, Petitioner contends that the LARC house rule is improper because it conflicts with the CHRB Rules and does not further their intent.

1. Mootness

On July 31, 2015, the CHRB adopted an emergency regulation pursuant to Govt. Code sections 11346.1 and 11349.6 amending Rule 1844 (Authorized Medication) to prohibit any detectable level of clenbuterol in a quarter horse's official urine test sample:

"Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to the race provided that: (e) Official urine test samples may contain one of the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels: (6) clenbuterol; 140 picograms per milliliter, except in quarter horses the amount of clenbuterol cannot exceed 0 picograms per milliliter." CHRB Exs., pp. 27, 29-31.

A second emergency regulation, Rule 1866.1, required that a quarter horse prescribed or otherwise testing positive for clenbuterol in a blood, urine or other official test sample must be placed on the Veterinarian's List until clenbuterol is no longer detected in the horse's blood or urine by an official test sample. Veterinarians also must report all clenbuterol prescriptions for quarter horses, and trainers must report all clenbuterol administrations to quarter horses. CHRB Exs., pp. 33-34. The CHRB initiated a separate rulemaking action to make both emergency regulations permanent through rulemaking in compliance with Govt. Code section 11346.1(e). CHRB Exs., pp. 37-55.

The CHRB contends that the FAP is moot because the CHRB now temporarily prohibits any detectable level of clenbuterol in an official urine sample and a pending rulemaking action would make the emergency regulations permanent. Thus, according to the CHRB, any potential conflict between the LARC house rule and the CHRB Rules has been resolved. CHRB Opp. at 9-10.

As Petitioner points out (Reply at 6-8), the emergency regulations say nothing about albuterol, which is banned by LARC's house rule. Additionally, the house rule uses a hair-follicle test, not the blood or urine test authorized under the CHRB rules. Clenbuterol remains in the hair follicle for up to 360 days, while it is undetectable in urine after 30 days. Thus, a horse that tests negative for clenbuterol using a urine test may still test positive for clenbuterol using a hair test. The potential conflict between the LARC house rule and the CHRB rules still exist because even

under the emergency regulations, a horse could be qualified under the CHRB rules and disqualified under the LARC house rule. The FAP is not moot.

2. Improper Delegation

The CHRB considered the LARC house rule over the course of two days in December 2014. CHRB Exs., pp. 56-134. The CHRB permitted the house rule because the lower medication limit furthered the intent of the CHRB's rules. CHRB Exs., p. 121.

At the December 17, 2014 CHRB committee meeting, LARC's owner advocated:

"DR. ALLRED: ...the race course and our horsemen are both requesting that the lower limit of Clenbuterol be omitted and that zero tolerance would be the rule for quarter horses. I'm not sure it wouldn't be a good idea for other horses as well, but we're not going to address that. ¶The way the Clenbuterol is apparently utilized, nobody but a pretty inexperienced track person, trainer, would ever have a positive Clenbuterol with blood. They use Clenbuterol over a long period of time....it's a muscle building (drug), basically. And it's outlawed in human bodybuilding contests. It has been for many years. It's outlawed in baseball. It's outlawed -- it isn't allowed anywhere....We want it outlawed completely. We're told that probably six months would be a good rule of thumb, no guarantees, but six months of being off Clenbuterol will clear the system." LARC Opp. Ex. I, pp. 51-52.

CHRB's Equine Medical Director, Dr. Arthur, stated:

"I will say Clenbuterol does have a good medical use; but since we've restricted its use in the last year, veterinarians have told me that they don't miss it that much...This is a major problem in quarter horse racing. There is no question that our current regulations do not address the problem that quarter horse racing has in California and elsewhere....So long as [LARC] doesn't lower our standards, you know you can have twice as much Clenbuterol as we allow, I don't see any problem with it. And it's something that is vitally needed in quarter horse racing....It is an issue that is really a major problem, and our regulations can't solve it." *Id.*, pp. 54-55.

