

1 Drew J. Couto, SBN 125770
2 couto&associates
3 755 West A Street
4 Suite 100
5 San Diego, California 92101
6 Telephone No. (858) 354-3739
7 Email: drew@coutoesq.com
8 Attorney for Petitioner, Jerry Hollendorfer

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/02/2022 at 11:44:00 PM
Clerk of the Superior Court
By Adriana Ive Anzalone, Deputy Clerk

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

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

CASE NO. 37-2020-00016369-CU-WM-CTL
**TRIAL BRIEF AND MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT OF
PETITION FOR WRIT OF MANDATE
PURSUANT TO CODE OF CIVIL PROCEDURE
§1085**

[IMAGED FILE]

FILED: MAY 28, 2020
DATE: OCTOBER 7, 2022
TIME: 1:30 P.M.
JUDGE: HON. RONALD FRAZIER
DEPT.: C-65

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1 I. SUMMARY OF ARGUMENT

2 Pursuant to *Code of Civ. Proc. §1085*, Petitioner seeks three writs of mandate as Respondent’s actions
3 were arbitrary, capricious, entirely lacking in evidentiary support, and/or that its actions were contrary to public
4 policy, procedurally unfair, and/or failed to follow procedures the law require. Specifically:

5 1. Purported administrative determinations in the form of investigative reports and/or opinions expressed
6 by Respondent’s legal counsel do not constitute valid administrative actions, orders, or determinations in
7 conformity with *Bus. & Prof. Code §19431(c)* and/or *Morton v. Hollywood Park, Inc. (1977) 73 Cal.App.3d*
8 *251*;

9 2. Respondent’s assertion that CHRB Rule ¹ 1989(b) (Removal or Denial of Access) authorizes racing
10 associations to deny other licensees of vested fundamental rights without fair procedure, due process, or equal
11 protection under the law “for any reason deemed appropriate” by the association is without merit and exceeds
12 the statutory authority conveyed to it by the Legislature. *Bus. & Prof. Code §§19440(b), 19572 and 19573; Fipke*
13 *v. Cal. Horse Racing Bd. (2020) 55 Cal.App.5th 505, Greenberg v. Hollywood Park, Inc. (1970) 7 Cal.App.3d*
14 *968; Kriple v. Cal. Horse Racing Bd. (Sup.Ct. Orange, 2020, No. 30-2019-01056627-CU-WM-CJC) (Ex. 62);*
15 and,

16 3. Respondent’s assertion that racing associations may contractually impose on other licensees, as a
17 condition on participation in race meets, terms that conflict with or supersede “[t]he law, rules, and orders of” or
18 that otherwise usurp the authority of the CHRB, is without merit and violates *Bus. & Prof. Code §19440(b)*, and
19 Rules 1402 (Controlling Authority), 1437 (Conditions of Race Meetings) and 2045 (Prohibited Provisions of
20 Horsemen’s Agreement). In particular, as such relates the delegation to racing associations the authority of the
21 CHRB’s Stewards to “control” or “refuse” race entries.

22 II. INTRODUCTION

23 Petitioner’s *Code of Civ. Proc. §1085* claims arise from Respondent’s failure to comply with its duties
24 under the law; specifically, as such related to Petitioner’s statutory and regulatory complaints against the Del Mar
25 Thoroughbred Club (“DMTC”) and the Los Angeles Turf Club, Inc. II (“LATC”).

26 Petitioner’s complaint against DMTC required Respondent immediately schedule a hearing pursuant to
27

28 ¹ All references to Rules are to title 4, division 4 of the California Code of Regulations.

1 *Bus. & Prof. Code §19573*, as to the validity of DMTC’s exclusion of Petitioner , as well as its decision to refuse
2 to accept his race entries. A hearing was required because Respondent confirmed that Petitioner had in fact been
3 excluded by DMTC pursuant to Rule 1989. See *Bus. & Prof Code §19573*.

4 Petitioner’s regulatory complaints against DMTC and LATC were substantively similar. Both stemmed
5 from actions by those associations in refusing to accept race entries submitted by Petitioner. CHRB’s Rules only
6 authorize racing personnel to establish individual race conditions and the procedures for the submission of entries,
7 with control over and the power to refuse entries delegated exclusively to the CHRB’s Board of Stewards.

8 In investigating Petitioner’s complaint against LATC, Respondent’s Chief of Investigations confirmed
9 that LATC had independently refused Petitioner’s valid race entry without involving the Stewards. Respondent’s
10 investigation further confirmed that LATC did so based on a purported ‘contractual rights’ secured via RMAs
11 and Stall Applications, which conflicted with CHRB Rules. As a consequence, Respondent was fully aware that
12 the actions of both racing associations were inconsistent with controlling statutes and regulations.

13 Despite that knowledge, Respondent declined to conduct any hearings on Petitioner’s complaints, and
14 permitted the illegal acts of licensed racing associations in dereliction of its duties under the law, all to the harm
15 and damage of Petitioner.

16 Petitioner’s request for relief pursuant to *Code of Civ. Proc. §1085* is appropriate: he seeks a writ mandate
17 compelling Respondent’s performance of an act, required by law, i.e., compel an agency to perform its mandatory
18 ministerial acts. The requested writ is also available to correct administrative ‘decisions’ that are arbitrary,
19 capricious, entirely lacking in evidentiary support, contrary to established public policy, unlawful, or procedurally
20 unfair.

