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8 Attorneys for Complainant, California Horse Racing Board

9 **BEFORE THE HORSE RACING BOARD**

10 **STATE OF CALIFORNIA**

| | | |
|-------------------------|---|------------------------------|
| 11 In the Matter of the |) | OAH CASE NO. 2008050474 |
| 12 Accusation Against: |) | CHRB CASE NOS. 07DM025 and |
| |) | 07DM067 |
| 13 DARRELL VIENNA |) | |
| |) | |
| 14 Trainer, |) | STIPULATED SETTLEMENT |
| 15 Respondent |) | |
| 16 |) | |
| 17 |) | |

18 In the interest of a prompt and speedy resolution of these matters, consistent with the
19 public interest and the responsibility of the California Horse Racing Board ("CHRB"), the parties
20 hereby agree to the following Stipulated Settlement which will be submitted to the CHRB for
21 consideration, approval and adoption as its Order as final disposition of the matters herein.

22 **RECITALS**

- 23 1. Kirk Breed (Complainant) is the Executive Director of the CHRB. He brought
24 these actions solely in his official capacity and is represented in this matter by Edmund G. Brown
25 Jr., Attorney General of the State of California, by Judith R. Seligman, Deputy Attorney General.
- 26 2. Respondent Darrell Vienna (Respondent) is represented Steve R. Schwartz, Esq.
27 and the law firm of Wallace & Schwartz, 215 N. Marengo Avenue, 3rd Floor, Pasadena,
28 California 91101, (626) 844-6777.

1 for analysis in accordance with CHRB Rule 1859.25, subd. (c), (Split Sample Testing).

2 11. On or about September 19, 2007 Industrial Laboratories Company reported that
3 Clenbuterol at a level of 11.98 ng/mL was identified and confirmed in the split sample of urine
4 sample number DM00789 and notified the CHRB in accordance with CHRB Rule 1859.25,
5 subd. (c), (Split Sample Testing).

6 12. The presence of a proscribed substance requires the disqualification of the horse
7 pursuant to CHRB Rule 1859.5 and the forfeiture of the purse monies as a result of the second
8 place finish in the fourth race at the Del Mar Race Track, Del Mar, California on July 18, 2007.

9 13. Complaint No. 07DM025 was served on Respondent and filed before the CHRB,
10 and is currently pending against Respondent.

11 14. Pursuant to Government Code section 19517.5, the enforcement proceedings in
12 Complaint No. 07DM025 were referred directly to the Office of Administrative Hearings
13 ("OAH") for adjudication.

14 15. Accusation No. 2008050474 was filed before the CHRB, and is currently pending
15 against Respondent at the OAH. The Accusation and all other statutorily required documents
16 were properly served on Respondent on May 1, 2008. Respondent timely tendered a Notice of
17 Defense contesting the Accusation.

18 **B. COMPLAINT NO. 07DM067**

19 16. On August 11, 2007 Respondent was the trainer of the horse "Medici Code"
20 which was regularly entered for the ninth race of August 11, 2007 at the Del Mar Race Track,
21 Del Mar, California, which was then conducting a licensed race meeting. Respondent admits that
22 Medici Code was a starter in the ninth race and finished in first place.

23 17. Following the conclusion of the ninth race of August 11, 2007 at the Del Mar
24 Race Track a urine sample was taken from Medici Code under the supervision of the Official
25 Veterinarian in accordance with CHRB Rule 1859, subd. (a), (Taking, Testing and Reporting of
26 Samples). Said specimen container was sealed, labeled, and marked with the identification
27 number DM01181.

28 18. Sample number DM01181 was transported to the Board's official analytical

1 laboratory, the University of California, Davis, Kenneth L. Maddy Equine Analytical Chemistry
2 Laboratory, for analysis in accordance with CHRB Rule 1859, subd. (a), (Taking, Testing and
3 Reporting of Samples).

4 19. On or about August 22, 2007, Scott Stanley of the University of California, Davis,
5 Kenneth L. Maddy Equine Analytical Chemistry Laboratory reported Clenbuterol in excess of the
6 authorized decision level detected in the urine sample number DM01181 and informed the
7 CHRB in accordance with CHRB Rule 1859, subd. (c), (Taking, Testing and Reporting of
8 Samples).