At the full CHRB meeting the next day, December 18, 2014, the CHRB considered LARC's house rule:

"[The house rule] seeks to bar any use of Clenbuterol in respect to quarter horse racing, even though we have a rule which permits for all breeds a certain limit on the amount of Clenbuterol that can be used....The extent to which a house rule can be different than a rule of the CHRB. And I think that there was a conclusion that was reached, and that was that that house rule ought to go on. But there was not any real agreement as to exactly what the rationale was. So I think that I speak for myself, Commissioner Rosenberg and for Counsel Miller, that there is a -- we're sympathetic to the position that if a house rule in no way contradicts the official

CHRB rule but, in fact, seems to implement it in a favorable way, then that ought to be accepted....The question is when is, when is it inconsistent and when is it consistent or indeed helpful." LARC Ex. J, p. 38.

The Board discussed whether the house rule furthers the intent of the CHRB Rule. *Id.*, p.42. A Commissioner noted that the mere fact of a violation of the house rule would not subject the offender to CHRB sanctions. *Id.*, p. 43. The Board's counsel agreed that it does not enforce local house rules. *Id.*, p. 44. Dr. Arthur explained that the house rule "will give the Board and the quarter horse industry an opportunity to look at alternative ways to regulate...Clenbuterol in quarter horses. ¶Very likely it's going to involve regulations to include hair testing as part of our regulatory structure, but this gives us time to work through this issue." *Id.*, p. 55. The Board approved a motion to permit the house rule. *Id.*, pp. 53, 55.

Petitioner argues that the CHRB approval of the LARC house rule was an improper delegation of its authority. According to Petitioner, the Board is the only body that can adopt and implement rules on medication. See B&P Code §19562. The CHRB may delegate its powers and duties only to stewards, and LARC is not an authorized steward. See B&P Code §19440(b). A racing association may impose conditions for its racing as necessary, so long as they do not conflict with Board Rules. Rule 1437. CHRB Rules supersede the conditions of a race meeting. Rule 1402. Mot. at 4-6.

Petitioner further argues that the Board has in place a comprehensive framework for the collection, testing, and enforcement of rules concerning medications. The Horse Racing Law permits an official test sample of blood or urine, and a split of that sample if possible. B&P §19577. Clenbuterol and albuterol are permissible in limited specified amounts. Rule 1844. A finding that an official test sample contains a prohibited substance requires disqualification of the horse from the race in which it participated. Rule 1859.5. Mot. at 4-6.

Yet, argues Petitioner, the LARC house rule provides that the mere detection of any level of clenbuterol after hair follicle testing disqualifies the horse from running at LARC events. While clenbuterol cannot be detected in blood or urine after 30 days, it remains in hair and can be detected for up to 360 days. Pet. Ex., p. 28. The mere detection of clenbuterol in a hair sample does not mean that the horse raced under the drug's influence or had its performance enhanced; only a blood or urine test can do that. Indeed, a CHRB memorandum advises that a horse will not have a positive blood or urine test if clenbuterol usage is stopped 21 days before testing. Pet. Ex., p. 21. The LARC house rule essentially bans the use of clenbuterol and albuterol, unlike the CHRB Rule 1844, and disqualifies horse that are in compliance with CHRB Rules.

Moreover, CHRB rule 1859.5 requires a finding by CHRB stewards of a prohibited substance in an official test sample as a condition precedent to disqualification of a horse. A hair sample is not an official test sample. See B&P Code §19577. Hair testing is not a basis for disqualification under the Rules. LARC's house rule provides none of the protections of an official test, including notice, clean and sterile collection equipment, chain of custody, and a split sample for the horse owner to test. Mot. at 7-8, 10.

