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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

11 **JERRY HOLLENDORFER,**  
12  
13 Petitioner,  
14  
15 **CALIFORNIA HORSE RACING BOARD,**  
16 Respondent.

14 v.

Case No. 37-2020-00016369-CU-WM-CTL

**RESPONDENT CALIFORNIA HORSE  
RACING BOARD'S OPPOSITION TO  
PETITION FOR WRIT OF  
TRADITIONAL MANDAMUS (C.C.P. §  
1085)**

**IMAGED FILE**

Date: October 7, 2022  
Time: 1:30 p.m.  
Dept: C-65  
Judge: The Honorable Ronald F. Frazier  
Trial Date: None set  
Action Filed: May 28, 2020

Filed Concurrently with:

1. Respondent's Opposition Brief in Response to Plaintiffs' CCP § 1094.5 Brief
2. Respondent's Evidentiary Objections to Petitioner's Compendium of Evidence
3. Proposed Order re Evidentiary Objections to Petitioner's Compendium of Evidence
4. Respondent's Compendium of Evidence

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1 **INTRODUCTION**

2 The sole issue in this cause of action is whether the CHRB failed to proceed in the manner  
3 required by law. Petitioner seeks a writ of mandate compelling the CHRB to hold a hearing under  
4 Business and Professions Code section 19573 because he was allegedly excluded from the Los  
5 Angeles Turf Clubs I and II (LATC) and the Del Mar Thoroughbred Club (DMTC) under CHRB  
6 Rules. Petitioner insists that the CHRB had a mandatory duty to give him a hearing regardless of  
7 the actual reasons behind the racing associations’ decisions to not allow him to enter or race in  
8 2019. However, possession of a valid trainer’s license does not “confer any right upon the holder  
9 thereof to employment at or participation in a race meeting.” (Cal. Code Regs., tit. 4, § 1485(c).)

10 Here, the CHRB satisfied its duty to investigate Petitioner’s complaints. As to LATC,  
11 regarding its refusal to accept his entry in September 2019, the CHRB’s investigation showed that  
12 LATC refused to accept his entry based upon its earlier decision under the RMA and the terms of  
13 the stall application he signed and submitted in September 2019. The investigation showed that  
14 Petitioner was not denied access to LATC under Rules 1980 or 1989 because he did not meet the  
15 categories set forth in those rules, and thus was not a person who was excluded or ejected from a  
16 horse racing inclosure pursuant to a rule of the board. Thus, the CHRB was not required to  
17 provide him with a hearing under section 19573 on the question of whether the rules applied to  
18 him. The same analysis applies to DMTC, which also denied Petitioner stalls and refused to  
19 accept his horse entries pursuant to the RMA and stall application.

20 Petitioner’s claims that former CHRB board members were biased are irrelevant and he has  
21 no evidence that they influenced the CHRB’s investigations. The CHRB’s investigations found  
22 no violation of the Horse Racing Law that would require a hearing. The racing associations  
23 banned Petitioner under contractual provisions the California Thoroughbred Trainers Association  
24 (CTT) negotiated on his behalf, not under any CHRB rule. The petition should be denied.

25 **STATEMENT OF FACTS**

26 **I. THE PARTIES**

27 Horse racing was created by a constitutional amendment in 1933. (Cal. Const., Art. IV, §  
28 19, subd. (b).) The intent of the Horse Racing Law is to allow pari-mutuel wagering on horse

1 races and, among other things, assure protection of the public. (§ 19401, subds. (a)-(d).) The  
2 amendment created the CHRB to oversee the industry’s activities. (§ 19440, subd. (a)(1); §  
3 19562, title 4, Cal. Code Regs., § 1400, et seq. (hereinafter “Rule”).)

4 Petitioner is a Thoroughbred trainer who has been and is currently licensed by the CHRB.  
5 (FAP ¶¶ 11, 12.) Petitioner is a member of the CTT. (FAP ¶ 21.) Petitioner was bound by and  
6 subject to the terms of the required Race Meet Agreement (RMA) between the CTT and the  
7 licensed racing association. (FAP ¶ 51; CHRB Rule 2041.)

8 **II. THE RACING ASSOCIATIONS BAN PETITIONER AFTER SIX OF HIS HORSES DIED**  
9 **BETWEEN DECEMBER 2018 AND JUNE 2019 AT TRACKS OPERATED BY THE**  
10 **STRONACH GROUP**

11 During the Santa Anita 2018-2019 winter/spring race meet, 31 horses suffered fatal injuries,  
12 including four of Petitioner’s, and two of Petitioner’s horses died at Golden Gate Fields before  
13 the Santa Anita season started. (FAP, ¶¶ 29, 33, Exh. G, p. 2) On June 22, 2019, the Stronach  
14 Group (who operates the racing associations at Golden Gate Fields and Santa Anita) issued a  
15 press release that Petitioner “was no longer welcome to stable, race, or train his horses at any of  
16 [its] facilities” because his “record in recent months at both Santa Anita and Golden Gate Fields  
17 [the race tracks] demand.” (FAP ¶ 49, 54; Petitioner’s Compendium of Evidence (Petitioner’s  
18 Comp.), Exh. 38, JH02222-2223; Exh. 71, JH02512:17-JH02513:1.) The DMTC issued a similar  
19 decision a couple weeks later. (FAP ¶¶ 41, 54, 170; Petitioner’s Comp., Exh. 37, JH02133.)

