BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

JAMES G. HANSON
CHRB License #290069
Respondent

CHRB Case #13LA0159
CHRB Case #13LA 0163

DECISION

The attached Proposed Decision is adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision is hereby remanded to the Board of Stewards to issue a ruling and order setting the dates of suspension and payment of the fines, the dates to be served separately.

IT IS SO ORDERED ON February 24, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman

Rick Baedeker
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaints: JAMES G. HANSON Trainer CHRB License # 290069	CHRB Case No. 13LA0159 CHRB Case No. 13LA0163 (PROPOSED) FINDINGS AFTER HEARING

PROPOSED FINDINGS AFTER HEARING

Comes now, Daniel Q. Schiffer, duly appointed by the California Horse Racing Board (the "CHRB" or "Board"), pursuant to Section 1414, Title 4, California Administrative Code, to sit as the designated hearing officer for taking evidence and reports to the Board all his findings in the above stated cases.

Both cases were heard concurrently on December 13, 2013, in the Executive Conference Room at Los Alamitos Race Course, Los Alamitos CA. The hearing commenced at 10:05 am and was submitted for decision at 1:58 pm. The hearing was transcribed by Michelle E. Dereig, Weinstein Court Reporters, P O Box 26634, Santa Ana CA 92799. In addition to the witnesses, also present at the hearing was Susan Hanson, wife of James G. Hanson. Witnesses who testified under oath were as follows:

Anita Yacaoub, D.V.M.
Scott D. Stanley, Ph.D.
Rick Arthur, D.V.M.
Kevin Kitashima, CHRB Investigator
James G. Hanson
Ryan Hansen

Both parties presented evidence booklets that, with the exception of a portion of Exhibit 5 to Defendant's exhibit book, were received into evidence pursuant to stipulation. The Court Reporter retained custody of the originals.

APPEARANCES OF COUNSEL

The CHRB was represented at the hearing by Elisabeth Frater, Esq., CA Bar # 139962, 300 S Spring St, Ste 1702, Los Angeles CA 90013, from the office of the Attorney General of California, Kamala D. Harris and Kenneth C. Jones, Supervising Deputy Attorney General.

Mr. Hanson was represented at the hearing by Robin D. Dunn, Esq., ID Bar # 2903, Dunn Law Offices, 477 Pleasant Country Lane, P O Box 277, Rigby ID 83442, who appeared in California in association with Joseph Wright, Esq., 32 N Washington St, Sonora CA (who was not present at the hearing).

THE COMPLAINTS

The CHRB filed two (2) complaints against JAMES G. HANSON, Trainer, CHRB License # 290069, each for violation of CHRB Rules 1843(a,b &d), 1859.5 & 1887. The first offense is alleged to have occurred on 6/15/2013, as follows:

Official urine sample #LA23481 taken on 6/15/2013 at Los Alamitos from horse, "Member of the Tribe" was reported by Scot Stanley of U.C. Davis Laboratories contained Clenbuterol, a Class 3 prohibited drug substance, Penalty Class B . "Member of the Tribe" ran in the 1st race finishing 1st . James G. Hanson is the trainer of record.

The second offense is alleged to have occurred on 6/22/2013, as follows:

Official urine sample #LA23537 taken on 6/22/2013 at Los Alamitos from horse, "I Told You Twice" was reported by Scot Stanley of U.C. Davis Laboratories contained Clenbuterol, a Class 3 prohibited drug substance, Penalty Class B . "I Told You Twice" ran in the 5th race finishing 1st . James G. Hanson is the trainer of record.

INTRODUCTION

Clenbuterol is a bronchodilator used in the treatment of respiratory conditions in horses. It is administered as an oral powder or syrup or by injection. It is marketed by Boehringer Ingelheim Animal Health under the trade name Ventipulmin. It was approved in 1998 by the FDA for the management of horses affected with airway obstruction, such as occurs in chronic obstructive pulmonary disease (COPD).[1]

Clenbuterol is classified as a Class 3 drug by the Association of Racing Commissioners International (ARCI) and that classification has been adopted by the CHRB pursuant to Rule 1843.2.

