

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

**THE CALIFORNIA THOROUGHBRED
TRAINERS,
Petitioner**

Case No. SAC 19-0074

v.

**THE PACIFIC RACING ASSOCIATION,
THE PACIFIC RACING ASSOCIATION
II, THE LOS ANGELES TURF CLUB,
INC., and THE LOS ANGELES TURF
CLUB, II, INC.,
Respondents**

DECISION

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

The Decision shall become effective on February 24, 2020.

IT IS SO ORDERED ON February 20, 2020.

CALIFORNIA HORSE RACING BOARD
Gregory L. Ferraro, DVM, Chairman



Rick Baedeker
Executive Director

1 Patrick J. Kane (SBN 273103)
11682 El Camino Real, Suite 400
2 San Diego, California 92130
Telephone: (858) 509-6023
3 E-mail: Patrick.Kane@troutman.com
4
5
6
7

8 **CALIFORNIA HORSE RACING BOARD**
9 **STATE OF CALIFORNIA**

10 In Re:)	Case No.: SAC 19-0074	
11 THE CALIFORNIA THOROUGHBRED)	PROPOSED DECISION RE: RACE	
12 TRAINERS,)		MEET AGREEMENT DISPUTE
13 Petitioner,)		BETWEEN PETITIONER AND
14 v.)		RESPONDENTS
15 THE PACIFIC RACING ASSOCIATION,)		
16 THE PACIFIC RACING ASSOCIATION II,)		
17 THE LOS ANGELES TURF CLUB, INC.,)		
18 and THE LOS ANGELES TURF CLUB, II,)		
INC.,)		
Respondents.)		

19 **I. INTRODUCTION**

20 This matter arises from a dispute over the interpretation of the following race meet
21 agreements: (1) a race meet agreement Petitioner, the California Thoroughbred Trainers, and
22 Respondents, the Pacific Racing Association and the Pacific Racing Association II (collectively,
23 the "PRA"), entered into on or about November 14, 2018; and (2) a race meet agreement
24 Petitioner, the California Thoroughbred Trainers, and Respondent, the Los Angeles Turf Club,
25 Inc. and the Los Angeles Turf Club II, Inc. (collectively the "LATC"), entered into on or about
26 November 14, 2018.

27 Darrel Vienna, Esq. represented Petitioner, the California Thoroughbred Trainers
28 ("Petitioner" or the "CTT"). Richard B. Specter, Esq. and Diane L. Ellis, Esq. of Corbett, of

1 Steelman and Specter represented Respondents, the Pacific Racing Association, the Pacific
2 Racing Association II, the Los Angeles Turf Club, Inc. and the Los Angeles Turf Club II, Inc.
3 (collectively, "Respondents") during the instant action.

4 Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane
5 ("Officer") presided over this action.

6 Having read and considered the briefs submitted by the parties, this Officer found this
7 Dispute appropriate for disposition without the necessity of holding a hearing.

8 **II. EXHIBITS ADMITTED INTO EVIDENCE**

9 **A. Exhibits Entered into Evidence.**

10 The following exhibits were entered into the instant action's record:

11 Exhibit "1" The Race Meet Agreement Between the PRA and the CTT;

12 Exhibit "2" The Race Meet Agreement Between the LATC and the CTT;

13 Exhibit "3" The Stronach Group Press Release Dated June 22, 2019;

14 Exhibit "4": Correspondence to Charles Winner, Chairman of the CHRB, Dated July
15 24, 2019;

16 Exhibit "5" The September 26, 2019 Order Setting the Instant Dispute's Briefing
17 Schedule;

18 Exhibit "6" Petitioner's Opening Brief Dated November 1, 2019;

19 Exhibit "7" Respondents' Brief Dated December 6, 2019;

20 Exhibit "8" Petitioner's Reply Brief Dated December 16, 2019;

21 Exhibit "9" Respondents' Request for Judicial Notice; and

22 Exhibit "10" Ruling on Petitioner's Evidentiary Objections.

23 **III. FACTUAL FINDINGS**

24 After analyzing the parties' respective briefs and any evidence submitted in support
25 thereof, this Officer makes the following findings of fact:

26 **A. The Parties Enter into the Agreements at Issue.**

27 **I.**

28 On November 14, 2018, the CTT and PRA entered into a Race Meet Agreement governing

1 the race meeting held at Golden Gate Fields, located at 1100 Eastshore Highway, Berkeley,
2 California 94710, from December 26, 2018 until December 25, 2018 (the “PRA Agreement”).
3 (See Ex. 1 at ¶ 1.)