20 **III. PETITIONER’S COMPLAINTS AGAINST DMTC TO THE CHRB OF JULY 23, 2019**

21 On July 23, 2019, Petitioner filed a complaint against DMTC under Business & Professions  
22 Code section 19573, and Rule 1765. (FAP ¶ 60.)<sup>1</sup> The complaint demanded that CHRB  
23 immediately schedule a hearing under section 19573, and that the CHRB investigate and schedule  
24 hearings concerning the DMTC’s “failure to acknowledge and/or honor existing RMA provisions  
25 that contractually limited a racing association’s exclusionary rights” which “established  
26 procedures for handling of disputed allocations or the withholding of stalls to” CTT members,  
27 and the DMTC’s threats and refusal of race entries. (FAP ¶ 68.)

28 <sup>1</sup> Further statutory references are to the Business and Professions Code unless noted.

1 **IV. THE CHRb INVESTIGATES PETITIONER'S DMTC COMPLAINT**

2 On July 24, 2019, the CHRb responded by letter that it would not grant a hearing under  
3 Rule 1989 (Removal or Denial of Access). That rule provides that "Any person may be removed  
4 or denied access for any reason deemed appropriate by [an] association, fair or simulcast facility  
5 notwithstanding the fact that such reason is not specified in the rules." The Board's letter also  
6 referred to Rule 1485, License Subject to-Conditions and Agreements, which states, "'Possession  
7 of a license does not confer any right upon the holder thereof to employment at or participation in  
8 a race meeting or to be within the inclosure.' These regulations reflect the [CHRb's] longstanding  
9 position," and referred Petitioner to prior litigation on Rule 1989 that found in CHRb's favor.  
10 (FAP, Exh. A; Petitioner's Comp., Exh. 24, JH02029-02037.)

11 The CHRb then investigated Petitioner's complaint against DMTC. On July 31, 2019, one  
12 week after receiving the complaint, Chief Shawn Loehr emailed Petitioner's counsel, Drew  
13 Couto. Couto confirmed that Petitioner's complaint alleged violation of various Rules, based on  
14 the DMTC's threat to deny or refuse race entries and refusal to honor the terms of the 2019 RMA.  
15 (Petitioner's Comp., Exh 37, JH02089-02090; Respondent's Compendium of Evidence  
16 (Respondent's Comp.), Exh. 1, Loehr Depo., 29:3-30:9 [authenticating report].)

17 Chief Loehr met with DMTC's Chief Operating Officer, Josh Rubenstein, and Executive  
18 Vice President Tom Robbins on August 8, 2019. Mr. Rubenstein advised that at the time the  
19 Stronach Group banned Petitioner, Petitioner had submitted stall applications to stable his horses  
20 at Del Mar for the 2019 summer meet. Following the ban by the Stronach tracks, DMTC began  
21 discussing Petitioner's stall application, leading up to a meeting with Petitioner and Mr. Couto on  
22 or about June 28, 2019. DMTC representatives told Loehr they advised Petitioner that he would  
23 not be allowed to train or enter horses at Del Mar for the 2019 fall meet. They pointed out several  
24 factors that led to the decision, including that Petitioner had 15 percent of the fatalities at Santa  
25 Anita and Golden Gate Fields from the beginning of the year, and that the industry was facing a  
26 lot of pressure from politicians and the press. DMTC officials related a CNN story in which Jim  
27 Cassidy, a trainer and President of the CTT stated, "It doesn't surprise me...[Petitioner] does  
28 what he wants...he has tunnel vision." (Petitioner's Comp., Exh 37, JH02090-2091.) DMTC

1 representatives said that they did not give Petitioner a specific justification or quote a rule section,  
2 and relied on Section 1 of the Stall Application Petitioner signed requesting stalls as justification.<sup>2</sup>

3 Also on June 28, 2019, DMTC received a formal request from the CTT to initiate a  
4 horsemen/Management Committee per the terms of the RMA to determine whether the decision  
5 to not grant Petitioner stalls was based on the totality of the circumstances and was not arbitrary  
6 or capricious. (Id., JH02092.) This is consistent with the terms of the RMA, and as discussed in  
7 the CHRB's concurrent opposition to Petitioner's petition for administrative mandamus, the CTT  
8 and DMTC later resolved their dispute and withdrew their request for an administrative hearing.  
9 (Id., JH02093, JH0295.) On July 5, 2019, the DMTC formally notified Petitioner of the decision  
10 not to allocate him stalls. In the letter, the rationale given for the denial was lack of space, and the  
11 bans by the Stronach Group and the New York Racing Association, "among other things." The  
12 letter also stated, "We have the right to take such action under our stabling application, the terms  
13 of which you agreed to by submitting your application." (Id., JH02093, JH02133.)