Petitioner finally argues that the CHRB improperly delegated to LARC the more restrictive testing for clenbuterol as a work around because compliance with the APA would take at least a year. The CHRB openly viewed the house rule as a new regulation, but without the notice, public participation, hearing, and review by OAH that compliance with the APA would involve. Mot. at

12-13. Yet, CHRB cannot delegate rulemaking authority to private parties possessing a pecuniary interest in the formulation and application of the rule any more than the legislature can delegate absolute legislative discretion to an administrative agency. See State Board v. Thrift-D-Lux Cleaners, (1953) 40 Cal.2d 436, 448. Mot. at 12-13.

There is some validity to Petitioner's argument that CHRB has improperly delegated to LARC the authority to impose more restrictive conditions for clenbuterol while the Board goes through the APA process for a new permanent rule. However, as CHRB points out, Rule 1437 permits a race association to impose additional conditions for participation in the race meeting so long as those conditions do not conflict with the Board's Rules, regulations, and orders. It would not be an improper delegation of CHRB's duties for it to consider whether a proposed house rule conflicts with its Rules for medication testing and enforcement. The CHRB did just that on December 18, 2014. The best means of analyzing the issue, then, is whether LARC's house rule impermissibly conflicts with the CHRB's Rules.

3. Does the House Rule Conflict with the CHRB Rules?

As discussed *ante* with respect to delegation, Petitioner contends that the LARC house rule conflicts with the CHRB Rules on clenbuterol because the house rule (1) requires hair follicle testing instead of the official testing of blood or urine; (2) disqualifies horses that would be qualified under the CHRB Rules; and (3) does not provide for any testing safeguards.

By analogy, the law concerning the preemption of local ordinances applies to the relationship of the CHRB Rules and LARC's house rule. State law preempts any local ordinance or regulation that "duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication." Sherwin-Williams Co. v. City of Los Angeles, ("Sherwin-Williams") (1993) 4 Cal.4th 893, 897. A regulation contradicts state law when it is inimical to or cannot be reconciled with state law. O'Connell v. City of Stockton, (2007) 41 Cal.4th 1061, 1068. A contradiction does not exist when the state law provides a general concept and the local ordinance or regulation reasonably interprets or defines the general concept. County of Tulare v. Nunes, (2013) 215 Cal.App.4th 1188, 1202. Even if the state law and the ordinance apply to similar subject areas, there is no contradiction so long as the regulation "does not prohibit what the statute commands or command what it prohibits." Sherwin-Williams, *supra*, 4 Cal.4th at 902. However, when a state law contains a specific provision, the regulation or ordinance may not contradict that provision in any way. Ex Parte Daniels, (1920) 183 Cal. 636, 641-48.

The CHRB found that the LARC house rule is consistent with the intent of its Rules. In support of its finding, the CHRB now relies on the general rule that an agency's interpretation of its own regulations is entitled to great weight unless unauthorized or clearly erroneous. See Communities for a Better Environment v. State Water Resources Board, (2003) 109 Cal.App.4th 1089, 1107. CHRB Opp. at 12.

Although the Board's interpretation is entitled to great weight, its interpretation of the intent of its Rules, particularly Rule 1844, is erroneous because CHRB Rules are not general, they are specific and may not be contradicted. Previously, Rule 1844 permits a limited amount of clenbuterol and albuterol as detectible in a horse's blood or urine. It did not outright ban usage of those drugs, which have a medical purpose. Now Rule 1866.1 more restrictively requires that a quarter horse prescribed or otherwise testing positive for clenbuterol in a blood, urine or other official test must be placed on the Veterinarian's List until clenbuterol is no longer detected in the

horse's blood or urine by an official test sample. However, Rule 1866.1 still permits clenbuterol to be used upon prescription of a CHRB-licensed veterinarian so long as it does not show up in a quarter horse's blood or urine test. CHRB Exs., p. 30. As Petitioner has demonstrated, this rule directly conflicts with the LARC house rule because a horse that has no clenbuterol in a blood or urine sample still will have clenbuterol present in a hair sample. A horse's blood or urine will clear clenbuterol in no more than 21 days, but its hair will show clenbuterol for up to a year.