4 **II.**

5 Also, on November 14, 2018, the CTT and LATC entered into a Race Meet Agreement
6 governing the race meeting held at Santa Anita Park, located at 285 W. Huntington Drive,
7 Arcadia, California 91007, from December 26, 2018 until December 25, 2019 (the “LATC
8 Agreement”). (See Ex. 2 at ¶ 1.)

9 The PRA and LATC Agreements appear to be identical, and thus will be collectively
10 referred to as the “Agreements.” (See Exs. 1-2.)

11 **B. CTT Member Jerry Hollendorfer is Barred from Respondents’ Racetracks.**

12 **III.**

13 On June 22, 2019, the Stronach Group, the entity overseeing Respondents, issued a press
14 release stating that CTT member Jerry Hollendorfer (“Trainer”) “was no longer welcome to
15 stable, race, or train his horses at any of [Respondents’] facilities” because Trainer’s “record in
16 recent months at both Santa Anita and Golden Gate Fields has become increasingly challenging
17 and does not match the level of safety and accountability [Respondents’] demand (the
18 “Exclusion”).” (See Ex. 3.)

19 **C. Procedural Background.**

20 **IV.**

21 On July 24, 2019, Petitioner submitted a formal complaint to the California Horse Racing
22 Board (the “CHRB”) pursuant to Cal. Code Regs. Tit. 4 § 2043 claiming Respondents violated
23 certain provisions of the Agreements. (See Ex. 4.) Specifically, Petitioners alleged that the
24 “unilateral decision of [Respondents] to eliminate [Trainer’s] participation in racing and training
25 at [Respondents’] tracks under [Respondents’] ‘safety and accountability’ procedures is violative
26 of Section 5 of the Agreement[s] (the “Dispute”).” (Id.)

27 Section 5 provides in pertinent part:

28 ///

1 Track may, in its discretion, establish rules, regulations, and security procedures
2 that may limit or eliminate Applicant's ability to participate in racing or training
3 activities at Track or any auxiliary training facility, subject to the agreement of the
4 CTT. The agreement of CTT shall be a condition precedent to any execution of a
5 decision by Track to limit or eliminate Applicant's ability to participate in racing
6 or training activities at Track or any auxiliary training facility. (See Exs 1-2.)

5 V.

6 This Officer subsequently held a telephonic scheduling conference with counsel for
7 Petitioner and Respondents. Pursuant to the parties' agreement, the following order was entered:

- 8 • Petitioner's Opening Brief was to be served on all parties no later than November 1, 2019;
- 9 • Respondents' Response Brief was to be served no later than December 6, 2019; and
- 10 • Petitioner's Reply Brief was to be served no later than December 16, 2019. (See Ex. 5.)

11 VI.

12 Because the facts of this Dispute are largely undisputed, and because the parties
13 adequately briefed the Dispute's major issues of law, this Officer determined a formal hearing
14 was unnecessary.

15 IV. STANDARD OF REVIEW

16 This Officer has the ability to adjudicate this Dispute pursuant to Cal. Code Regs. Tit. 4 §
17 2043 ("Section 2043"), which states:

18 A complaint alleging a violation of any provision of an agreement between a
19 horsemen's organization and a racing association may be filed with the Board by
20 either of the contracting entities. The Board shall immediately investigate the
21 allegations and may refer the complaint to the Board of Stewards appointed for the
22 meeting where the violation is alleged to have occurred, or refer the matter for
23 hearing under the provisions of Rule 1414 of this division. The stewards or a referee
24 may, after hearing the matters alleged, order compliance with the terms of the
25 contract if within their authority to do so, or propose to the Board a decision or
26 other course of action including therein their recommendations to the Board.