14 Chief Loehr concluded that Petitioner's Complaint did not appear to specify any violation  
15 of the CHRB rules (1527, 1542, 1580, 1587, 2041, 2042, 2043 and 2045). Chief Loehr's  
16 conclusions were based on several facts found during the investigation, including that both "the  
17 Stall Application and the Race Meet Agreement have similar language stating that the DMTC  
18 cannot make decisions related to stall assignments in an 'arbitrary or capricious' manner," but  
19 Petitioner provided no evidence of it. (Id., JH02095.) The Stall Application states that in the event  
20 stable space is refused to a Trainer, the CTT may ask for a review of the decision by the  
21 Horsemen/Management Committee. It appears the Horsemen/Management Committee meeting  
22 was held on 07/08/2019, so this process was followed appropriately." (Ibid.) Loehr concluded  
23 that the "DMTC made a business decision to not grant Mr. Hollendorfer stall space or allow him

24 \_\_\_\_\_  
25 <sup>2</sup> Section 1 of the Stall Application states, "DMTC reserves the right without notice to the  
26 applicant, (a) to refuse this application for stable space in whole or part, or (b) to refuse the entry  
27 or acceptance of any entry in any race or (c) to refuse the transfer of an entry for any course.  
28 However, DMTC's decision to exercise its rights under (a), (b), or (c) shall not be made in an  
arbitrary or capricious manner. Additionally, in the event DMTC exercises its rights under (a),  
(b), or (c) or this Section, CTT may ask for review of the decision before the Horsemen/  
Management Committee. Notwithstanding the foregoing, the final decision shall be made by  
DMTC." (Id., JH02092, ref. to JH02113-JH02123, Para. 1 [signed DMTC stall applications].)



1 to enter horses during the Del Mar Summer Meet based on many factors.” Chief Loehr concluded  
2 that the DMTC’s actions were not arbitrary or capricious. (Ibid.) The CHRB notified Petitioner of  
3 its findings on October 24, 2019. (Id., JH02070-2071.)

4 **V. PETITIONER’S COMPLAINT AGAINST LATC TO THE CHRB OF SEPTEMBER 26,**  
5 **2019.**

6 On September 26, 2019, Petitioner filed a complaint against the LATC alleging that LATC  
7 refused to accept a single race entry, the horse “Big Base,” that Petitioner submitted to the Santa  
8 Anita Racing Office earlier that day. (FAP ¶ 83.) Petitioner contacted Dan August at the office  
9 who told Petitioner that “no change in status had occurred” and that Santa Anita “was not  
10 accepting” his entry. (Petitioner’s Comp., Exh 37, JH02222.)

11 **VI. THE CHRB INVESTIGATES PETITIONER’S COMPLAINT AGAINST LATC**

12 The CHRB investigated and determined in its discretion that no rules were violated. (FAP,  
13 Exh. D, p. 2; Petitioner’s Comp., Exh. 38, JH02221-02247 [Investigation # 19SA0213 findings  
14 JH02225]; Respondent’s Comp., Exh. 1, Loehr Depo., 144:6-23.) Chief Loehr contacted  
15 Petitioner’s counsel who confirmed, “No authority was given and [Rule] 1989(b) was never  
16 stated.” (Petitioner’s Comp., Exh. 38, JH02222.) Chief Loehr then conducted a meeting with  
17 LATC’s executive director, chief operating officer and legal counsel on September 27, 2019, and  
18 explained the complaint received from Petitioner. The LATC representatives admitted that  
19 Petitioner submitted a stall application for the current fall 2019 meet, but that he was still banned  
20 from all Stronach Group tracks since June 22, 2019. His stall application was denied but no  
21 confirmation was ever communicated to Petitioner because he was still aware he was banned and  
22 that the application would be denied. (Id., JH02223.) The LATC representatives were aware  
23 Petitioner recently tried to enter a horse, but they would not accept entries under his name. Loehr  
24 asked for LATC’s authority for denying Petitioner’s entry. The LATC representatives indicated  
25 that both the Santa Anita Park Autumn Stall Application and the 2018-2019 LATC and CTT Race  
26 Meet Agreement (RMA) contain language providing authority to deny stable space and refuse  
27 entries as long as the decision is not made in an arbitrary or capricious manner. (Id., JH02222-  
28 02224.) Petitioner, a CTT member, is subject to the RMA, and LATC has authority to ban him

1 per the terms of both documents. (Id., JH02224.) Loehr obtained both the RMA and stall  
2 application. Section 1 of the Santa Anita Park Autumn Meet Stall Application is identical to  
3 Section 1 of the DMTC Stall Application. (See Footnote 2, *supra.*) (Id., JH02224.) The Race  
4 Meet Agreement contains nearly identical language (Section 6a).<sup>3</sup>

