

CALIFORNIA HORSE RACING BOARD  
1010 HURLEY WAY, SUITE 300  
SACRAMENTO, CA 95825  
(916) 263-6000  
FAX (916) 263-6042



## REGULAR MEETING

of the **California Horse Racing Board** will be held on, **Thursday, March 25, 2004**, commencing at **9:00 a.m.**, at **Golden Gate Field Race Track**, 1100 Eastshore Highway, **Albany, California**.

### AGENDA

#### Action Items

1. Approval of the minutes of the regular meeting of **February 19, 2004**.
2. Approval of the minutes of the regular meeting of **January 22, 2004**.
3. Discussion and action by the Board on the **request of the California Thoroughbred Horsemen's Foundation, Inc., to approve the nomination of two new directors to its board**.
4. Report on the **Advance Deposit Wagering (ADW) Handle for 2003 with updates for racing meetings in 2004**.
5. Report from Xpress Bet and TOC on the **Advance Deposit Wagering (ADW) Issue**.
6. Discussion on the **current rule on rebates**.
7. Report by the **Jockeys' Guild on the proposal for jockey weight allowances**.
8. Discussion and action by the Board on the **request to approve the new agreement between the Thoroughbred Owners of California and the Jockeys' Guild** regarding the health and welfare benefits for California jockeys pursuant to Business and Professions Code Section 19612.9.
9. Discussion of the **current status of Northern California racing and the future availability of racetracks in the Bay Area**.
10. Staff report on the following **concluded race meetings**:
  - A. **Capitol Racing, LLC, at Sacramento from September 26, 2003 through February 29, 2004**.

**Committee Reports**

11. Report from the **Pari-mutuel Operations Committee**  
Vice Chairman Roger H. Licht, Chairman  
Commissioner Sheryl Granzella, Member  
Commissioner Jerry Moss, Member

**Other Business**

12. **General Business:** Communications, reports, requests for future action of the Board.
13. **Old Business:** Issues that may be raised for discussion purposes only, which have already been brought before the Board.
14. **Executive Session:** For the purpose of receiving advice from counsel, considering pending litigation, reaching decisions on administrative licensing and disciplinary hearings, and personnel matters, as authorized by Section 11126 of the Government Code.
  - A. Personnel.
  - B. Board may convene an Executive Session to consider any of the attached pending litigation.
  - C. The Board may also convene an Executive Session to consider any of the attached pending administrative licensing and disciplinary hearings.

Additional information regarding this meeting may be obtained from Roy Minami, at the CHRB Administrative Office, 1010 Hurley Way, Suite 300, Sacramento, CA 95825; telephone (916) 263-6000; fax (916) 263-6042. A copy of this notice can be located on the CHRB website at [www.chrb.ca.gov](http://www.chrb.ca.gov). \*Information for requesting disability related accommodation for persons with a disability who requires aids or services in order to participate in this public meeting, should contact Roy Minami.

**CALIFORNIA HORSE RACING BOARD**

John C. Harris, Chairman  
Roger H. Licht, Vice Chairman  
William A. Bianco, Member  
Sheryl L. Granzella, Member  
Marie G. Moretti, Member  
Jerry Moss, Member  
John C. Sperry, Member  
Roy C. Wood, Jr., Executive Director

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**PENDING LITIGATION**  
**MARCH 2004**

**CASE**

**CASE NUMBER**

**MARTIN, JOHN v.**  
California Horse Racing Board

Sacramento County Superior Court  
No. 98CS00952

**BURNETT-NUTTER, LAURIE v.**  
California Horse Racing Board

Riverside County Superior Court  
No. RIC 382077

**DUFFY, NORMA v.**  
California Horse Racing Board  
and Pacific Racing Association

Hayward Superior Court  
No. VG03079504

**LONG, GREGORY ALLEN v.**  
California Horse Racing Board

Los Angeles County Superior Court  
No. BS082483

**CALIFORNIA HARNESS HORSEMEN'S  
ASSOCIATION and CAPITOL RACING,  
LLC, v.**  
California Horse Racing Board

Sacramento County Superior Court  
No. 03CS01033

**PROCEEDINGS** of the Regular Meeting of the **California Horse Racing Board** held at the **Arcadia City Council Chambers**, 240 West Huntington Drive, Arcadia California, on **February 19, 2004**.