27 Petitioner must prove Respondents violated the Agreements by a preponderance of the
28 evidence. (See e.g. *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 483, ["The general rule in
California is that issues of fact in civil cases are determined by a preponderance of testimony."].)
"Preponderance of the evidence means evidence that has more convincing force than that opposed
to it." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) "Preponderance of the
evidence means what it says, viz., that the evidence on one side outweighs, preponderates over,

1 is more than, the evidence on the other side, not necessarily in number of witnesses or quantity,
2 but in its effect on those to whom it is addressed.” (Id. at 325, citations omitted.)

3 Pursuant to the above, this Officer applies the preponderance of the evidence standard to
4 adjudicate the instant Dispute.

5 V. DISCUSSION

6 A. Evidentiary Objections.

7 1. Respondents’ Request for Judicial Notice.

8 Respondents request this Officer take judicial notice of four (4) discrete facts concerning
9 orders entered in multiple cases filed in the Superior Court of California relating to this Dispute.
10 Petitioner objects to Respondents’ Request for Judicial Notice. Respondents’ Request for Judicial
11 Notice is attached to this Proposed Decision and made part of the administrative record as Exhibit
12 “9.”

13 For the reasons set forth below, Respondents’ Request for Judicial Notice is granted in
14 part and denied in part.

15 “Strictly speaking, a court takes judicial notice of facts, not documents.” (*Fontenot v.*
16 *Wells Fargo Bank, N.A.*, (2011) 198 Cal. App. 4th 256, 265.) “Judicial notice is the recognition
17 and acceptance by the court, for use by the trier of fact or by the court, of the existence of a matter
18 of law or fact that is relevant to an issue in the action without requiring formal proof of the matter.”
19 (*Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106,
20 1117.)

21 Evidence Code, section 451, provides in mandatory terms that certain matters designated
22 therein must be judicially noticed...” (*Mangini v. R. J Reynolds Tobacco Co.* (1994) 7 Cal.4th
23 1057, 1063.) A Court is permitted to take judicial notice of “records of (1) any court of this state
24 or (2) any court of record of the United States or of any state of the United States.” (Evidence
25 Code § 452(d).)

26 Here, Respondents request this Officer take judicial notice of four (4) exhibits consisting
27 of: (1) an NBC News Report; (2) a Court Order granting a Preliminary Injunction in *Hollendorfer*
28 *v. Del Mar Thoroughbred Club*, issued on July 15, 2019 in the San Diego Superior Court, Case

1 No. 37-2019-36284; (3) a Court Order denying a Preliminary Injunction in *Hollendorfer v. Pacific*
2 *Racing Association*, issued on September 6, 2019 in the Alameda County Superior Court, Case
3 No. RG19030854; and (4) the Order denying the *Ex Parte* Application for Temporary Restraining
4 Order in *Hollendorfer v. Los Angeles Turf Club*, issued on October 16, 2019 in the Los Angeles
5 County Superior Court, Case No. 19STCV34353.

6 Concerning Respondents' request that this Officer take judicial notice of Exhibit 1, it is
7 denied because the NBC News Report does not fall within the scope of judicial notice. (See e.g.
8 *People v. Ramos* (1997) 15 Cal. 4th 1133, 1167 ["The proffered articles did not come within the
9 scope of this provision...[a]ccordingly, the trial court properly declined the request."].)
10 Respondents' request that this officer take judicial notice of Exhibits 2-4 is granted as said exhibits
11 are records from the Superior Court of California meaning they fall within the scope of
12 California's judicial notice statutes.

13 Accordingly, Respondents' Request for Judicial Notice as to Exhibit 1 is denied while
14 Respondents' Request for Judicial Notice as to Exhibits 2-4 is granted for the reasons stated
15 above.

16 **2. Petitioner's Evidentiary Objections.**

17 Petitioner's evidentiary objections to the declarations Respondents submitted in support
18 of their Response Brief and this Officer's rulings on said objections are attached to this Proposed
19 Decision and made part of the administrative record as Exhibit "10."

20 **B. Any Supposed Violation of the Agreements is Moot.**

21 Initially, Petitioner's assertion that Respondents violated Section 5 of the Agreements is
22 moot because the Agreements are no longer enforceable against either Petitioner or Respondents
23 as they are "applicable only to thoroughbred race meetings conducted by [Respondents] under
24 license from the CHRB for the period commencing December 26, 2018 through December 25,
25 2019." (See Exs. 1-2 at ¶ 1.) As a result, the instant Dispute should be dismissed on mootness
26 grounds.