5 Chief Loehr completed his investigation and report on October 1, 2019, five days after  
6 Petitioner submitted his Complaint. He found no violation of the Horse Racing Law. He found  
7 that Petitioner was banned from all Stronach Group tracks on June 22, 2019, and the ban  
8 remained in place as of the time of his investigation. He determined that both the Stall  
9 Application and the RMA gave the LATC the authority to deny stalls and refuse race entries as  
10 long as the decision is not arbitrary or capricious, and that “The LATC decision to deny Mr.  
11 Hollendorfer’s entry is based upon his June 22, 2019 ban from all Stronach Group tracks.” (Id.,  
12 JH02225.) Chief Loehr determined that the LATC Complaint was not about the ban, but about the  
13 denial of Petitioner’s attempt to enter a horse. (Ibid.) He concluded that because of Petitioner’s  
14 prior ban from Santa Anita, the denial of his entry did not appear to be arbitrary or capricious.  
15 Loehr found that Petitioner did not appear to allege violations of any specific CHRB rules. The  
16 CHRB advised Petitioner in October 2019 that it completed the investigation of his complaints  
17 against DMTC and LATC and found no violation of any regulations or rules. (FAP, Exhs. D, E.)

#### 18 STATEMENT OF THE CASE

19 Petitioner filed this action on May 28, 2020, alleging causes of action for mandamus under  
20 Code of Civil Procedure section 1085 and 1094.5, and for a statutory violation of Government  
21 Code section 815.6. He amended his petition on March 11, 2021. The gravamen of the amended

22 <sup>3</sup> Section 6a provides “Track shall provide during each individual race meet which occurs  
23 during the Term, a minimum of 3,200 stalls in good condition for stabling. In the allocation and  
24 assignment of stall space for thoroughbreds, so long as the trainer is duly licensed, Track will not  
25 discriminate in any way against any trainer by reason of membership of any trainer in the CTT, or  
26 by way of any arbitrary or capricious conduct by Track. If any trainer asserts that Track shall  
27 have so discriminated on such ground or grounds, then the trainer claiming to be so aggrieved  
28 may submit his claim to Track or to CTT for examination, and if CTT shall then believe the claim  
to have merit, CTT shall be entitled to present the merits of the grievance on behalf of such  
trainer to Track. If the dispute is not settled, Track and CTT agree that the matter is to proceed  
immediately to arbitration before a hearing officer chosen by mutual consent by Track and CTT.  
If Track and CTT cannot agree on a hearing officer chosen by mutual consent, a hearing officer  
shall be appointed by the CHRB.” (Id., JH02224-02225, ref. to JH02233-02234 [LATC RMA].)

1 Petition is that the CHRB refused to conduct a hearing regarding LATC’s and DMTC’s refusal to  
2 allow him stabling and race entries. The Petition seeks a writ of mandate pursuant to Code of  
3 Civil Procedure section 1085 compelling the CHRB to hold such a hearing. (Petition, ¶¶ 157.)  
4 The CHRB answered and largely denied or objected to the allegations because the refusal to  
5 allow stabling and racing entries by a track pursuant to race meet agreements and stalling  
6 application between the tracks and the CTT is a private matter outside the CHRB’s jurisdiction.

### 7 STANDARD OF REVIEW

8 The sole issue here is whether the CHRB failed to proceed in the manner required by law.  
9 There are two requirements to the issuance of a writ of mandate under Code of Civil Procedure  
10 section 1085: (1) a clear, present and ministerial duty on the part of the respondent, and (2) a  
11 clear, present and beneficial right on the part of the petitioner to the performance of that duty.  
12 (*Morton v. Hollywood Park, Inc., (Morton)* (1977) 73 Cal.App.3d 248, 254.) “In general, when  
13 review is sought by means of ordinary mandate the inquiry is limited to whether the decision was  
14 arbitrary, capricious, or entirely lacking in evidentiary support.” (*Bunnett v. Regents of University*  
15 *of California* (1995) 35 Cal.App.4th 843, 849.) “The petitioner always bears the burden of proof  
16 in a mandate proceeding brought under Code of Civil Procedure section 1085.” (*California*  
17 *Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1154.)

### 18 ARGUMENT

#### 19 I. PETITIONER WAS NOT EXCLUDED, EJECTED OR DENIED ACCESS UNDER THE 20 HORSE RACING LAW AND THUS NOT ENTITLED TO A HEARING

21 The Horse Racing Law requires every licensed Thoroughbred racing association to enter  
22 into a Race Meet Agreement (RMA) with the official organization representing the interests of  
23 licensed Thoroughbred trainers prior to the start of each such race meet. (CHRB Rule 2044.)  
24 Generally, Section 19573 provides for hearings for persons who are *excluded or ejected* pursuant  
25 to Section 19572 [Board may make rule for “exclusion or ejection” from inclosure of  
26 bookmakers, touts, pickpockets, etc.].) Rule 1984 provides for hearings for persons who are  
27 *excluded or ejected* pursuant to Rules 1980 and 1981. Neither CHRB rules nor public policy  
28 dictates that possession of a CHRB license grants its holder an absolute right to compete in any

1 racing meeting in the state. (Rule 1485(c).) Requiring a licensee to have previously competed at  
2 other times or in other places in order to earn the right to compete at a given race meeting is not  
3 contrary to public policy. (*Tisher v. California Horse Racing Bd.* (1991) 231 Cal.App.3d 349,  
4 360; *Tisher*, at p. 355 [association may impose conditions in its race meetings and licensees have  
5 no absolute right to participate in the race meetings because they possess valid licenses].)