Present:        John C. Harris, Chairman  
                  William A. Bianco, Member  
                  Alan W. Landsburg, Member  
                  Roger H. Licht, Member  
                  Marie G. Moretti, Member  
                  John C. Sperry, Member  
                  Roy C. Wood, Jr., Executive Director  
                  Derry Knight, Deputy Attorney General

### **MINUTES**

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Chairman Harris asked for approval of the minutes of the Regular Board Meeting of December 4, 2003. Commissioner Sperry **motioned** to approve the minutes. Commissioner Moretti **seconded** the motion, which was **unanimously carried**.

### **DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR LICENSE TO CONDUCT A HORSE RACING MEETING OF THE BAY MEADOWS OPERATING COMPANY, LLC. (T), FROM APRIL 7 THROUGH JUNE 20, 2004, INCLUSIVE.**

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Roy Minami, CHRB staff, said Bay Meadows Operating Company (BMOC) proposed to run 55 days, the same number of days as in 2003, for a total of 473 races. The first post time would be 12:45 p.m. through April 18, 2004, and 1:00 p.m. from April 21 through June 20, 2004. Mr. Minami stated there would be advanced wagering on April 30, 2004, for the Kentucky Derby; on May 14, 2004 for the Preakness; and on June 4, 2004, for the Belmont. He said there was no missing documentation, and staff recommended the Board approve the application. Chairman Harris asked if BMOC had

introduced a totalizator board that could handle 14 wagering interests. Bernie Thurman of BMOC said her organization initiated a project to add 14 displays to the electronic and totalizator boards. She stated the project would be completed in March 2004. Commissioner Moretti **motioned** to approve the application for license to conduct a horse racing meeting of BMOC. Commissioner Licht **seconded** the motion, which was **unanimously carried**.

**DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR LICENSE TO CONDUCT A HORSE RACING MEETING OF CHURCHILL DOWNS CALIFORNIA COMPANY (T), FROM APRIL 21 THROUGH JULY 18, 2004, INCLUSIVE.**

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John Reagan, CHRB staff, said Churchill Downs California Company (CDCC) proposed to run 65 days, the same number of days as in 2003, for a total of 559 races. The first post time would be 1:20 p.m., Monday through Thursday, and 7:05 p.m., Fridays. Mr. Reagan stated the fire clearance; horsemen's agreement and worker's compensation insurance were missing from the application. He said staff recommended approval of the application conditioned on the receipt of any missing items noted in the analysis. Chairman Harris said he understood there was an issue with overpayment of purses. He asked if the overpayment would be carried from one meeting to the next. Mr. Reagan said any overpayment, or underpayment, would be carried to the next meeting until the accounts were even. Drew Couto of Thoroughbred Owners of California (TOC) said the purse agreement, stakes schedule and overnight purse schedules were approved by the TOC board. He stated the board was waiting for the simulcast site identification to complete the horsemen's agreement. Mr. Couto added

the TOC board knew there was an overpayment and was working with CDCC management to assure they had conservative revenue projections. Based on the numbers the CDCC provided, three quarters of the overpayment would be retired during the meeting. Chairman Harris asked if the overpayment could be carried forward indefinitely. Mr. Couto said the horsemen's agreement did not require retirement of the overpayment at the next meeting. If the racetrack was prepared to carry the overpayment forward, it was their prerogative. Chairman Harris asked what the difference in purses would be in 2004 versus 2003. Mr. Couto said there would be a 3 percent decrease in the overnight purses and roughly 6 percent in stakes purses. He stated if the meeting was successful the overpayment might be retired; however, the TOC was being conservative in its projections. Commissioner Licht **motioned** to approve the application for license to conduct a horse racing meeting of CDCC conditioned upon receipt of items the analysis noted as missing. Commissioner Bianco **seconded** the motion, which was **unanimously carried**.