27 "Mootness has been described as the doctrine of standing set in a time frame: [t]he
28 requisite personal interest that must exist at the commencement of the litigation (standing) must

1 continue throughout its existence (mootness).” (*Medical Board v. Superior Court* (2001) 88 Cal.
2 App. 4th 1001, 1008.) “A case is considered moot when the question addressed was at one time
3 a live issue in the case, but has been deprived of life because of events occurring after the judicial
4 process was initiated.” (*Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal. App.
5 4th 1559, 1573, internal quotations omitted.)

6 Petitioner initially argues it is not seeking declaratory relief, but rather is requesting a
7 determination as to whether Section 5 of the Agreements was breached when Respondents
8 “excluded [Trainer] without the consent of the CTT” because “[a]judication of that issue will
9 necessarily define the relationship between the parties in the context of [Trainer’s] exclusion.”
10 (Ex. 8 at p. 3, Ins. 12-14.) However, Petitioner’s claim is unpersuasive as it is requesting this
11 Officer to interpret the Agreements, a proper subject for declaratory relief. (See e.g. *Southern*
12 *Cal. Edison Co. v. Superior Court* (1995) 37 Cal.App.4th 839, 846 [“The interpretation of a
13 contract is clearly a proper subject of declaratory relief.”].)

14 Thus, this Officer finds Petitioner seeks declaratory relief meaning Petitioner must
15 demonstrate that the Dispute: (1) is a proper subject of declaratory relief; and (2) concerns an
16 actual controversy involving justiciable questions relating to Petitioner’s rights or obligations.
17 (See *Wilson & Wilson v. City Council of Redwood City* (2011) 191 Cal.App.4th 1559, 1582.) As
18 to the first element, this Officer holds the interpretation of the Agreements is a proper subject of
19 declaratory relief.

20 However, Petitioner cannot demonstrate the Dispute concerns an actual controversy as the
21 Agreements expired on December 25, 2019 mooted all issues asserted in the Dispute. Thus,
22 Petitioner cannot meet the second element of a declaratory relief claim since the Dispute now
23 improperly seeks redress for “past wrongs.” (See e.g. *Gafcon, Inc. v. Ponsor & Associates* (2002)
24 98 Cal.App.4th 1388, 1403 [“[D]eclaratory relief operates prospectively, and not merely for the
25 redress of past wrongs.”].)

26 Because the Agreements expired on December 25, 2019, and because Petitioner
27 improperly seeks redress for “past wrongs,” the Dispute is moot meaning this Officer lacks
28 discretion to determine whether Respondents violated Section 5 of the Agreements. (See e.g.

1 *Giles v. Horn* (2002) 100 Cal.App.4th 206, 228 [Finding plaintiff's claims to set aside the
2 contracts at issue to be moot because "[t]he contracts have been fully performed and have
3 expired."].)

4 Section 2043's language, which governs this Dispute, separately supports a finding that
5 the Dispute is moot. "The pivotal question in determining if a case is moot is...whether the court
6 can grant the plaintiff any effectual relief." (*Wilson & Wilson*, supra, 191 Cal.App.4th at 1573.)
7 Here, Petitioner cannot be granted any relief Section 2043 provides because the expired
8 Agreements cannot be the basis of an "actual controversy to adjudicate" as require. Nor can this
9 Officer order compliance with the terms of the Agreements since they became unenforceable as
10 of December 25, 2019. (See Exs. 1-2 at ¶ 1.)

11 For this reason also, the Dispute must be dismissed as being moot. (See e.g. *Consol. etc.*
12 *Corp. v. United A. etc. Workers* (1946) 27 Cal.2d 859, 863 ["It necessarily follows that when...an
13 event occurs which renders it impossible for [the] court, if it should decide the case in favor of
14 plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal
15 judgment..."].)

16 Petitioner attempts to avoid the glaring mootness issue by arguing the Dispute is a matter
17 "of public interest [that] is likely to recur." (Ex. 8 at p. 3-4, lns. 26-4.) Petitioner's argument is
18 unpersuasive for several reasons. Initially, the Dispute concerns: (1) facts particular to the
19 Agreements; and (2) whether Respondent was required to obtain Petitioner's consent under
20 Section 5 of the Agreements, neither of which can be construed as issues of broad public interest.
21 Thus, this Officer cannot discern any broad public interest concerning the interpretation of the
22 Agreements, which expired on December 25, 2019.