6 **A. Petitioner was not excluded or ejected under Rules 1980 and 1981, and**  
7 **thus not entitled to a hearing pursuant to Rule 1983.**

8 Neither the CHRB nor any racing association has ever asserted that Petitioner falls within  
9 any of the classes of persons listed in Rule 1980 ([“exclusion or ejection” from inclosure of  
10 bookmakers, touts pickpockets etc.]). (Petitioner’s Comp., Exh. 37 JH02095 [DMTC ban based  
11 on RMA, Stall Application, TSG ban]; Exh. 38 JH02224 [LATC refusal to accept entry based on  
12 prior ban under RMA, Stall Application].) Thus, Rules 1981 through 1988 are inapplicable. Rule  
13 1981 provides that a racing association has a duty to “exclude and eject from their inclosures”  
14 persons who fall in any class of persons described in Rule 1980. Rule 1981 prohibits such persons  
15 from participating in pari-mutuel wagering and being present within any inclosure.

16 Petitioner was not excluded or ejected under Rules 1980/1981, and so not entitled to a  
17 hearing under Rule 1984 to question whether he was within a class of persons described in those  
18 rules. “[N]othing in the applicable statutes or in the Board’s regulations promulgated pursuant  
19 thereto” declares the existence of a licensee’s right to a “hearing to determine if a racing  
20 association has acted properly in excluding a person for any reason.” (*Greenberg v. Hollywood*  
21 *Turf Club* (1980) 7 Cal.App.3d 968, 980.)

22 **B. Petitioner was not removed or denied access under Rule 1989.**

23 There has never been any assertion by the CHRB or the racing associations that Petitioner  
24 was removed or denied access under Rule 1989. (Petitioner’s Comp., Exh. 37 JH02095 [DMTC];  
25 Exh. 38 JH02224 [LATC].) Like Rule 1980, Rule 1989(a) [Removal or Denial of Access]  
26 describes six classes of persons whom a racing association may remove from or deny access to its  
27 premises, to include among other things, individuals who are intoxicated, interfering with the  
28 racing operation, or boisterous. (Rule 1989(a).)

1 Nor did the CHRB’s investigations find any evidence that Petitioner was removed or  
2 denied access under Rule 1989(b). Rule 1989(b) is a catch-all provision that recognizes that a  
3 racing association is private property, and provides that “Any person may be *removed or denied*  
4 *access* for any reason deemed appropriate by the association” notwithstanding the fact that such  
5 reason is not specified in the rules. (Rule 1989, emphasis added). Both investigations determined  
6 that neither racing association relied on Rule 1989(b). DMTC representatives advised Chief  
7 Loehr, “[W]e decided to rely on our stabling application as the justification and felt that it was  
8 appropriate. We did not exclude Jerry per 1989(b), and he was never completely excluded from  
9 Del Mar. The decision was made to not grant him stalls or allow him to enter horses.”

10 (Petitioner’s Comp., Exh. 37 JH02092.) Similarly, Petitioner’s counsel told Loehr that DMTC  
11 never mentioned Rule 1989(b). (Id., JH02222.) LATC representatives advised Loehr that  
12 Petitioner was banned from all Stronach Group tracks on June 22, 2019, and the ban continued at  
13 the time of his investigation. He determined that the Stall Application and RMA gave LATC this  
14 authority if the decision was not arbitrary or capricious. Loehr found it was not. (Id., JH02225.)

15 Petitioner was not excluded or ejected pursuant to Section 19572 or Rule 1981. The terms  
16 “excluded and ejected” have a distinct meaning under the Horse Racing Law, and that meaning  
17 does not apply here. These terms refer to individuals who are prohibited from participating in  
18 pari-mutuel wagering and from being present within the inclosure during a recognized race meet.  
19 Such persons are those who have been convicted of bookmaking, illegal wagering, touting, or of  
20 an illegal, corrupt or fraudulent act in connection with horse racing or pari-mutuel wagering, etc.  
21 (See Rules 1980 through 1988.) Additionally, Petitioner was not denied access to LARC pursuant  
22 to Rule 1989, subdivisions (a) or (b). Therefore, Petitioner is not entitled to a hearing under  
23 Section 19573 or CHRB rules.