LARC's more restrictive rule conflicts with CHRB's specific Rules. The house rule effectively bans the use of clenbuterol, as its owner admitted at the December 17, 2014 CHRB committee meeting. Yet, CHRB's Rules permit the use of clenbuterol so long as it does not affect the quarter horse's race as demonstrated by a blood or urine test. Albuterol also is banned by the house rule, and yet the CHRB Rules 1866.1 and 1844 still permit its limited use as reflected in blood or urine tests.

The Board concluded, and its opposition argues, that LARC's house rule is consistent with its Rules because it furthered their intent. CHRB Opp. at 11-12. But they do not. The intent of the Board's rules is to protect the integrity of horse racing, the health of the horse, and the interests of the public by controlling the use of drugs with racing horses. Rule 1843. The CHRB did so previously in Rule 1844 by permitting small amounts of clenbuterol and albuterol from a blood or urine test. The Board's emergency regulations further limit clenbuterol – but not albuterol – by effectively prohibiting its use without a prescription and within 21 days of a race. Thus, even now the Board's intent is to permit some usage of both drugs. LARC's house rule is inconsistent with that intent.

The CHRB's mistake in approving the house rule on December 18, 2014 lies in the fact that its commissioners accepted and relied upon the testimony that clenbuterol abuse was adversely affecting quarter horse racing, assumed that they would be moving forward with a more restrictive rule or outright ban of the drug, and felt the house rule was consistent with their assumption. It may have been, but it was not consistent with their existing Rule 1844. And the Board's assumption that it would be banning clenbuterol did not come to a complete fruition; emergency Rules 1866.1 and 1844 as amended do not completely ban clenbuterol. Nor did the Board even address albuterol in its rulemaking.

It is worth noting that in 2011 the CHRB concluded that any LARC house rule suspending the use of clenbuterol would be inconsistent with Rule 1402. Pet. Exs., p. 20. The CHRB opposition argues that the Board's earlier position is irrelevant in light of Rule 1866.1, but this is not true because clenbuterol is not subject to an outright ban in the Board's Rules. The 2011 statement is an admission by the CHRB that any house rule regulating the amount of clenbuterol would be inconsistent with the Rules.⁴

Apart from the permissible amounts of clenbuterol and albuterol, the LARC house rule provides for hair testing. CHRB notes that hair testing in horses is a well-developed technique to test for clenbuterol in horses. Arthur Decl. ¶22. Rul 1859 provides for the taking of urine, blood,

⁴ The CHRB relies on analogies to other statutory schemes in which a maximum is imposed – e.g., speed limits, BAC while driving, smoking in enclosed places – but permit more extensive local regulation. CHRB Opp. at 14. Petitioner properly rebuts these situations, which are not analogous because they involve different statutory schemes, less comprehensive regulation, or permit local regulation by ordinance. See Reply at 8-9.

or other official test samples, and contemplates other types of testing as permissible. CHRB Opp. at 12-13. Similarly, LARC argues that the CHRB rules do not prohibit the use of a hair follicle test, specifically allowing such a test for jockeys and drivers. LARC Opp. at 12-13, Ex. F, p.4. Neither Respondent responds to Petitioner's arguments regarding the lack of equivalence in the testing protocols of notice, split, and chain of custody.

Neither the Horse Racing Law nor the Board's Rules permit hair testing of horses. B&P Code section 19577(a)(1) provides only for blood or urine testing of racing horses with a split sample if feasible. The first sample shall be referred to as the official sample and the second as the split sample. CHRB Rule 1859 provides only for the taking of "urine, blood, or other official test samples..." This Rule contemplates that forms of testing besides urine or blood may be permitted as official test samples. Thus, the Board may have the power to approve other forms of official sample testing. But CHRB has promulgated no rule permitting a hair sample as an official sample. Without one, the LARC house rule is inconsistent with Rule 1859.⁵

Finally, the house rule is inconsistent with the CHRB test procedures concerning notice, chain of custody, and a split if feasible. Respondents do not contend otherwise.