21 To the extent the opinions of Respondent’s legal counsel effectively constituted ‘administrative
22 decisions’ a writ overturning those opinions deeming appropriate the denial of hearings as to Petitioner’s
23 exclusion and the racing associations’ refusal of Petitioner’s valid race entries is warranted and appropriate.

24 Furthermore, Respondent failed to comply with the procedural and substantive requirements of
25 applicable law and regulation, including but not limited to:

26 a) Respondent failed to make or render valid administrative determinations or dispositions, and/or take
27 official action with regard to its duties, powers, or functions as such related to Petitioner’s Statutory and
28 Regulatory Complaints, in accord with *Bus. & Prof. Code §19431*;

1 b) Respondent failed to conduct hearings as required by *Bus. & Prof. Code §19573* following the exclusion
2 of Petitioner, as a licensed trainer, pursuant to Rule 1989 (Removal or Denial of Access), in accord with *Morton*,
3 *supra*, 73 Cal.App.3d 251; *Greenberg v. Hollywood Park, Inc.* (1970) 7 Cal.App.3d 968; *Pinsker v. Pacific Coast*
4 *Soc. of Orthodontists* (1969) 1 Cal.3d 160; *Thompson v. Moore Drydock Co.* (1946) 27 Cal.2d 595; and *James*
5 *v. Marinship Corp.* (1944) 25 Cal.2d 721;

6 c) Respondent failed to ensure that the private entities it licensed to conduct regulated business activities,
7 and to which it annually allocated control over approximately 85% of Thoroughbred race dates in California – a
8 virtual monopoly – provided to Petitioner a minimum of “Fair Procedure” before taking action to exclude or
9 deny access to him as a licensee. Those actions deprived Petitioner of both vested fundamental property rights
10 and of longstanding occupational rights and privileges, and substantial economic interests, in a manner contrary
11 to the laws of the State and the Constitutions of California and the United States;

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

15 e) Respondent acted arbitrarily and capriciously, and did not proceed in the manner required by law and
16 regulation by failing to prohibit licensed racing associations from seeking to enforce race meet and contractual
17 conditions that conflicted with CHRB Rules as such related to race entries and the exclusion from participation
18 by an individual holding a valid CHRB license;

19 f) Respondent acted arbitrarily and capriciously, and did not proceed in the manner required by law and
20 regulation in denying Petitioner’s valid Complaints based on the its counsel’s opinions, which were devoid and/or
21 lacking of evidentiary support, and analytical rationale that tied factual finding to specific determinations.
22 Accordingly, Respondent knew, or should have known, that such opinions were contrary to its rules and
23 regulations, established public policy, were unlawful, and procedurally unfair. (Ex. 16-22, 24-36); and

24 g) Respondent failed to reasonably adopt, interpret, and/or apply its Rules, including, but not limited to,
25 Rule 1989 (Removal or Denial of Access). Respondent exceeded its statutory rule-making and regulatory
26 authority and unlawfully attempted to convey to private entities – the Racing Associations – effective licensing
27 authority and, unlimited discretion and rights, powers, and/or authority to exclude and/or ban occupational
28 licensees without Fair Procedure or recourse that those Associations otherwise were precluded from exercising

1 under law.

2 **III. STANDARD OF REVIEW**

3 A traditional writ of mandamus under *Code of Civ. Proc. §1085* compels a public entity to perform a
4 legal duty. The trial court in such a mandamus must determine whether the agency's actions were arbitrary,
5 capricious, or entirely lacking in evidentiary support, contrary to established public policy, unlawful, procedurally
6 unfair, or involved the agency's failure to follow procedures the law requires. *Vallejo Police Officers Assn. v.*
7 *City of Vallejo* (2017) 15 Cal.App.5th 601, 611-612.

8 Though such mandate is not intended to control a public agency's discretion – to force the exercise of
9 discretion in a particular manner – it may appropriately correct abuses of discretion. *Galzinski v. Somers* (2016)
10 2 Cal.App.5th 1164, 1175. Abuse of discretion is established where an agency has not proceeded in the manner
11 required by law. *Boren v. State Personnel Bd.* (1951) 37 Cal. 2d 634, 638.

12 **IV. THE PETITION MEETS THE REQUIREMENTS OF CODE OF CIVIL PROCEDURE §1086**

13 This is a matter in which there is not a plain, speedy, and adequate remedy, in the ordinary course of law,
14 absent the issuance of a writ compelling respondent to act in conformity with the law. In pursuing this Petition,
15 Mr. Hollendorfer filed a verified petition, and properly identified himself as the party beneficially interested.
16 Petitioner is the beneficially interested party as he has a vested fundamental property right in the trainer's license
17 issued by the CHRB, which has been recognized as such by the U.S. Supreme Court, that were and continue to
18 be denied to him or otherwise improperly limited by Respondent in a manner that is contrary to law and
19 regulation.

20 In 1979, the United States Supreme Court determined that licensed horse trainers have a property interest
21 in their licenses sufficient to invoke the protection of the Due Process Clause. Consequently, no state agency
22 may deprive – directly or indirectly – a licensed trainer of such property interests without first affording him/her
23 due process and equal protection under the Constitution. *Barry v. Barchi* (1979) 443 U.S. 55. The California
24 Supreme Court has similarly determined that the State may not hinder a licensee's vested right to practice their
25 profession, without due process and substantial evidence. *Bixby v. Pierno* (1971) 4 Cal.3d 130; *Dare v. Bd. of*
26 *Medical Examiners* (1943) 21 Cal.2d 790; *Sandstrom v. Cal. Horse Racing Bd.* (1948) 31 Cal.2d 401.