24 **II. THE BOARD ACTED IN THE PUBLIC INTEREST AND TO SUBSERVE THE PURPOSE OF**  
25 **THE HORSE RACING LAW**

26 **A. The CHRB’S interpretation of statutes and rules is entitled to deference.**

27 The CHRB’s longstanding interpretation of the Horse Racing Law, RMAs, Stall  
28 applications, and particularly, Rules 1980 through 1989, is entitled to judicial deference. “An

1 agency interpretation of the meaning and legal effect of a statute [or regulation] is entitled to  
2 consideration and respect by the courts; however, unlike quasi-legislative regulations adopted by  
3 an agency to which the Legislature has confided the power to ‘make law,’ and which, if  
4 authorized by the enabling legislation, bind this and other courts as firmly as statutes themselves,  
5 the binding power of an agency’s interpretation of a statute or regulation is contextual: Its power  
6 to persuade is both circumstantial and dependent on the presence or absence of factors that  
7 support the merit of the interpretation.” (*Yamaha Corp. of America v. State Bd. of Equalization*  
8 (1998) 19 Cal.4th 1, 7 (*Yamaha*)). “Whether judicial deference to an agency’s interpretation is  
9 appropriate and, if so, its extent—the ‘weight’ it should be given—is thus fundamentally  
10 situational. A court assessing the value of an interpretation must consider complex factors  
11 material to the substantive legal issue before it, the particular agency offering the interpretation,  
12 and the comparative weight the factors ought in reason to command.” (*Id.* at p. 12.)

13 Two broad categories of factors relevant to a court’s assessment of the weight due an  
14 agency’s interpretation are those “indicating that the agency has a comparative interpretive  
15 advantage over the courts,” and those “indicating that the interpretation in question is probably  
16 correct.” (*Yamaha, supra*, 19 Cal.4th at p. 12.) The factors in the first category assume the agency  
17 has expertise and technical knowledge, especially where the legal text to be interpreted is  
18 technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.  
19 A court is more likely to defer to an agency’s interpretation of its own regulation than to its  
20 interpretation of a statute, since the agency is likely to be intimately familiar with regulations it  
21 authored and sensitive to the practical implications of one interpretation over another. (*Ibid.*) The  
22 second group of factors—those suggesting the agency’s interpretation is likely to be correct—  
23 includes indications of careful consideration by senior agency officials, such as an interpretation  
24 of a statute contained in a regulation adopted after public notice and comment, evidence that the  
25 agency has consistently maintained the interpretation in question, especially if it is long-standing,  
26 and indicates that the agency’s interpretation was contemporaneous with legislative enactment of  
27 the statute being interpreted. (*Yamaha, supra*, 19 Cal.4th at pp. 12–13.)  
28

1 In this case, the factors warranting deference to the CHRB’s interpretation of the pertinent  
2 statutes and rules are present. Each statute and rule is technical, obscure, open-ended, complex, or  
3 entwined with issues of fact, policy, and discretion. Moreover, the factors that indicate the  
4 CHRB’s interpretation are correct are all present. The CHRB’s Board and senior officials have  
5 carefully considered the interpretation of these statutes for decades, and have consistently  
6 maintained the interpretation that the RMAs agreed to between the CTT and the Racing  
7 Associations are private agreements between those parties. While the CHRB has oversight  
8 authority and must approve each RMA (Rule 2044), once approved, it is essentially a private  
9 contract. Once the parties to the RMA requested hearings pursuant to the RMAs, the CHRB  
10 granted those hearings. The CHRB also investigated Petitioner’s complaints against DMTC and  
11 LATC and found no predicate rule violation as a basis for a formal Accusation against them.

12 **B. Having discretion does not mean the CHRB is required to act.**

13 Courts have long held that noncompliance with a directory regulation does not invalidate an  
14 administrative action. Section 19573 is silent regarding any consequences to the CHRB for not  
15 holding a hearing.<sup>4</sup> Courts have characterized “the question of whether a public official’s failure  
16 to comply with a statutory procedure should have the effect of invalidating a subsequent  
17 governmental action ... as a question of whether the statute should be accorded ‘mandatory’ or  
18 ‘directory’ effect.” (*City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 923.) The word  
19 “shall” does not necessarily mean that something is mandatory; rather “shall” may denote that  
20 something is directory. (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal.4th 231,  
21 257 [mandatory]; see also *California Correctional Peace Officers Assn. v. State Personnel Bd.*  
22 (1995) 10 Cal.4th 1133, 1145 [directory].)

23 \_\_\_\_\_  
24 <sup>4</sup> Section 19573 provides in pertinent part that:

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

28 The board **shall** hold the hearing either at its next regular meeting after receipt of the  
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. (§ 19573 (emphasis added).)

1           Whether a statute is mandatory or directory depends on the legislative intent as ascertained  
2 from a consideration of the entire act. (*Coastside Fishing Club v. California Fish and Game*  
3 *Comm'n* (2013) 215 Cal.App.4th 397, 425 [court determined no penalty in Marine Managed  
4 Areas Improvement Act for adoption of proposed regulation without first subjecting proposed  
5 regulation to committee review; thus the committee review requirement was directory rather than  
6 mandatory].) And where a statute does not provide any consequence for noncompliance, the  
7 language should be considered directory rather than mandatory which means non-adherence to  
8 the directive of the statute does not by itself invalidate the department's action. (*Ibid.*)

9           Petitioner's argument that the CHRБ was required to hold a hearing thus fails. Section  
10 19573 contains no penalty or consequence to the CHRБ for not holding a hearing. Thus, the  
11 "shall" in Section 19573 is unambiguously permissive, as opposed to mandatory. (*Greenberg v.*  
12 *Hollywood Turf Club, supra*, 7 Cal.App.3d at p. 980 n.9 ["We say nothing concerning the power  
13 of the [CHRБ] to investigate a dispute between two of its licensees should it desire to do so. The  
14 record is plain to the effect that the Board did not so desire."].)