23 Because the Dispute requires a factual determination to be resolved by considering the
24 Agreements at issue, and because any dispute thereunder must be resolved on a case-by-case
25 basis, this Officer finds the Dispute does not concern a broad public interest. Petitioner's
26 argument fails for this reason alone. (See e.g. *Giles*, supra, 100 Cal.App.4th at 228 [Finding
27 plaintiff's broad public interest argument unavailing as "Plaintiffs' claim concerns whether, on
28 the facts peculiar to the particular contracts at issue here, and the services to be performed..."]

1 Nor is there is any probability that the Dispute will likely recur because any future dispute
2 between Petitioner and Respondent will solely concern whatever race meet agreement is in place
3 at that time as opposed to the Expired Agreements. For this reason also, Petitioner’s argument
4 lacks merit. (See e.g. *Daily Journal Corp. v. County of Los Angeles* (2009) 172 Cal.App.4th
5 1550, 1557 [“Given the vagaries of future contracts for publication of legal notices—affected
6 surely by economic factors and new technologies—we cannot say that the present controversy is
7 likely to recur.”].)

8 Thus, the exceptions to the mootness doctrine are inapplicable because: (1) the
9 Agreements expired; and (2) the Dispute is unlikely to recur. (See e.g. *Wilson & Wilson*, supra,
10 191 Cal.App.4th at 1574 [“If events have made such relief impracticable, the controversy has
11 become “override” and is therefore moot.”].)

12 Simply put, Petitioner’s ability to seek a declaration as to whether Respondents violated
13 Section 5 of the Agreement expired at the same time the Agreements did. Thus, Petitioner’s
14 remedy against Respondents, as it relates to the Agreements, is to pursue a fully matured claim
15 for breach of contract, if such a claim exists.

16 Accordingly, this Officer recommends the Dispute be dismissed on mootness grounds.

17 **C. The Dispute’s Merits Cannot be Decided Due to the Lack of an Existing Controversy.**

18 Finally, this Officer lacks jurisdiction to address the parties’ respective arguments because
19 the Dispute has been disposed of upon the ground of mootness. “When events render a case moot,
20 the court, whether trial or appellate, should generally dismiss it.” (*Wilson & Wilson*, supra, 191
21 Cal.App.4th at 1574.) “A judicial tribunal ordinarily may consider and determine only an existing
22 controversy, and not a moot question or abstract proposition.” (*Wilson v. Los Angeles County*
23 *Civil Service Com.* (1952) 112 Cal. App. 2d 450, 452–453.)

24 “It is this court’s duty to decide actual controversies by a judgment which can be carried
25 into effect, and not to give opinions upon moot questions or abstract propositions, or to declare
26 principles or rules of law which cannot affect the matter in issue in the case before it.” (*Vernon*
27 *v. State of California* (2004) 116 Cal. App. 4th 114, 120, internal quotations omitted.)

28 Because an actual existing controversy is no longer present, this Officer is barred from

1 addressing the Dispute’s merits as doing so would amount to providing an impermissible advisory
2 opinion “upon moot questions or abstract propositions.” (See e.g. *Giraldo v. Department of*
3 *Corrections & Rehabilitation* (2008) 168 Cal.App.4th 231, 257 [“The policy behind a mootness
4 dismissal is that courts decide justiciable controversies and will normally not render advisory
5 opinions.”].)

6 Accordingly, this Officer does not make any findings as to the merits of this Dispute as it
7 should be dismissed on mootness grounds.

8 **VI. CONCLUSION**

9 Because the Agreements are no longer enforceable, the Dispute is now moot meaning the
10 Dispute should be dismissed as a matter of law.

11 WHEREFORE, it is hereby recommended that Petitioner’s Dispute be dismissed in
12 accordance with this Proposed Decision.

13 Dated: February 11, 2020



14
15
16 Patrick J. Kane, Esq.
17 Hearing Officer
18 11682 El Camino Real, Suite 400
19 San Diego, California 92130
20 Telephone: (858) 509-6023
21 E-mail: Patrick.Kane@troutman.com

EB 112020 4:25