27 Petitioner, as a CHRB-licensed trainer, has a vested fundamental property right in his occupational
28 license. Both he and Respondent were and are bound by CHRB regulations to the terms of and procedures

1 established by its Rules and as set forth in the State’s Horse Racing Law (HRL), *Bus. & Prof. Code §19400, et.*
2 *seq.*, as to such licenses and rights. Rule 1510 (Knowledge of Rules). Petitioner and Respondent are each bound
3 to act in conformity with those Rules unless a particular Rule has been temporarily suspended by valid
4 administrative action of the CHRB. Rule 1406 (Suspension of Rule).

5 V. STATEMENT OF FACTS

6 A. The Parties

7 Petitioner, Jerry Hollendorfer, is a Hall of Fame, CHRB-licensed Thoroughbred trainer. Respondent,
8 CHRB, is an administrative and regulatory agency of the State of California.

9 B. Respondent’s Authority and Responsibility

10 In passing the HRL, the California legislature identified as one of its four intents the provision of
11 “uniformity of regulation” for each type of horse racing. *Bus. & Prof. Code §19401(d)*. Accordingly, it conveyed
12 to Respondent “jurisdiction and supervision” over all race meets at which wagering on horse races is conducted
13 in the State, and “over all persons or things having to do with the operation of such meetings.” *Bus. & Prof.*
14 *Code §19420*.

15 Among Respondent’s enumerated powers are the: adoption of rules and regulations; control of horse
16 racing and parimutuel wagering; administration and enforcement of all laws, rules, and regulations affecting
17 horse racing; adjudication of controversies arising from the enforcement of those laws and regulations; and
18 licensing of racing associations and all persons who participate in a horse racing meets. In performing those
19 powers, Respondent may delegate only to its Board of Stewards those powers and duties necessary to carry out
20 fully and effectuate the purposes of this the HRL. *Bus. & Prof. Code § 19440*.

21 C. LATC’s Disastrous 2018-2019 Winter/Spring Race Meet

22 LATC conducted its 2018-2019 winter/spring race meet – December 26, 2018 through June 23, 2019 –
23 at Santa Anita Park (“SAP”) during which at least 31 equine fatalities were reported, involving horses trained by
24 25 trainers. The number and frequency of those fatalities became the subject of intense media and public scrutiny.
25 Conditions in and management of SAP’s racing and training surfaces became the subject of concern, action, and
26 criticism from the CHRB, elected officials, and concerned members of the public, as well as participating
27 horsemen. Their concerns led to at least three requests to suspend racing and training at SAP , with two such
28 suspension occurring in February and March of 2019, and another rejected by LATC in early June. (Ex. 64)

1 The extraordinary number of equine fatalities led to the launch of unprecedented investigations and
2 detailed reports by the CHRB and the Los Angeles District Attorney’s Office. Respondent’s special investigation
3 resulted in the publication of an extensive 76-page report in March of 2020 entitled “Report on Fatalities at Santa
4 Anita Park from 12/30/18 through 3/31/19.” (Ex. 64)

5 **D. Ban of Petitioner**

6 On June 22, 2019, LATC ban Petitioner from SAP and all other tracks owned by its parent company,
7 The Stronach Group (“TSG”), issuing the following statement:

8 Individuals who do not embrace the new rules and safety measures that put horse and rider safety above
9 all else, will have no place at any Stronach Group racetrack. We regret that Mr. Hollendorfer’s record
10 in recent months at both Santa Anita and Golden Gate Fields has become increasingly challenging and
11 does not match the level of safety and accountability we demand. Effective immediately, Mr.
12 Hollendorfer is no longer welcome to stable, race or train his horses at any of our facilities.

13 Notwithstanding that Statement, under oath later, LATC’s senior most officials admitted that Petitioner
14 had violated “no rules and safety measures that put horse and rider safety” at risk. Additionally, management at
15 Golden Gate Fields (“GGF”) and SAP similarly admitted that they were unaware of any investigations conducted
16 by TSG, GGF, SAP, the CHRB, or U.C. Davis Veterinary Medicine Laboratory that determined Petitioner’s acts
17 had caused or contributed to any fatality.

18 To the contrary, LATC had continually encouraged Petitioner’s support of and participation at SAP’s
19 beleaguered winter/spring meet. Yet, without forewarning, it banned him from their facilities. It did so without
20 conducting any investigations as to the cause or causes of a single fatality, nor any assessments as to possible
21 contributing track conditions or actions, which was particularly troubling and self-serving given SAP’s own
22 failings; i.e., not placing lifesaving Kimzey Splints on at least two of Petitioner’s injured horses. (Ex. 71, p 97 ln
23 3-10, p 100 ln 18-110 ln 18)

24 **E. Petitioner Filed Timely Administrative Complaints with Respondent**

25 On July 23, 2019, Petitioner filed timely statutory and regulatory complaints with the CHRB as against
26 the DMTC because of the latter’s decision to honor the ban first imposed by TSG, and to refuse to accept his
27 valid race entries. (NOL, Ex.13.)