15           **C.    The CHRБ properly interpreted the law, the RMA's and stall applications.**

16           Exhibit A to the 2018-2019 RMA is part of the 2018-2019 RMA (Section 6(b)) and defines  
17 the terms by which racing associations allow trainers to apply to stable horses at the track. The  
18 language was carefully negotiated between the CTT and the racing associations. The racing  
19 associations have "the right without notice to the applicant, (a) to refuse this application for stable  
20 space in whole or in part, or (b) to refuse the entry or the acceptance of any entry in any race, or  
21 (c) to refuse the transfer of an entry for any cause." (Petitioner's Comp., Ex. 37 [JH2147, ref. to  
22 JH2159]; Exh. 38 [JH02233-02234, ref. to JH02244, ¶ 1].)

23           Exhibit A provides that if CTT disagrees with such an action, it may "ask for review of the  
24 decision before the Horsemen/Management Committee." (*Id.*) Regardless of that review, "the  
25 final decision shall be made by" the racing associations. (*Id.*) When Petitioner applied for  
26 permission to stable horses at Santa Anita in late 2019, he signed and submitted stall applications.  
27 He submitted signed stalling applications to the DMTC too. (Petitioner's Comp., Exh. 37  
28 JH02112-02123 [DMTC].) After the racing associations' actions vis-à-vis Plaintiff, the CTT and



1 the racing associations initiated administrative proceedings before the CHRB pursuant to the  
2 RMAs. The CTT settled with DMTC and withdrew its request for a CHRB hearing. The CTT did  
3 not seek judicial review of the CHRB’s administrative decision finding the dispute with LATC  
4 was moot. The CTT has released any claims on Petitioner’s behalf against the racing associations.

5 **III. PETITIONER DOES NOT IDENTIFY AN ENACTMENT THAT IMPOSES A MANDATORY**  
6 **DUTY TO HOLD A HEARING.**

7 Petitioner cites a raft of statutes and rules to support his breach of mandatory duties cause  
8 of action. As noted in Section II.B., courts have recognized that inclusion of the term “shall” in an  
9 enactment “does not necessarily create a mandatory duty and there may be other factors that  
10 indicate that apparent obligatory language was not intended to foreclose a governmental entity's  
11 or officer's exercise of discretion.” (*San Mateo Union High Sch. Dist. v. Cty. of San Mateo* (2013)  
12 213 Cal. App. 4th 418, 429; *de Villers v. County of San Diego* (2007) 156 Cal.App.4th 238, 260.)  
13 “It is not enough,” the California Supreme Court has declared, “that the public entity or officer  
14 have been under an obligation to perform a function if the function itself involves the exercise of  
15 discretion.” (*Haggis v. City of Los Angeles* (2000) 22 Cal.4th 490, 498.)

16 The CHRB’s obligation to investigate and determine whether a hearing is warranted  
17 involves the exercise of discretion. (*Richardson v. Department of Motor Vehicles* (2018) 25  
18 Cal.App.5th 201, 110 [DMV’s determination involved exercise of discretion whether driver was  
19 entitled to driving privilege and did not impose mandatory ministerial function].) Here, the CHRB  
20 held a hearing on the CTT’s complaint against LATC, and initiated a hearing process on CTT’s  
21 complaint against DMTC. The CHRB investigated Petitioner’s complaints, and determined no  
22 predicate rule violation existed that warranted filing an Accusation. These determinations  
23 necessarily involved the exercise of discretion, which the CHRB properly exercised.

24 Here, because the CHRB’s obligations to perform its duties under the RMA (for the CTT  
25 complaints) and the Horse Racing Law (for Petitioner’s complaints) involved the inherent  
26 exercise of discretion, no mandatory duty exists for purposes of Government Code section 815.6.