The CHRB authorized the use of clenbuterol for therapeutic purposes. Pursuant to Rule 1844(e)(9) the maximum amount of clenbuterol in a post race urine sample cannot exceed 5 nano grams per millimeter. Official blood test samples may contain clenbuterol in an amount not to exceed 25 picograms per millimeter of serum or plasma. Rule 1844(f).

The CHRB set various recommended withdrawal times to guide the participants so that clenbuterol would not show up in blood or urine post-race testing (in amounts beyond those specified in the Rules). Initially the withdrawal time was set at 4 days. It was later revised to 21 days. It is felt that the drug will clear the horse's system under all circumstances within 30 days of administration.

On June 7, 2012, the CHRB issued a Memorandum (the "CHRB Memorandum"), effective July 18, 2012, that suspended CHRB Rules 1844(e)(9) and 1844(f) for the use of clenbuterol for all breeds at all tracks in California and (in effect) clenbuterol was treated as all other drugs that are not specifically authorized by the Board. The CHRB Memorandum stated that clenbuterol was still considered by the CHRB to be a therapeutic drug and was not being "banned." The 21 day recommended withdrawal time was appropriate for the standard therapeutic administration of Ventipulmin but the CHRB Memorandum made clear that other non-recommended uses of Ventipulmin or non-FDA approved forms of clenbuterol could have longer withdrawal times and had the potential to show up in post race testing.[2]

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[1] Defendant's Exhibit 3

[2] CHRB Exhibit D

By way of background all professionals involved in this case[3] testified as to the therapeutic effects of the drug for treatment of small airway disease in race horses. Given the environment in which race horses are situated and the demands placed upon them during exercise or racing, the inability to breathe is clearly detrimental to their performance. The racing regulators determined initially to set a withdrawal time that would result in the drug being eliminated from the horse's system prior to racing. Because clenbuterol is a steroidal drug it has to been determined that its presence in the animal has the potential to cause performance enhancement during racing. Then later, reacting to the knowledge that the drug was being used in formulas and quantities that were intended to enhance performance, issued the CHRB Memorandum to penalize the abuse of the drug.

STIPULATION AS TO CETAIN FACTS

A written Stipulation was presented by the parties and received into evidence by the Hearing Officer. Said Stipulation is contained in both Exhibit Books.[4]

The Hearing Officer incorporates the following stipulated facts into his findings:

1. At all relevant times, Respondent JAMES G. HANSON ("HANSON") was duly licensed as a horse trainer (License 290069 by the CHRB. At all relevant times, HANSON was under the jurisdiction of the CHRB and subject to Horse Racing Law (Business and Professions Code sections 19400, et seq.) and the Horse Racing Rules (Code of Regulations Title 4, Division 4).

2. At all relevant times, HANSON was the trainer of record of the horses "MEMBER OF THE TRIBE" and "I TOLD YOU TWICE."

3. On June 15, 2013, MEMBER OF THE TRIBE ran in the first Race at Los Alamitos Race Course, finishing first.

4. An official blood sample was taken from MEMBER OF THE TRIBE on June 15, 2013, after the race.

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[3] Scott D. Stanley, Ph. D., Anita Yacaoub, DVM., & Rick Arthur, DVM.

[4] CHRB Exhibit "A" and Defendant's Exhibit "1"

5. An official urine sample was taken from MEMBER OF THE TRIBE on June 15, 2013, after the race.

6. On June 22, 2013, I TOLD YOU TWICE ran in the fifth Race at Los Alamitos Race Course, finishing first.

7. An official urine sample was taken from I TOLD YOU TWICE on June 22, 2013, after the race.

8. An official blood sample was taken from I TOLD YOU TWICE on June 22, 2013, after the race.

9. The urine and blood samples (LA23481- MEMBER OF THE TRIBE) (LA23537- I TOLD YOU TWICE) were properly sealed, handled, sent for analysis to and received by the Equine Analytical Chemistry Laboratory at the University of California, Davis.

10. With respect to Laboratory sample LA23537 (I TOLD YOU TWICE) there was no evidence of clenbuterol in the blood test; with respect to Laboratory sample LA23481 (MEMBER OF THE TRIBE) there was a "trace" of clenbuterol that was considered too low to forensically confirm.