28 On July 24, 2019, CHRB legal counsel advised that he had determined DMTC had excluded petitioner
pursuant to Rule 1989. (Ex. 17) That representation was false and unsupported by actual fact. According to the

1 Respondent’s Investigative Report completed October 2, 2019, its investigator noted that DMTC representatives
2 stated:

3 “We certainly are aware of CHRB Rule 1989(b) and the *right to exclude* any person for any reason
4 the association deems appropriate. However, we decided to rely on our stabling application as the
5 justification and felt that it was appropriate. We did not exclude Jerry per 1989(b)...”

6 (Ex. 37, JH02092, [emphasis added])

7 Respondent’s investigation of SAP’s exclusion revealed that Rule 1989 was never cited as a basis for
8 excluding Petitioner from the TSG tracks as well. Specifically, its investigator noted that outside and in-house
9 legal counsel for SAP and GGF advised that “[w]e never specifically quoted our authority for the *ban* to Mr.
10 Hollendorfer or Mr. Coutu [sic].” [emphasis added] (Ex. 38, JH02224)

11 It is noteworthy that in both instances, neither track representative referred to their own actions as being
12 a “denial of access” to of Petitioner, but rather an “exclusion” or “ban”.

13 Notwithstanding the actual facts, on July 30, 2019, Respondent’s counsel, Robert Brodник, independently
14 invoked Rule 1989 as the basis for asserting that the associations had ‘denied access’ to Petitioner rather than
15 ‘exclude or ban’ him. Mr. Brodnik did so in order to perpetuate a legal and semantical fiction; specifically, that
16 licensees – including racing associations – recognize and intended there to be a substantive and legal distinction
17 between ‘excluding or banning’ versus “denying” a licensee access.

18 With regard to Petitioner’s complaint that the associations’ refusal to accept his race entries conflicted
19 with and otherwise violated cited CHRB Rules, Respondent’s investigations also revealed that both associations
20 refused Petitioner’s entries on their own, without the involvement of the Stewards. Each cited purported
21 contractual provisions as authorization, notwithstanding such provisions substantively conflicting with Rules
22 specifically providing otherwise. Neither racing association requested the Stewards approve their refusal to
23 accept Petitioner’s entries.

24 On September 26, 2019, Petitioner filed a second timely regulatory complaint as against LATC, as it had
25 that morning refused his entry of the horse Big Base. (Ex 38) The complaint cited , among others, Rules 1527
26 (General Authority of Stewards), 1542 (Power to Refuse Entry and Deny Eligibility), and 1580 (Control over
27 Entries and Declarations). (NOL, Ex.13, incorrectly dated July 22, 2019.) According to Respondent’s *Report of*
28 *Investigation*, by the following day Respondent had been advised by it’s the Stewards at SAP that “they were not
aware of the attempted entry and had nothing to do with the decision to deny his entry.” (Ex. 38, JH02222) By

1 that very same afternoon, Respondent had obtained admissions from LATC personnel that it refused Petitioner's
2 entry based on 'contractual terms' found in its Stall Application and the RMA with CTT. (Ex. 38, JH02224) To
3 the extent LATC representatives were asserting private contracts with individual trainers and the CTT permitted
4 it to establish conditions that conflicted with specific Rules those assertions constituted violations of the Rules
5 cited by Petitioner. Rules 1402 (Controlling Authority), 1437 (*Conditions of a Race Meeting*), and 2045
6 (Prohibited Provisions of Horsemen's Agreements).

7 Respondent's Chief of Enforcement and Licensing, Shawn Loehr, assigned himself to investigate these
8 claims. He, at the time, did so despite only having been with the CHRB "eight or nine months," and had
9 conducted perhaps four or five investigations. He assigned himself because he considered the complaint unique
10 and complicated in nature. (Ex. 69, p 19 ln 13-p 20 ln 10) Having joined the Board after serving as a Welfare
11 Department investigator for the County of Sacramento, Mr. Loehr described himself as having "absolutely
12 nothing" in terms of experience in horse racing matters. (Ex. 69 p 20 ln 14-p 21 ln 22) He chose to assign himself
13 though Respondent admittedly had more experienced investigators, who were "definitely" more familiar with
14 CHRB Rules and HRL. (Ex. 69, p 180 ln 25-p 181 ln 7) Mr. Loehr had not read, nor was he familiar with the
15 entirety of CHRB Rules, though he did understand that part of his responsibilities as an investigator was to
16 determine if other Rules were violated even though a complainant may not have accurately articulated the precise
17 rule violated. (Ex. 69, p 65 ln 1-25, p 179 ln 15-180 ln 6) Similarly, he didn't recall reviewing any particular
18 section of the HRL 'in its entirety'. (Id.) Prior to or in the course of his investigation, Mr. Loehr did not review
19 the CHRB's Investigator's Manual "with regard to any policies and procedures relating to the expelling of
20 persons" or "any portion of the Investigator's Manual relating to how – the process or procedures related to claims
21 that asserted a right under Business and Professions Code Section 19573." (Ex. 69 p 139 ln 9-19)

22 Notwithstanding his limited tenure, vague familiarity with CHRB Rules, and his admitted lack of
23 experience in racing, Mr. Loehr made no effort to determine if there were any precedents where an association
24 had attempted to impose a condition that was later deemed inconsistent with a Rule that led to some form of
25 litigation. (Ex. 69, p 101 ln 9-17)

26 **F. Respondent's Actions Were Inconsistent with its' Investigator's Factual Determinations**

27 On July 24 and 30, and again on October 24, 2019, Respondent's counsel Mr. Brodnik asserted that, with
28 regard to Petitioner's complaints as against DMTC, no violations of CHRB Rules occurred. Those purported