1 **IV. PETITIONER’S CLAIMS OF BIAS ARE IRRELEVANT.**

2 Petitioner claims that former CHRB Chair Charles Winner and Vice-Chair Madeline  
3 Auerbach harbored pecuniary or other bias that somehow infected the CHRB’s response to his  
4 complaints. His allegations are baseless and irrelevant. Neither Winner nor Auerbach were  
5 involved in any CHRB decisions concerning Petitioner. Both were off the Board by February  
6 2020, and did not vote to approve the Hearing Officer’s proposed decision that the CTT/LATC  
7 dispute was moot. (Respondent’s Comp., Exh. 3, Winner Depo., 26:23-27:3 [Winner left October  
8 2019]; Exh. 4 Auerbach Depo., 40:1-4 [Auerbach retired November 2019].) Winner had no role  
9 in creating or discussing the Stronach Group’s June 22, 2019 notice prior to its release. (Id., Exh.  
10 3, Winner Depo., 188:15-189:6.) The CTT and DMTC settled their dispute so neither Winner nor  
11 Auerbach had any say in that decision of the parties. Neither Winner nor Auerbach had any input  
12 in the determinations made in Loehr’s investigations of Petitioner’s complaints against the LATC  
13 and DMTC. (Id., Exh. 3, Winner Depo., 112:5-8; Exh. 4, Auerbach Depo., 207:13-208:20.) Chief  
14 Loehr had no assistance drafting or making conclusions in his LATC report. (Respondent’s  
15 Comp., Exh. 1, Loehr Depo., 70:9-25, 144:6-23.) Chief Loehr met with Executive Director  
16 Baedeker who approved his report and determined that no hearing would be held. (Id., Exh. 1,  
17 Loehr Depo., 20:18-25; Exh. 2, Baedeker Depo., 137:11-138:6 [DMTC]; 138:16-139:1 [LATC].)

18 **V. PETITIONER MAY NOT USE TRIAL COURT DECISIONS AS PRECEDENT**

19 A decision by one department in a superior court is not binding upon another co-equal  
20 department of a court. (*Santa Ana Hospital Medical Center v. Belshe* (1997) 56 Cal.App.4th 819,  
21 832 [“The doctrine of stare decisis applies only to decisions of appellate courts. Trial courts  
22 make no binding precedents”].) Petitioner asks this court to give precedential effect to the trial  
23 court decisions in *De La Torre* and *Kriple*. (See Petitioner’s CCP §1085 Brief [Kriple p. 18:1-9];  
24 [De La Torre p. 15:18-20] Petitioner’s Comp., Exh. 62 [Kriple], Exh. 63 [De La Torre].) This is  
25 improper. *Kriple* specifically addressed Los Alamitos Turf Club’s decision to exclude Kriple  
26 under Rule 1989, which was not applied to Petitioner.<sup>5</sup> Neither decision is authority in this case.

27 <sup>5</sup> Interestingly, the *Kriple* court noted, consistent with the CHRB’s position here, that  
28 “There does not appear to be any constitutional, statutory, or case authority that requires the

1 **VI. PETITIONER’S REQUEST FOR JUDICIAL NOTICE SHOULD BE DENIED.**

2 Petitioner again seeks judicial notice of a number of newspaper articles (Exhs. 42-49), the  
3 *Kriple* and *De La Torre* trial court decisions (Exhs. 62, 63) and a CHRB report (Exh. 64). Even if  
4 the court takes judicial notice of the fact the *Kriple* and *De La Torre* decisions exist, both are  
5 irrelevant, not binding or persuasive authority and are hearsay. The articles, meeting transcripts  
6 and the 76-page CHRB report entitled “Report on Fatalities at Santa Anita Park from 12/30/18  
7 through 3/31/19,” are complete hearsay. Petitioner seeks to use them for an improper purpose by  
8 culling them for ad hoc statements in an effort to prove the truth of the matters asserted. (See *Day*  
9 *v. Sharp* (1975) 50 Cal.App.3d 904, 914.) The articles, transcripts and the report suffer from the  
10 same infirmities. None are relevant, and all are hearsay. (Id.; Evid. Code, §§ 1200, et seq.)

11 **VII. RESPONDENT REQUESTS A STATEMENT OF DECISION**

12 The CHRB timely requested that a Statement of Decision as to all controverted issues be  
13 issued should this petition be granted. (Code Civ. Proc., § 632; Answer to FAP, p. 36:3-4.)

14 **CONCLUSION**

15 Petitioner asks the court to ignore the plain language of the relevant statutes and rules, as  
16 well as the CHRB’s interpretation of its own rules, and force the CHRB to hold a hearing.  
17 However, Petitioner fails to establish any basis for this Court to compel the CHRB to provide him  
18 with a hearing. This matter was fully and fairly investigated and no predicate rule violation was  
19 found to justify a hearing. Therefore, Respondent CHRB requests that the court deny the petition.

20 Dated: September 19, 2022

Respectfully submitted,

21 ROB BONTA  
22 Attorney General of California

23 

24 GARY S. BALEKJIAN  
25 Supervising Deputy Attorney General  
26 *Attorneys for Respondent*  
27 *California Horse Racing Board*

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27 California Horse Racing Board to conduct a hearing on the petitioner's claim simply because he  
28 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.” (FAP, Exh. N, p. 3.)

**DECLARATION OF SERVICE BY E-MAIL**

Case Name: **Jerry Hollendorfer v. California Horse Racing Board**

Case No.: **37-2020-00016369-CU-WM-CTL**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On **September 19, 2022**, I served the attached **RESPONDENT CALIFORNIA HORSE RACING BOARD'S OPPOSITION TO PETITION FOR WRIT OF TRADITIONAL MANDAMUS (C.C.P. § 1085)** by transmitting a true copy via electronic mail, addressed as follows:

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*Attorney for Petitioner, Jerry Hollendorfer*

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on September 19, 2022, at Los Angeles, California.

Precious Armstrong  
Declarant

  
Signature