11. On or about August 3, 2013, in connection with the test sample from MEMBER OF THE TRIBE, a CHRB complaint was served on Respondent HANSON charging violations of CHRB rules 1843 (a,b &d), 1859.5 and 1887.

12. On or about August 3, 2013, in connection with the test sample from I TOLD YOU TWICE, a CHRB complaint was served on Respondent HANSON charging violations of CHRB Rules 1843 (a,b & d), 1859.5 and 1887.

14. Respondent HANSON was given timely written notice of these complaints and notices of the hearing on the complaints.

15. Respondent HANSON has requested that matters case- numbered 13LA0163 and 13LA0159 be referred to a Hearing Officer.

ADDITIONAL FACTS ESTABLISHING CHRB's PRIMA FACIE CASE

Scott D. Stanley, Ph.D., testified on behalf of the CHRB. Dr. Stanley is the Chief Analyst at the Maddy Laboratory in Davis. He has Ph. D.'s in Toxicology and Veterinary Medicine; has been involved in approximately 100 research publications; has been a teacher of both veterinary and medical students; and has 20, plus years in performance testing of samples. He has previously qualified as an expert in his fields and clearly is a leader in his field.

Facts established by Dr. Stanley and CHRB Exhibits E & F:

16. Analysis of the urine sample submitted to the University of California, Davis, Equine Analytical Chemistry Laboratory as # LA 23481 was found to contain Clenbuterol.[5]

17. Analysis of the urine sample submitted to the University of California, Davis, Equine Analytical Chemistry Laboratory as # LA 23537 was found to contain Clenbuterol.[6]

CONCLUSION

By virtue of the above stipulated and established facts the Hearing Officer concludes that the CHRB has established a prima facie case that HANSON violated CHRB Rules 1843 (a,b & d), 1859.5 and 1887 in both cases arising out of LA23481- MEMBER OF THE TRIBE and LA23537- I TOLD YOU TWICE.

DEFENSES RAISED BY HANSON

1. Blood Test vs Urine Test.

Respondent argues that the Blood Tests on the two samples are the more reliable readings than that of the Urine Tests and, since neither Blood Test showed a measurable amount of Clenbuterol,[7] the CHRB has not proven a violation.

2. The CHRB Memorandum fails to comply with the law.

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[5] CHRB Exhibit E, Conclusions stated on page 87 thereof.

[6] CHRB Exhibit F, Conclusions stated on page 87 thereof.

[7] See Fact #10 above.

Respondent argues that the CHRB, in violation of their Rule 1844.1 (1) failed to conduct a public meeting prior to issuing the CHRB Memorandum (suspending the use of clenbuterol as an authorized medication) and (2) failed to specify a date in the CHRB Memorandum when the CHRB Memorandum was to expire and therefore the CHRB Memorandum was not in force at the time the violations occurred. If the CHRB Memorandum was not in force the minimum Clenbuterol level for a violation was 5 nano grams per milliliter in a urine sample and less than 25 picograms in a blood sample.[8] Since both test samples were below the minimum specified in Rule 1844(e)(9) and (f), Respondent argues that the terms of the CHRB Memorandum were not in force and there was no violation.[9]

DISCUSSION

Respondent made his argument regarding the validity of the CHRB Memorandum by making an oral motion to dismiss following the CHRB resting its case. That motion was denied by the Hearing Officer following argument by both sides. While the record specifies the grounds for denial of that motion it is necessary to discuss this aspect of the case in order to understand Respondent's other defense.