1 determinations were made outside of any hearing process and despite knowledge that the assertions were
2 inconsistent with the facts, as reported and determined by Investigator Loehr. Furthermore, Respondent's
3 conclusion unlawfully ignored the prohibitions on race meet conditions that conflict with or purportedly
4 supersede the Rules or State Law: Rules 1402 (Controlling Authority), 1437 (Conditions of a Race Meeting),
5 and 2045 (Prohibited Provisions of Horsemen's Agreement), and *Bus. & Prof. Code §19573*. (Ex. 34)

6 On October 8, 2019, Mr. Brodnik asserted, without reference to either a factual or legal basis, that
7 Petitioner's complaint relating to LATC's refusal of his race entry, did not involve a violation of CHRB Rules .
8 Again, Respondent made that determination without conducting a hearing and despite knowledge that the
9 assertion was inconsistent with the facts as reported and determined by its investigator. Respondent's conclusion
10 unlawfully ignored the prohibitions on race meet conditions that conflict with CHRB Rules or State Law. (Ex.
11 30-32)

12 **G. Petitioner's Attempt to Exhaust Administrative Remedies**

13 On December 3, 2019, Petitioner submitted to Respondent his concerns as to its failure to apply and/or
14 follow applicable laws and Rules in the context of the complaints against DMTC and LATC. (Ex. 36) Petitioner
15 cited specific *Bus. & Prof. Code* sections and CHRB Rules, as well as judicial precedent (including trial court
16 decisions in which the CHRB had participated) that applied, controlled, and were dispositive – in some instances
17 – of the issues.

18 Again, because of his concerns as to bias and reported conflicts of interest, Petitioner requested
19 Respondent refer the matters to neutral hearing officers for determination in lieu of challenging Respondent's
20 actions via Writs of Mandate. Petitioner invited and welcomed further dialogue as to these matters. Respondent
21 did not respond.

22 **VI. PETITIONER'S VESTED FUNDAMENTAL RIGHTS ARE CONSTITUTIONALLY PROTECTED**

23 As discussed herein above, the U.S. and California Supreme Courts have recognized and determined
24 licensed horse trainers to have property interests in their licenses sufficient to invoke the protection of the Due
25 Process Clause, and the State may not hinder a licensee's vested right to practice their profession, without due
26 process and substantial evidence. *Barry v. Barchi, supra; Bixby v. Pierno, supra*.

27 **VII. THE HORSE RACING LAW SETS FORTH RESPONDENT'S DUTIES RESPONSIBILITIES**

28 The CHRB is required to faithfully, consistently, and accurately administer and enforce "all laws, rules,

1 and regulations” as such affect horse racing in the State. *Bus. & Prof. Code §19440(a)(2)*. The CHRBR *exclusively*
2 has all powers necessary and proper to license and regulate all persons who participate in racing, other than the
3 public at large. *Bus. & Prof. Code §19440(a)(4)*. No other provision of the HRL authorizes the delegation of
4 such authority to private racing associations.

5 *Bus. & Prof. Code §19431*, requires that “[a]t least four members of the [CHRB] board shall concur
6 in...the exercise of any of the board’s duties, powers, or functions.” Any purported exercise of the CHRBR’s
7 decision-making authority by its counsel does not constitute a valid administrative decision, nor is it a lawful
8 exercise of its authority, duties, or and powers. *Morton, supra*, 73 Cal.App.3d at p. 251. In the context of horse
9 racing, the court in *Morton*, determined that absent a vote of the board, counsel’s determinations were nothing
10 more than informal “opinions.” *Morton* also concluded that challenges by section 1085 appropriate as the law
11 “anticipates an arbitrary or illegal refusal of a duly constituted board to hold a hearing. The section authorizes
12 resort to the writ of mandate “to compel the performance of an act which the law specifically enjoins.” *Id at 254*.

13 With regard to the “opinions” or “determinations” put forward by CHRBR counsel on July 24th and 30th,
14 and October 9th and 24th, none constituted a “valid final administrative order or decision” under the law.
15 Accordingly, Petitioner has alternatively sought relief pursuant to *Code of Civ. Proc. §§1085 and 1094.5*.

16 **VIII. RESPONDENT MAY NOT IGNORE THE PROHIBITIONS SET FORTH IN ITS RULES**

17 Unless suspended temporarily pursuant to CHRBR Rule 1406 (Suspension of Rule) neither the CHRBR nor
18 any of its licensees may ignore a Rule otherwise in effect. Respondents have been judicially instructed previously
19 that no racing association has the ability nor authority to change a CHRBR Rule on their own. *Gustavo De La*
20 *Torre v. Cal. Horse Racing Bd. et al.* (Super. Ct. Los Angeles County, 2016, No. BS154412).

21 CHRBR Rules 1402 (Controlling Authority), 1437 (Conditions of a Race Meeting), and 2045 (Prohibited
22 Provisions of Horsemen’s Agreement) expressly prohibit any condition imposed by a racing association, or
23 provision of a RMA, that conflicts with a Rule. In instances where such conflicts exist, the regulations and law
24 shall supersede conflicting contractual provisions.

25 **IX. RESPONDENT MAY ONLY DELEGATE TO THE STEWARDS ITS POWERS AND DUTIES**

26 Respondent may delegate only to its Stewards those enumerated powers and duties necessary to carry
27 out fully and effectuate the purposes of the HRL. *Bus. & Prof. Code §19440(b)*. No other section of the HRL
28 authorizes Respondent to delegate to a licensee a power or duty legislatively conveyed to it.