**DISCUSSION BY THE BOARD ON THE JOCKEY'S GUILD PROPOSAL FOR JOCKEY WEIGHT ALLOWANCES.**

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Chairman Harris said the item would be put over to a future Board meeting.

**DISCUSSION AND ACTION BY THE BOARD ON THE REQUEST OF THE JOCKEYS' GUILD TO EXTEND THE PROVISIONS OF THEIR PRIOR AGREEMENT WITH THE THOROUGHBRED OWNERS OF CALIFORNIA REGARDING THE HEALTH AND WELFARE PROGRAM FOR CALIFORNIA JOCKEYS UNTIL A SUBSEQUENT AGREEMENT CAN BE COMPLETED.**

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John Van de Kamp of Thoroughbred Owners of California (TOC) said his organization met with the Jockeys' Guild (Guild) advisor from Marsh-McClinton and reviewed proposed amendments to the contract. He stated the parties were close to an agreement, and should complete negotiations by the next Regular Board Meeting. Mr. Van de Kamp said TOC recommended the Board grant the Guild's request for an extension. Commissioner Sperry **motioned** to extend the provisions of the Guild's health and welfare agreement with TOC until a subsequent agreement could be completed. Commissioner Licht **seconded** the motion, which was **unanimously carried**.

**DISCUSSION AND REPORT BY MAGNA AND OTHER IMPACTED PARTIES ON THE DOWNWARD TRENDS OF HANDLE AT THE CURRENT CALIFORNIA RACE MEETS AND THE EFFORTS TO REVERSE THESE TRENDS.**

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Chairman Harris commented the Board was not attempting to single-out Magna in regards to downward trends in the handle. He stated Magna was currently running both of the ongoing meetings. Chairman Harris said he believed it was important for the Board to understand where the industry stood and what its vision was for reversing some of the trends. Jim McAlpine of Magna Entertainment (ME) introduced Jack McDaniel, the new president of Santa Anita Race Park. Mr. McDaniel spoke about his professional background and his involvement with ME. Mr. McAlpine reviewed the

current total handle at Santa Anita (SA) and Hollywood Park (HP). He stated the handle at both tracks was down. In addition, the handle at HP's last meeting, the Oak Tree meeting and several other racetracks was down. Mr. McAlpine stated there were factors in California that needed to be understood. The field size at SA and Golden Gate had declined, in part, because of worker's compensation issues and one-third fewer Pick-6 carryovers as compared to the previous year. If one took a closer look at the numbers, one would find that account wagering was up, while the core business was down in California, and nationally. He commented the out-of-state rebater numbers were down too. ME, together with the horsemen, made some adjustments in their relationship with rebaters, but one had to look at a more detailed view of the numbers to understand the trends. Mr. McAlpine reviewed an analysis of the first five weeks of 2003 versus 2004, and stated that based on the numbers the rebater source of handle was on the mend. Chairman Harris asked if the variations in rebater handle were associated with certain outlets. Mr. McAlpine said the number of rebate outlets was constant. He said the outlets were identified as rebaters based on their business model. The variations in handle were due to different levels of activity by their customers. Mr. McAlpine said the current SA meeting could be divided into two parts: the "pre-Sunshine Millions" and the post-Sunshine Millions." It was clear the first part of the meeting was down, but beginning with the second portion, there was an ongoing recovery. ME was taking proactive steps to reverse trends. It created the "Sunshine Millions in cooperation with Florida horsemen. In addition, ME introduced the "Magna Pick-5" to attract wagering dollars to SA and Golden Gate Fields (GGF). Mr.