The LARC house rule conflicts with the CHRB Rules and is invalid.

4. The Acknowledgement of Conditions

The CHRB recognizes the need for racing associations to enter into agreements with owners and trainers regarding the conditions of each race meeting. Rule 2040. The CHRB expressly permits a racing association, such as LARC to impose conditions for its race meeting as necessary, so long as they do not conflict with the CHRB's rules and regulations. Rule 1437. A racing association's conditions are binding on all licensees, including owners, provided the licensees are given reasonable advance notice. Rule 1870.

Based on these Rules, Respondents argue that Petitioner is bound by the terms of LARC's Acknowledgment of Conditions, including the no tolerance policy for clenbuterol, because Petitioner's trainer Loza signed it. CHRB Opp. at 11.

While LARC is entitled to enter into agreements with owners and trainers, those agreements may not conflict with CHRB Rules:

"No agreement between the [racing] association and the horseman shall include provisions that conflict with the Horse Racing Law, the rules of the [CHRB], or usurp the authority of the [CHRB].... [including] provisions which may serve to exclude participation at the meeting by any individual holding a valid CHRB license." Rule 2045 (Pet. Reply RJN Ex. 1).

As discussed above, the LARC house rule is invalid because there is a conflict between the LARC house rule and CHRB Rule 1866.1, 1844, and 1859. The Acknowledgement of Conditions

⁵ The CHRB relies on its authority under Rule 1402 to enforce rules or conditions of breed registry organizations if not inconsistent with those of the Board, and notes that the AQHA has begun implementing hair testing to combat clenbuterol use. Blodgett Decl., ¶¶9-10. CHRB Opp. at 13. This argument suffers from the same defect – the CHRB may have the authority to approve hair testing as an official test, but has not done so.

cannot be used to avoid the invalidity, because Rule 2045 specifically proscribes agreements that conflict with CHRB rules.

Petitioner did not contract away his ability to challenge the LARC house rule when Loza signed the Acknowledgement of Conditions.

F. Conclusion

The petition for writ of mandate is granted. A writ shall issue directing the CHRB to set aside its approval of the LARC house rule. Although Petitioner also seeks a writ against LARC to set aside its house rule, none can issue because LARC does not have a mandatory ministerial duty. However, Petitioner is entitled to declaratory and injunctive relief against both the CHRB and LARC against enforcement of the LARC house rule.

Petitioner's counsel is ordered to prepare a proposed judgment and a writ, serve it on Respondents' counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for April 21, 2016 at 9:30 a.m.

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**VERIFICATION
OF WRIT OF MANDATE
FILED BY JERRY HOLLENDORFER**

In the matter captioned *Hollendorfer v. California Horse Racing Board*, to be filed in the Superior Court of the State of California, in the County of San Diego, I declare and verify as follows:

My name is Jerry Hollendorfer.

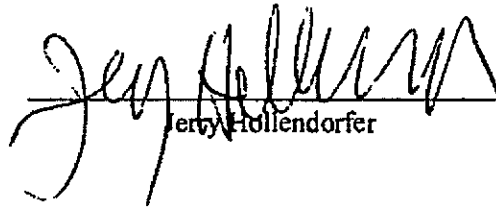
I am the Petitioner in this action.

I have read the foregoing Writ of Mandate and Damages prepared on behalf my behalf, and know the contents thereof.

The same is true of my own knowledge, except as to those matters which are therein stated on information and belief, or are otherwise based on information provided by my legal counsel in the course of representing my interests, as required by law, and as to those latter matters, I believe them to be true.

Executed on April 16, 2020, in the County of Alameda, California.

I declare under penalty of perjury that the foregoing is true and correct.


Jerry Hollendorfer