1 **X. CHRBRULES AUTHORIZE ONLY THE STEWARDS TO CONTROL OR REFUSE RACE ENTRIES**

2 The power to *refuse entries* is expressly reserved to the CHRBR's Stewards. CHRBRule 1580 (Control
3 Over Entries and Declarations) provides that "[a]ll entries and declarations are under the supervision of the
4 stewards, and they may, without notice, refuse the entries of any person or the transfer of any entries". Rule 1542
5 (Power to Refuse Entry or Deny Eligibility) instructs racing associations, Racing Secretaries, and all other
6 licensees that it is the Stewards who are expressly authorized to "refuse" an entry: "[f]or good cause, *the stewards*
7 *may refuse the entry to any race, or declare ineligible to race and order removed from the premises, any horse.*"
8 [Emphasis added]

9 With regard to race entries, Rule 1581 (Racing Secretary to Establish Conditions) limits a Racing
10 Secretary's authority to establishing "the conditions for any race, the allowances or handicaps to be established
11 for specific races" and "the procedures for the *acceptance of entries and declarations.*" [Emphasis added]
12 Pursuant to Rule 1583 (Receipt of Entries and Declarations), a Racing Secretary is only "authorized to receive
13 entries and declarations" for the races they write.

14 **XI. CHRBRULE 1989 DOES NOT PREEMPT COMMON LAW RIGHTS TO FAIR PROCEDURE**

15 Neither Rule 1989 nor *Bus. & Prof. Code §19573* usurp or abrogate Petitioner's common law right to
16 Fair Procedure.

17 "The general rule as stated by the Supreme Court is that 'statutes do not supplant the common law
18 unless it appears that the Legislature intended to cover the entire subject or, in other words, to "occupy the
19 field.'" "[G]eneral and comprehensive legislation, where course of conduct, parties, things affected, limitations
20 and exceptions are minutely described, indicates a legislative intent that the statute should totally supersede and
21 replace the common law dealing with the subject matter." *Van de Kamp v. Gumbiner* (1990) 221 Cal.App.3d
22 1260, 1283, citing *I.E. Associates v. Safeco Title Ins. Co.* (1985) 39 Cal.3d 281, 285.

23 In the context of horse racing, the courts have already recognized that neither the CHRBR's Rules nor
24 the HRL were intended to, nor did they, 'occupy the field.' The common law doctrine continues to apply in
25 such instances, in addition to the rights existing in Petitioner's favor under *Bus. & Prof. Code §19573*.
26 *Greenberg, supra*, 7 Cal.App.3d 968.

27 **XII. RESPONDENT'S APPLICATION OF RULE 1989 EXCEEDS ITS STATUTORY AUTHORITY**

28 Courts have repeatedly determined that "an 'administrative agency may not adopt a regulation that

1 exceeds the scope of, or is inconsistent with, the enabling statute.” *Fipke, supra*, 55 Cal.App.5th at p. 516.

2 Respondent is authorized to prescribe rules, regulations, and conditions that provided “for the exclusion
3 or ejection from any inclosure...any known bookmaker, known tout, person who has been convicted of a
4 violation of any provision of this chapter or of any law prohibiting bookmaking or any other illegal form of
5 wagering on horseraces, or any other person whose presence in the inclosure would, *in the opinion of the board*,
6 be inimical to the interests of the state or of legitimate horse racing, or both.” *Bus. & Prof. Code §19562*
7 (emphasis added).

8 As noted above, *Bus. & Prof. Code §19440(a)(4)* exclusively authorizes the CHRB with all powers
9 necessary and proper to license and regulate all persons, other than the public at large, who participate in a horse
10 racing meeting. No other provision of the HRL authorizes the delegation or assignment of such authority to
11 private racing associations or other licensees.

12 CHRB Rule 2045 (Prohibited Provisions of Horsemen’s Agreement) precludes “(4) Provisions which
13 may serve to exclude participation at the meeting by any individual holding a valid license issued by the board.”

14 Prior to asserting that Rule 1989 authorized the associations to ban Petitioner – in an attempt to
15 circumvent Petitioner’s due process and Fair Procedure rights – Respondent was well aware that California
16 Courts had previously determined that the doctrine of Fair Procedure applied to racing associations because (a)
17 they are licensed by the CHRB and involve a public interest; (b) those associations have a quasi-monopoly by
18 virtue of the CHRB’s licensing powers and control over the number of racetracks in operation at any one time
19 and the race meetings each track may conduct; and (c) access to the associations’ racetracks is a “practical
20 necessity” for a CHRB licensee to practice his or her profession. *Greenberg, supra*, 7 Cal.App.3d at p. 976.

21 As here, in *Greenberg*, the racing association asserted it had the “right as a property owner to keep
22 persons it does not want off its premises.” *Id.* at 976. The *Greenberg* court rejected that argument, noting that
23 “the problem is not so easily solved,” stating: “It is a matter of judicial notice that by virtue of the licensing powers
24 of the Board, racing associations have a quasi-monopoly and that the number of tracks in operation at any one
25 time is severely limited. (*Bus. & Prof. Code §19530 et seq.*; see also footnote 5, post.) This imposes upon
26 Hollywood [racing association] certain obligations to which other landowners are not subject.”