McAlpine said the wager was successful and was having the desired effect. He stated ME was also investing in SA, its flagship facility, by enhancing the physical plant, hosting events and energizing the track for customers. Other projects included customer friendly wagering machines; broader television distribution of ME racing through Horse Racing Television (HRTV) and Racetrack Television Network; greater international distribution of California racing in Europe and Central and South America; and reevaluating pricing and distribution policies with respect to the export signal. Mr. McAlpine said ME was also working to solve the worker's compensation dilemma and increase field size. He stated the problems faced by California's thoroughbred pari-mutual industry were not isolated to the state. The problems were national in scope, and would take time to address. Chairman Harris said he was bothered by the tracks' inability to fully utilize databases to assess their horse inventory in writing condition books and filling races. He stated he understood SA purchased software to address the problem, and asked if SA had implemented it to its full capability. Mr. McAlpine said SA bought the software and was working to improve its utilization. Chairman Harris asked if promotional spending, aside from the Sunshine Millions, was the same in 2004 as in 2003. Was there anything one could point to as not having been promoted as much as in 2003? Mr. McAlpine said ME was trying to reallocate its marketing dollars to be more effective. He stated ME wanted to promote a host of special events at SA, GGF, and later at Bay Meadows. The events would be publicized locally, as well as across the ME network. Mr. McAlpine said the Sunshine Millions demonstrated that ME could put point-of-sale material out at different

racetracks nationally to bring attention to California. Mr. McDaniel said the ME Thoroughbred program was an industry model in terms of outreach to veteran racetrack visitors. He stated ME was borrowing ideas from other industries. As an example, theme parks could not exist on a ride inventory that was 10 or 15 years old. Something new had to be introduced every year to draw customers back to the experience. Mr. McDaniel said promotions about new experiences at Santa Anita were not about the experience, they were about Santa Anita. ME's strategy was to stretch its message across a 12-month period to make certain the public knew it was in business. Mr. McDaniel stated ME wanted to cooperate with the industry to heighten interest in every track and the excitement wagering and horse racing could bring. Chairman Harris commented that for the industry to benefit, those attracted to the track for events other than horse racing needed to become wagering fans. He asked what promotions worked best at transforming a casual track attendee into a horseplayer? Mr. McAlpine stated ME had previous experience with concerts at racetracks in Florida. He said concertgoers were given bar-coded vouchers. Management was subsequently able to track how much wagering those persons did. One of the challenges was to determine if they returned to the track. Mr. McAlpine stated ME was starting to use technology to help it understand its customer base. Mr. McDaniel said ME was producing a live Saturday show at Santa Anita in an effort to break down barriers to horse racing and personalize the sport's greatest stars. He stated jockeys, and owners and trainers participated in a relaxed setting created by the show to build a relationship with the fan at the track. Chairman Harris said he recalled different television shows in previous

years that were discontinued. Mr. McAlpine said ME would have liked to continue some of the shows, but in some cases contracts were not able to be renewed, or there was the issue of the value of the program against the dollars spent. Commissioner Licht asked how the Magna Pick-5 takeout was distributed. Mr. McAlpine said the takeout was allocated based on where the wager was made. Commissioner Landsburg asked if ME's web site highlighted the Pick-5. Mr. McAlpine said ME had a special Magna Pick-5 web site – with cross-references to its other sites. Chairman Harris asked if ME was seeking more outlets for HRTV. Mr. McAlpine said there were approximately one million five hundred thousand cable television subscribers across the nation with access to HRTV. He stated ME's sales force was continually looking for greater distribution. Chairman Harris asked about ME's use of free media. Chris McCarron of SA said Huell Howser of the Public Television show "California Gold" was recently at SA to take the Seabiscuit tour. Mr. McCarron said Mr. Howser interviewed trainers, fans and owners and spent the day at the track. Mr. Howser told SA the show would air soon, and would probably attract new people to the venue. Mr. McAlpine said SA was also trying to increase its outreach to the general press to be more accessible and to anticipate issues rather than react to them. Chairman Harris asked if any of ME's improvements would be seen at its satellite facilities. Mr. McAlpine said the new venue "Sirona's" was the prototype for satellite facilities. He stated four large screens with high definition projection systems were introduced, and ME was partnering with HD Net. The partnership with HD Net would produce high-definition horse racing to reach about 7 million viewers.