Respondent's first ground for invalidating the CHRB Memorandum is that it was not issued after a public meeting as required by Rule 1844.1(a). Counsel for HANSON questioned CHRB witness Dr. Rick Arthur, who is listed along with (then CHRB Executive Director) Kirk Breed, as co-author of the document, regarding the circumstances surrounding the issuance of the CHRB Memorandum. In his responses Dr. Arthur did not testify that he was in any way responsible to fulfill the public meeting requirement prior to the issuance of the CHRB Memorandum. As such the evidence elicited lacks foundation on this issue and there was no showing that Dr. Arthur had such an obligation. In fact Dr. Arthur's job title, i.e., Equine Medical Director of the UC Davis School of Veterinary Medicine and Medical Advisor to the CHRB, does not, without more foundation, lead to the conclusion that he was in charge of the administrative duties required by Rule 1844.1. No other proof was offered on the issue. Therefore Respondent failed to prove, for purposes of his motion, that the CHRB Memorandum was not properly published prior to its issuance and the Hearing

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[8] Rule 1844(e)(9) and (f)

[9] See CHRB Exhibits E and F, both at page 87.

Officer is entitled to conclude that the CHRB Memorandum was in force at the time of the violations.

Rule 1844.1(c)(2) further requires that that the written notification shall at a minimum (state) the period of time for which the use of the authorized medication is temporarily suspended. The Rule goes on to state that the suspension ... shall not exceed 12 months. Rule 1844.1(d). Respondent argues that the CHRB Memorandum fails to meet these requirements.

The text of the CHRB Memorandum begins with the words, "Effective July 18, 2012." This date, specifying when the suspension commences, in the context of the limiting language in Rule 1844.1(d), by rule makes the maximum term of the suspension no more than 12 months and thereby causes the period of time wherein the use of the medication is prohibited to be sufficiently stated for purposes of complying with Rule 1844.1(c)(2).

Pursuant to Rule 1510 every licensee, in order to maintain his qualifications for any license held by him, shall be familiar with and have knowledge of the rules including all amendments thereto. Every licensee is presumed to know the rules. Rule 1894 reiterates the previous sentence stating, specifically, "Trainers ... are presumed to know the rules."

At this point it should be noted that HANSON admitted to a clenbuterol violation for one of his horses which ran on February 1, 2013.[10] Of note in that decision it is stated, "Trainer James Hanson acknowledged that there is a zero tolerance policy by the California Horse Racing Board Rule and takes responsibility under the Trainer Insurer Rule, however he thinks this could be a mitigating circumstance in light of the fact that previously Clenbuterol had an acceptable level of 5 nano grams...."

Further there was testimony by CHRB witness Kevin Kitashima, CHRB investigator. Mr. Kitashima stated that, between HANSON's first clenbuterol violation (02/01/2013) and the second positive test (06/15/2013), he had received reports from the Maddy Laboratory showing the presence of clenbuterol in horses raced by HANSON; but the amounts were below the threshold to be classified as violations. He discussed those results with HANSON. HANSON stated that he was using the drug on two year old quarter horses; but denied using clenbuterol on thoroughbreds.

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[10] CHRB Exhibit "G".

There can be no question that HANSON was aware of the zero tolerance policy regarding clenbuterol nor that more than one of the horses under his care had tested positive for clenbuterol prior to the violations at issue in this case. As such HANSON cannot prevail on his argument that the CHRB Memorandum is invalid because he was aware of the terms of that document, accepted its limitations and was responsible for the drug being administered to race horses in his care.

The same line of reasoning negates the Respondent's distinction between the blood versus urine tests. The testimony of Anita Yacaoub, DVM., was presented by the Respondent to show that, if the reasoning behind the CHRB Memorandum was to prohibit the performance enhancing potential of clenbuterol, blood testing is a more acceptable and objective indicator than urine testing. Dr. Yacaoub reasoned that the blood is indicative of physiological activity whereas urine represents expellants being removed from the system. Therefore the presence of the drug in the blood more accurately shows what currently has the potential for enhancing performance in contrast to when the urine is discharging the residual of the drug from the system. Dr. Yacaoub cited two authorities; one a 2000 study done by Robinson[11] and research work done by Knych at UC Davis. (It should be noted that both CHRB expert witnesses, Dr Stanley and Dr. Arthur, disputed the Robinson findings and the position taken by Dr. Yacaoub.) Dr. Yacaoub concluded that because clenbuterol did not show up in the blood testing there was no current performance enhancing possibility in either horse.