27 Thus, the court in *Greenberg* concluded that the *Marinship-Pinsker* rule preventing arbitrary exclusion
28 applied. *Greenberg, supra*, 7 Cal App. 3d at 976 (footnote and secondary citations omitted).

1 In a factually and legally similar matter in Orange County Superior Court, the Petitioner therein was a
2 licensed horse trainer who alleged he was improperly excluded by a racing association for arbitrary and
3 capricious reasons. *Kriple, supra*, (Ex. 62). In that matter, the CHRB again asserted racing associations have
4 the absolute right to exclude a licensee pursuant to CHRB Rule 1989. The court concluded otherwise however.
5 In granting that writ, the court rejected the CHRB’s position, finding that Rule 1989 was based upon statutory
6 authority delegated to the board to exclude “disruptive persons,” and that the, “[w]hen the Board adopted
7 language to expand the rule to allow the licensee to remove anyone at its discretion, the Board clearly
8 exceeded its statutory, rule-making authority.” *Kriple, supra*, (Ex. 62). That trial court’s decision was
9 consistent with the precedent set by the appellate court in *Fipke, supra*, 55 Cal. App.5th 505.

10 XIII. REQUEST FOR STATEMENT OF DECISION

11 Petitioner hereby requests a Statement of Decision as such relates to the decisions made by the Court in
12 this proceeding.

13 XIV. PETITIONER’S IS ENTITLED TO DAMAGES, ATTORNEY’S FEES & COSTS

14 Judgment for the petitioner permits the recovery of damages which the individual has sustained as
15 found by a jury or as determined by the court, together with costs. *Code Civ. Proc. §1095*. Petitioner is
16 entitled to attorneys’ fees and costs. *Code Civ. Proc. §§1021.5, 1028.5, 1032; Gov’t. Code §800*.

17 XV. RESPONDENT’S ACTIONS TAINTED BY PERVASIVE BIAS AND CONFLICTS OF INTEREST

18 At all relevant times, Respondent’s former Chair and Vice-Chair had conflicts of interest – actual and
19 apparent, which should have disqualified them as public officers from participating in discussing or commenting
20 on any matter, in any way, to any person charged with oversight of a ministerial function to be performed as such
21 related to Petitioner’s complaints. See *Clark v. City of Hermosa Beach* (1996) 48 Cal.App.4th 1152. In *Clark*,
22 the court noted: “[T]he common law doctrine against conflicts of interest ... prohibits public officials from placing
23 themselves in a position where their private, personal interests may conflict with their official duties.” (64
24 Ops.Cal.Atty.Gen. 795, 797 (1981); *accord*, 70 Ops.Cal.Atty.Gen. 45, 47 (1987).) fn. 18.
25 *Id.*, at p 1170-1171.

26 While the Political Reform Act focuses on financial conflicts of interest, the common law extends to
27 noneconomic conflicts of interest. *Id.* at 1171, fn 18, citing 64 Ops.Cal.Atty.Gen. 795, 797 (1981), and 70
28 Ops.Cal.Atty.Gen. 45, 47 (1987)

1 **A. Pervasive Bias and Lack of Impartiality Colored Respondent’s Actions**

2 At deposition, former CHRB Vice-Chair Madeline Auerbach – and a longtime Chair of its Track Safety
3 Committee – testified that she understood the “common thread” among the fatalities was the condition of the
4 racetrack. (Ex. 68, Deposition of Auerbach p 26 ln 10-p 27 ln 22; p 87 ln 20-p 88 ln 10) She testified that the
5 number of equine fatalities reflected, in her view , “a general...lack of attention and leadership from the racing
6 association.” (Id., p 89 ln 21-p 90 ln 6) She also testified that “track surface management” seemed to be the
7 problem all along. (Id., p 102 ln 15-p 103 ln 16)

8 According to Ms. Auerbach, Respondent’s efforts in suspending racing and training at SAP in 2019 were
9 partially intended to “get the heat off of us” in the form of political scrutiny and criticism from “animal rights
10 people.” (Id., p 95 ln 20-p 96 ln 22)

11 Despite her understanding that the fatalities at SAP were an outgrowth of poor track surface
12 management and a lack of leadership at the racing association, at 9:26 P.M., on June 22, 2019, the day the ban
13 of Petitioner was announced, Auerbach shared with senior CHRB staff her, and that of CHRB Chair Charles
14 Winner, approval of the media’s change in focus from the recurring number of fatalities to the exclusion. Her
15 email stated: “It appears to me that most of the coverage that I have read seems more concentrated on Santa
16 Anita’s action to remove Hollendorfer than on the latest fatality. That is probably a good way of getting a positive
17 spin on a negative story.” Chair Winner replied “Well put.” (Ex. 55)

18 Respondent redacted the email, to exclude conversations between Auerbach and Winner purportedly to
19 preserve a “deliberative process” privilege, though it has continually represented that no
20 administrative/regulatory actions against Petitioner were ever brought or threatened for any conduct occurring
21 at SAP or GGF, particularly prior to that communication. If the communication included a request to consider
22 such an action being made by either the Chair or Vice-Chair, such request would be germane to issues of bias
23 and partiality in the context of these writs.

24 Respondent’s senior staff copied on these communications included its then Executive Director (Rick
25 Baedeker), legal counsel (Robert Brodnik) and Public Information/Communications Director (Mike Marten).
26 The first two were directly involved in decisions related to the assignment, investigation, and handling of the
27 complaints initiated both by Petitioner and CTT, on Petitioner’s behalf.