**STAFF REPORT ON THE FOLLOWING CONCLUDED RACE MEETINGS:**

**A. LOS ALAMITOS QUARTER HORSE RACING ASSOCIATION AT LOS ALAMITOS FROM DECEMBER 26, 2002 THROUGH DECEMBER 21, 2003**

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John Reagan, CHRB staff, said the total handle at Los Alamitos in 2003 was up, with on-track and off-track handle down, and advance deposit wagering significantly increased. Mr. Reagan said the current meeting was off to a good start.

**DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR LICENSE TO CONDUCT A HORSE RACING MEETING OF CAPITOL RACING, LLC. (H), FROM MARCH 5 THROUGH JULY 31, 2004, INCLUSIVE.**

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Rod Blonien, representing Los Alamitos Quarter Horse Racing Association (LAQHRA), said LAQHRA and the quarter horse horsemen had reached an agreement with Mr. Bieri, Capitol Racing (CR) and the harness horsemen. Mr. Blonien stated LAQHRA asked that the agreement be placed as a condition on the license of CR. The agreement stipulated that \$500,000 held by CR in an a trust account would be paid to LAQHRA. In addition, a payment would be made by CR to LAQHRA for misdirected payment relating to advance deposit wagering. Mr. Blonien said LAQHRA was holding \$1.3 million that would have been paid to CR. The quarter horse horsemen would retain that money. In addition, Mr. Bieri and CR would post a \$1 million bond to secure additional amounts that were due. Mr. Blonien stated the agreement was contingent on a decision by the superior court in Sacramento. The money would belong to LAQHRA if it prevailed. If CR prevailed, LAQHRA would pay back the sums that had been forwarded pursuant to the agreement. Mr. Blonien said the parties had agreed that the Zumbrun agreement would continue to be the formula on which

future impact fees would be calculated. Half of the formula would be put in a trust account under the control of the CHRB, and would eventually be paid to the prevailing party. The other half would be available to CR for use in its cash flow. David Neumeister of California Harness Horsemen's Association said the harness horsemen were not agreeing they owed any money prospectively. He stated the horsemen would operate under the Zumbarn agreement. If CR and the harness horsemen prevailed in court, the CHRB would decide how much they owed LAQHRA. Mr. Bieri said harness was passing money through to LAQHRA without any admission that it actually owed a fee. He stated harness was working with the formula set forth in the memorandum from Alan Horowitz. Executive Director Roy Wood, Jr., said that based on the agreement between the parties, staff no longer objected to the approval of the license application. Commissioner Landsburg **motioned** to approve the application for license to conduct a horse racing meeting of CR under the conditions stated for the record by both parties concerned. Commissioner Moretti **seconded** the motion, which was **unanimously carried**.

**DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR LICENSE TO CONDUCT A HORSE RACING MEETING OF THE CAL EXPO RACING ASSOCIATION, LLC. (H), FROM MARCH 5 THROUGH JULY 31, 2004, INCLUSIVE.**

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Chairman Harris said the item was withdrawn.

**ELECTION OF BOARD VICE-CHAIRMAN.**

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Chairman Harris said Vice-Chairman Granzella resigned from the position due to personal obligations. Commissioner Sperry **nominated** Commissioner Licht for the position of Vice-Chairman. Commissioner Bianco **seconded** the nomination, which was **unanimously carried**.

**GENERAL BUSINESS**

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Rod Blonien thanked Commissioner Landsburg, whose term as a Commissioner was ending, for his years of service to the industry. He stated he hoped Commissioner Landsburg would continue to be involved. Mr. Blonien said the television productions "World Poker Tour" and "Celebrity Poker Tour" resulted in substantial new business for card clubs in California. He stated he believed it would benefit horse racing if it could find a way to produce television events of the same caliber. Chairman Harris said he wished to acknowledge and commend Nora Williams, CHRB Southern California Licensing Supervisor, who was retiring after 20 years with the Board.

**MEETING ADJOURNED AT 12:05 P.M.**

A full and complete transcript of the aforesaid proceedings are on file at the office of the California Horse Racing Board, 1010 Hurley Way, Suite 300, Sacramento, California, and therefore made a part hereof:

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Chairman

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Executive Director

**PROCEEDINGS** of the Regular Board Meeting of the **California Horse Racing Board** held at the **Arcadia City Hall**, 240 West Huntington Drive, Arcadia, California, on **January 22, 2004**.