However, regardless of which test is preferential, the fact of the matter remains that the CHRB had, prior to the violations at issue in this case, issued the CHRB Memorandum that made the mere presence of clenbuterol in EITHER the blood or urine of a race horse a violation of Rule 1844. Since that rule was in place at the time of the violations at issue here and HANSON was aware of the rule, the positive tests in both cases, even though limited to the urine samples and not the blood samples, resulted in his being in violation of the rules.

CONCLUSION

Complaint 13LA0159, charging Respondent, Trainer James G. Hanson (License #290069- 09/2014) with violating California Horse Racing Board Rules # 1843 (a,b & d), # 1859.5 and #1887, in that "Member of the Tribe", trained by the

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[11] Dr Robinson's article is reprinted in Respondent's Exhibit "3".

Respondent, ran first in the first race at Los Alamitos Race Course on June 15, 2013, with clenbuterol, a Class 3 prohibited drug substance, Penalty Class B, in its system, is found to be true.

Complaint 13LA0163, charging Respondent, Trainer James G. Hanson (License #290069- 09/2014) with violating California Horse Racing Board Rules # 1843 (a,b & d), # 1859.5 and #1887, in that "I Told You Twice", trained by the Respondent, ran first in the fifth race at Los Alamitos Race Course on June 22, 2013, with clenbuterol, a Class 3 prohibited drug substance, Penalty Class B, in its system, is found to be true.

PENALTY

As noted above HANSON had one clenbuterol violation in 2013 prior to the violations at issue in these cases. The violations herein constitute his second and third violations.

Pursuant to Rule 1843.2 clenbuterol is considered a Class 3 drug and its presence in an official sample is subject to the Category "B" penalties specified in Rule 1843.3(d), as follows:

CATEGORY "B" PENALTIES
Penalties for violations due to the presence of a drug substance in an official test sample, which CHRB drug classification is categorized as warranting a Category B penalty are as follows:

LICENSED TRAINER:

2nd offense (two years.)
○ Minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension.
AND/OR
○ Minimum fine of $1,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of $20,000.

3rd offense (five years)
○ Minimum 90-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a one-year suspension.

AND/OR
○ Minimum fine of $2,500 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of $50,000 or 10% of purse (greater of the two).
AND
○ May be referred to the Board for any further action deemed necessary by the Board.

DISCUSSION OF MITIGATING OR AGGRAVATING CIRCUMSTANCES

Rule 1843.3(d) specifies eleven factors, either mitigating or aggravating, that should be considered in arriving at a penalty.

1. Past record.

As indicated above HANSON had one clenbuterol violation in 2013 for which he was suspended for thirty (30) days and fined $3,000. The record also notes a fine for high phenylbutazone in 2009. The prior clenbuterol violation is clearly an aggravating factor.

2. The potential of a drug to influence a horse's performance.

The testimony on this issue was a highly contested one at this hearing.

As summarized above Dr. Yacaoub testified that the minute amounts of the drug detected in the urine tests represented merely the unflushed residue from a period of withdrawal that is subjective according to each individual horse. She opined that the presence of number of picograms of the drug detected in the urine of the two horses had no performance enhancing capability in either case.

Dr. Arthur testified that the purpose of testing is to insure a level playing field in racing and thus to promote the welfare of the horse and to protect the public. He stressed that in his opinion the drugs were administered in significant amounts within 4-8 days prior to each horse racing. He concluded that this conduct does not represent the therapeutic use of the drug; but rather was indicative of its anabolic use.

This is a difficult issue because, as the professionals agreed, there isn't really any study that correlates the timing of the drug's use versus any correlated results on performance. The data does however show that, if the drug therapy is concluded prior to the time recommended by the CHRB, then the drug will have

left the system by the time the horse is tested. Therefore, in the absence of any testimony that the drug was administered to the horses by mistake or fraud, it is reasonable to conclude that HANSON administered them outside the CHRB guidelines in order to gain an advantage over his competition. Accordingly this factor is aggravating.

3. Legal availability of the drug.

Clenbuterol is considered a therapeutic drug for the horse and is readily available. There was testimony that the drug was obtained from a licensed veterinarian via prescription. Therefore this is mitigating factor.