28 These communications suggest that Ms. Auerbach sought to communicate the Chair and Vice-Chair’s

1 approval of the fact that media coverage changed the narrative and redirected attention from the number of
2 fatalities occurring at SAP to the expulsion of a Petitioner, a Hall of Fame Trainer. CHRB leadership tainted
3 and influenced the actions of staff and the overall response of the CHRB from the outset; subtly advocating it
4 leave Petitioner's fate to the racing associations. As reported by the San Jose Mercury News on July 10, 2019,
5 CHRB Chair Winner was concerned that it could take Respondent months, even years to suspend or revoke a
6 license, but that "the current system allows track owners to take immediate action." (Ex. 49)

7 **B. Conflicts of Interest**

8 Conflicts of interest existed between Respondent's then Chair and Vice-Chair which tainted their
9 interests and actions, as well as those of senior staff answerable to them, such that Petitioner's rights under the
10 law were disregarded and compromised.

11 In response to a Public Records Act request, Respondent produced a document entitled "Incompatible
12 Activities Statement" issued by the Governor's Office and represented the same to be provided and applicable
13 to all CHRB commissioners and staff. In the first paragraph of that Statement, it states:

14 No employment, activity, or enterprise shall be engaged in by any gubernatorial
15 appointee that might result in, or create the appearance of resulting in, any of the following:

16 ...

17 6. Receiving or accepting, directly or indirectly, any gift...including money, service,
18 gratuity, favor, entertainment, hospitality, loan, or any other thing of value, from anyone...whose
19 activities are regulated or controlled in any way by the State, under circumstances from which it
20 reasonably could be inferred that the gift was intended to influence the appointee in his or her
21 official duties or was intended as a reward for any official action on his or her part.

22 (Ex. 70)

23 At deposition, former CHRB Executive Director Mr. Baedeker testified that CHRB commissioners and
24 staff members were required by law to disclose any investments, business positions, or sources of income they
25 had which involved a racing association or entity or with a person attendant upon horses that was subject to
26 licensing or regulation by the Horse Racing Board – Form 700. (Ex. 67, Baedeker Depo p 62 ln 22-p 64 ln 18.)

27 During the same timeframe, the press uncovered multiple undisclosed financial/business dealings
28 between Respondent's the Vice-Chair and senior TSG's representatives, including a \$485,000.00 foal share
arrangement with TSG' Chair and a racehorse partnership with TSG's then COO and the wife of its third most
senior executive, Mike Rogers. (Ex. Nos. 59-61; Ex. 68, Deposition of Madeline Auerbach, p 196 ln 19-p
205 ln12; Ex. 67, Deposition of Baedeker, p 89 ln 3-p 95 ln 20, p 242 ln 21-p 244 ln 2) According to Mr.

1 Baedeker, when uncovered, the news surprised both the CHRB's Chair and he, which led to private discussions
2 with the Vice-Chair and the forced divestiture by TSG's COO. (Ex. 67, p 80 ln 13-p 85 ln 4) These
3 financial/business relationships were perceived publicly, and by him, as apparent conflicts of interest. (Ex. 42-
4 48; Ex. 67, p 70 ln 4-p77 ln 12, p 79 ln 25-p 85 ln 4, p 242 ln 21-p 244 ln 2) Mr. Baedeker had no knowledge of
5 the Vice Chair ever disclosing such arrangements to the CHRB nor FPPC prior to them being revealed by the
6 press, nor did she file the required Form 700s. (Ex. 67, p 88 ln16-p 89 ln 7) All of these business relationships
7 created conflicts of interest, actual and apparent, and occurred during the equine fatality crisis at SAP in 2019.
8 (Ex. 67, p 94 ln 23-p 95 ln 20)

9 Concurrently, Respondent licensed and regulated not only the TSG entities that controlled SAP and GGF,
10 but the TSG companies that controlled: the training center San Luis Rey Downs; California's parimutuel tote
11 system (AmTote); it's A/V signal distribution services provider (Monarch); the racing operation Stronach
12 Stables; and the advanced deposit wagering provider Xpressbet. (Ex. 67, p 88 ln 16-p 94 ln 22)

13 Mr. Baedeker testified that he was aware Chair Winner provided professional services to LATC/SAP in
14 the form of crisis management, during the relevant 2019 timeframe. (Ex. 67, p 150 ln 15-p 151 ln 17)

15 At some point thereafter, Mr. Baedeker became aware of concerns and criticism of the CHRB expressed
16 by the Governor's office as to a series of apparent conflicts of interest involving the Chair and Vice Chair and
17 events occurring at and/or relationships with TSG executives/principals. (Ex. 67 p 142 ln 4-p 145 ln 23). Mr.
18 Baedeker understood Ms. Auerbach resigned from the CHRB due to the Governor's concerns regarding her
19 conflicts of interest. (Ex. 67 p 145 ln 6-p 148 ln 16) Similarly, Chair Winner left the CHRB in the fall of 2019.
20 (Ex. 67 p 148 ln 14-16)

21 XVI. CONCLUSION

22 Based on the foregoing, Petitioner respectfully requests his Petition for Writ of Mandamus be granted,
23 and attorney's fees and costs be awarded in an amount to be determined, as approved by the court, should the
24 parties be unwilling or unable to resolve and settle such amounts independently.

25 Dated: September 2, 2022

26 Respectfully submitted
27 couto&associates

28 

Drew J. Couto, Esq.
Attorney for Petitioner