9 20. Respondent was notified of the positive test finding for Clenbuterol in excess of
10 the authorized decision level and given California Horse Racing Board Form 56 "Request to
11 Release Evidence" in accordance with CHRB Rule 1859.25, subd. (b), (Split Sample Testing).

12 21. Respondent requested the split sample of urine sample number DM01181 be sent
13 for analysis in accordance with CHRB Rule 1859.25, subd. (c), (Split Sample Testing).

14 22. On or about September 19, 2007 Industrial Laboratories Company reported that
15 Clenbuterol at a level of 7.6 ng/mL was identified and confirmed in the split sample of urine
16 sample number DM01181 and notified the CHRB in accordance with CHRB Rule 1859.25,
17 subd. (c), (Split Sample Testing).

18 23. The presence of a proscribed substance requires the disqualification of the horse
19 pursuant to CHRB Rule 1859.5 and the forfeiture of the purse monies as a result of the first
20 place finish in the ninth race at the Del Mar Race Track, Del Mar, California on August 11, 2007.

21 24. Complaint No. 07DM067 was served on Respondent and filed before the CHRB,
22 and is currently pending against Respondent.

23 25. Pursuant to Government Code section 19517.5, the enforcement proceedings in
24 Complaint No. 06SA221 were referred directly to the OAH for adjudication.

25 26. Accusation No. 2008050474 was filed before the CHRB, and is currently pending
26 against Respondent at the OAH. The Accusation and all other statutorily required documents
27 were properly served on Respondent on May 1, 2008. Respondent timely tendered a Notice of
28 Defense contesting the Accusation.

1 **AGREEMENT**

2 27. Complainant and Respondent both agree that the above recitals correctly state the
3 facts that resulted in CHRB Investigation and Complaint No. 07DM025 and in CHRB
4 Investigation and Complaint No. 07DM067.

5 28. Respondent waives the right to adjudicate these matters before the Office of
6 Administrative Hearings as provided for in Government Code section 19517.5.

7 29. Respondent agrees that he is in violation of CHRB Rules and Regulations 1843,
8 subd. (a) and (d) (Medication, Drugs and Other Substances), 1844, subd. (e) (Authorized
9 Medication), and 1887, subd. (a) (Trainer to Insure Condition of Horse).

10 30. Respondent hereby voluntarily agrees to pay a fine in the sum of Eight Thousand
11 Five Hundred Dollars (\$8,500.00), by cashier's check payable to the California Horse Racing
12 Board. Said payment is subject to the following terms and conditions:

13 A. Respondent shall make said payment concurrently with his execution of
14 this Stipulated Settlement, which shall be no later than ten (10) days from the date the Stipulated
15 Settlement was mailed to Respondent's counsel. Payment shall be sent to counsel for the CHRB
16 at the address at the top of this Stipulated Settlement.

17 B. In the event that Respondent fails to timely make the payment specified
18 herein, Respondent's license as a trainer issued by the California Horse Racing Board, license
19 number 068609-09/2008, shall be summarily suspended without further notice to Respondent.
20 Said license shall remain suspended until such time as Respondent has made the required
21 payment. If Respondent's license expires while he is under suspension, he will not be able to
22 renew it until all sums are paid in full.

23 31. Complainant and Respondent agree to refer this Stipulated Settlement to the
24 CHRB for consideration, approval and issuance of an Order reflecting the payment of the fine of
25 Eight Thousand Five Hundred Dollars (\$8,500.00), on the terms and conditions specified
26 hereinabove. Respondent understands and acknowledges that the horse Medici Code shall be
27 disqualified and all purse monies earned shall be redistributed by Order of the Board of Stewards.

28 32. Respondent further agrees and understands that the facts agreed to and the record

1 of this Stipulated Settlement, including the payment of the fine of Eight Thousand Five Hundred
2 Dollars (\$8,500.00), shall be entered in the official minutes of the CHRB and shall be included in
3 Respondent's CHRB and ARCI License History. Respondent further agrees and understands that
4 the finding of Clenbuterol in excess of the authorized decision level in Medici Code, on two
5 separate occasions, shall be reported as a Class 3 drug violation.

6 33. Respondent agrees that there is cause for discipline and he is to be bound by the
7 CHRB's imposition of discipline as detailed herein in this Stipulated Settlement and which will
8 be set forth in the Order of the CHRB.