4. Whether there is reason to believe the responsible party knew of the administration of the drug or intentional administration of the drug.

HANSON's testimony was not clear on this issue. He stated that he did give the drug to his horses for therapeutic reasons and would not enter a horse which had been given the drug within 21 days of racing but he did not attempt to explain how the drug was found in the horses' systems. This is a neutral factor.

5. Steps by trainer to safeguard horse.

HANSON testifies that he used clenbuterol on horses which were bleeders. He stated he would not abuse it on a cheap horse for a small purse such as those that are involved in this case. This is a mitigating factor.

6. Steps taken by owner to safeguard against subsequent medication violation.

This factor is not an issue in this case and therefore is neutral.

7. Environmental contamination.

This factor is not an issue in this case and therefore is neutral.

8. Purse of the race.

The purse forfeited by Member of the Tribe was $3,555. The purse forfeited by I Told You Twice was $4,005. While the amounts here are not significant enough to cause dishonesty, the fact that both horses won leads to the

conclusion that HANSON did gain an advantage through the use of the drug. This is therefore an aggravating circumstance.

9. Was the horse receiving treatment with the drug.

Both horses were prescribed the drug. This is a mitigating factor.

10. Suspicious wagering.

This factor is not an issue in this case and therefore is neutral.

11. Was the trainer acting under the advice of a licensed veterinarian.

Yes, HANSON had received the drug pursuant to a prescription from a licensed veterinarian. But he had also had a positive test and had been warned prior to the violations in question that his horses were showing traces of the drug and yet he did nothing to alter his conduct to insure that the prohibited drug did not appear in subsequent post race testing. This is an aggravating factor.

CALCULATION OF PENALTY

HANSON has been a lifelong participant in the sport of horse racing following the footsteps of his grandfather, mother and father. He has participated as a jockey, owner and trainer for the past 35 years all over the western states from Montana to California. He really had no explanation for nor did he appear to have any remorse for the positive tests for the horses under his care.

The issue is made more difficult because, if used as it was intended, clenbuterol is a valuable drug for the health and welfare of race horses. Since there is evidence that the drug is being abused by certain individuals the CHRB had to impose extreme limitations on its use to protect the welfare of the animals and the racing public.

The witnesses agreed that minute amounts of the drug were found in the results of the urine tests. The mere presence of the drug in their systems, when it was clear that HANSON was aware of the safe withdrawal time for the use of the drug, is indicative of his intent to use the drug outside CHRB guidelines. HANSON had ample warnings to conduct his business within the terms of the CHRB Memorandum regarding the administration of clenbuterol and chose to

ignore those warnings in favor of enhancing the opportunities for his horses and owners over those of his competitors. As such the aggravating factors outweigh the mitigating factors.

Accordingly it is recommended that penalties beyond the minimum be imposed.

PROPOSED DECISION

The Hearing Officer, having heard all the evidence, concludes that Trainer James G. Hanson violated CHRB Rules # 1843 (a,b & d), # 1859.5 and #1887 in cases LA23481- MEMBER OF THE TRIBE and LA23537- I TOLD YOU TWICE and the aggravating factors outweighing the mitigating factors, recommends the following proposed decision:

LA23481- MEMBER OF THE TRIBE (Second Violation):

1. All California Horse Racing Board licenses held by James G. Hanson shall be suspended for a period of ninety (90) days, beginning on a date to be determined by the California Horse Racing Board. During the term of the suspension, Respondent shall perform no act for which a trainer's license is required by law.

2. Respondent shall pay a fine of $4,000.00, due on a date to be determined by the California Horse Racing Board.

LA23537- I TOLD YOU TWICE (Third Violation)

1. All California Horse Racing Board licenses held by James G. Hanson shall be suspended for a period of One Hundred Twenty (120) days, beginning on a date to be determined by the California Horse Racing Board. During the term of the suspension, Respondent shall perform no act for which a trainer's license is required by law.

2. Respondent shall pay a fine of $5,000.00, due on a date to be determined by the California Horse Racing Board.

Dated: January 9, 2014

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Respectfully Submitted,

DANIEL Q. SCHIFFER, Hearing Officer