9 34. Complainant agrees not to impose any additional penalties or fines on
10 Respondent, other than those set forth in this Stipulated Settlement, resulting from or relating to
11 the matter of the CHRB Complaint No. 07DM025 and CHRB Complaint No. 07DM067, and
12 Accusation No. 2008050474.

13 35. Respondent waives the prohibition against *ex parte* communications between
14 CHRB enforcement personnel and counsel and the CHRB commissioners and staff for the
15 purpose of discussing this settlement.

16 36. Respondent agrees that CHRB enforcement personnel and counsel may discuss
17 the merits of this case with the CHRB commissioners and staff without notice and without the
18 opportunity for all parties to participate. Any such *ex parte* communication shall not prevent the
19 CHRB from hearing this matter should this matter require a hearing before the CHRB.

20 37. Respondent has no objection to CHRB staff presenting this Stipulated Settlement
21 to the Commissioners of the CHRB in closed session.

22 38. Respondent has carefully read, fully discussed with counsel, and understands the
23 charges and allegations in Complaint No. DM025, Complaint No. DM067, and Accusation No.
24 2008050474. Respondent has also carefully read, fully discussed with counsel, and understands
25 the effects of this Stipulated Settlement.

26 39. Respondent is fully aware of his legal rights in this matter, including the right to a
27 hearing on the charges and allegations in the Complaints and the proposed Accusations as
28 provided in Government Code section 19517.5; the right to be represented by counsel at his own

1 expense; the right to confront and cross-examine the witnesses, the right to present evidence and
2 to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of
3 witnesses and the production of documents; the right to reconsideration and court review of an
4 adverse decision; and all other rights accorded by the California Administrative Procedure Act
5 and other applicable laws.

6 40. Respondent voluntarily, knowingly, and intelligently waives and gives up each
7 and every right set forth above.

8 41. Respondent agrees and enters into this agreement freely and voluntarily and
9 waives any right of appeal in this matter and waives any claim in federal or state court or any
10 other administrative forum that may arise out of this matter which he may now have or hereafter
11 acquire by reasons of this dispute which is settled.

12 42. This Stipulated Settlement shall be construed as though all parties participated
13 equally in its drafting.

14 43. This Stipulated Settlement contains all the terms and conditions agreed upon by
15 the parties hereto regarding the subject matter of this Stipulated Settlement. Any prior
16 agreements, promises, negotiations, or representations, either oral or written, relating to the
17 subject matter of this Stipulated Settlement, not expressly set forth in this Stipulated Settlement,
18 are of no force or effect.

19 44. The parties understand and agree that facsimile copies of this Stipulated
20 Settlement, including facsimile signatures thereto, shall have the same force and effect as the
21 originals.

22 45. It is agreed that the terms of settlement herein shall be null and void and not
23 binding on the parties if not approved by the CHRB.

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25 **IT IS SO STIPULATED**

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27 DATED: _____

7/27/09



DARRELL VIENNA
Respondent

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DATED: _____

KIRK BREED
Executive Director,
California Horse Racing Board

Approved as to form:

WALLACE AND SCHWARTZ

DATED: 7/28/08 _____

BY  _____
STEVE R. SCHWARTZ
Attorneys for Respondent, Darrell Vienna

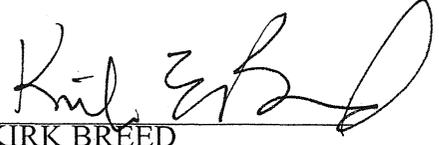
EDMUND G. BROWN JR.
Attorney General

DATED: _____

BY _____
JUDITH R. SELIGMAN
Deputy Attorney General
Attorneys for Complainant,
California Horse Racing Board

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DATED: 07/18/08


KIRK BREED
Executive Director,
California Horse Racing Board

Approved as to form:

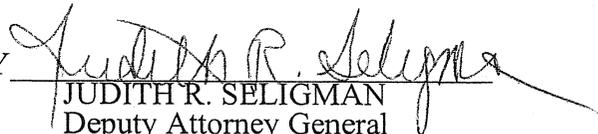
WALLACE AND SCHWARTZ

DATED: _____

BY _____
STEVE R. SCHWARTZ
Attorneys for Respondent, Darrell Vienna

EDMUND G. BROWN JR.
Attorney General

DATED: 8/1/08

BY 
JUDITH R. SELIGMAN
Deputy Attorney General
Attorneys for Complainant,
California Horse Racing Board