Present:        John C. Harris, Chairman  
                  William A. Bianco, Member  
                  Alan W. Landsburg, Member  
                  Roger H. Licht, Member  
                  Marie. G. Moretti, Member  
                  Roy Minami, CHRB Staff  
                  Derry Knight, Deputy Attorney General

**DISCUSSION AND ACTION BY THE BOARD ON THE APPLICATION FOR LICENSE TO CONDUCT A HORSE RACING MEETING OF CAPITOL RACING, LLC. (H) FROM MARCH 5 THROUGH JULY 31, 2004, INCLUSIVE.**

John Reagan, CHRB staff, said Capitol Racing (CR) proposed to run 82 nights, for a total of 1,032 races. The first post time would be 5:35 p.m., Wednesday through Saturday, with a first simulcast post at 4:50 p.m. CR would offer a wagering program using CHRB regulations and the Association of Racing Commissioners International daily double. Mr. Reagan said the application was complete; however, due to issues regarding the May 12, 2003 Order (Order) issued by the Board, staff did not recommend approval of the application. Steve Bieri of CR said the Board would be wrong if it agreed with staff's recommendation as it was illegal and not in the best interest of horse racing. Mr. Bieri stated the Board had to find CR in full compliance with its Order. He said the Board directed CR to pay pursuant to the formulas of the "Zumbrum Agreement" (ZA), but CR was not required to pay anything as it was not a party to the ZA. In addition, the ZA expired in 2000, so the formulas did not require a payment from any party. Mr. Bieri stated the formulas in the ZA required payments for harness racing immediately preceding quarter horse racing at Los

Alamitos (LA), yet there was no harness racing at LA. He further stated the Order required payments from May 12, 2003 to the present based on CR's failure to pay previous monies. Mr. Bieri said the Board was acting in direct contravention to the Maddy bill, which required that LA take CR's signal without additional fees. He added the issues were in litigation, and by acting before a court could rule, the Board was being arbitrary and capricious. Mr. Bieri stated the Board would do the right thing if it approved CR's application. Ed Friedberg, an owner and breeder, said he spoke on behalf of a number of harness owners and breeders in California. Mr. Friedberg outlined several items in CR's financial statement, including an overpayment of purses, which demonstrated CR was financially incapable of supporting a race meeting at Cal-Expo. Mr. Friedberg asked the Board to require that CR provide sufficient funds to guarantee the financial stability of its meeting before it approved the application. As an additional condition, he asked that the Board not allow CR to reduce the horsemen's purses by the amount of the overpayment. Dan Schiffer of the Pacific Coast Quarter Horse Racing Association (PCQHRA) stated the quarter horse horsemen were concerned with CR's failure to comply with the Board's Order. Mr. Schiffer read into the record a quarter horse horsemen's petition requesting the Board to enforce its Order. He further asked that monies paid by CR into two funds be released to the quarter horse horsemen. Richard English, a consultant for PCQHRA and Los Alamitos Quarter Horse Racing Association (LAQHRA), stated he had submitted to Board staff reports detailing monies CR owed quarter horse horsemen and LAQHRA. Mr. English said the monies totaled \$4,075,000 and included impact fees; payments for advance

deposit wagering (ADW) and shared purses. Conversely, Mr. English said LAQHRA held \$1,382,000 in shared harness meeting purses. When CR's debt was compared to LAQHRA's, CR owed \$2,691,000. Chairman Harris asked if the monies owed were increasing over time. Mr. English said the ADW amount would not increase, but the impact fees and shared purses on imports would. He stated the figures he quoted were as of the end of the meetings that closed on December 21, 2003. Ivan Axelrod, a United States Trotting Association director, and owner and breeder, said over the past 20 to 25 years harness went through many operators, all of whom left the industry for various reasons. Mr. Axelrod stated when harness was about to fold in California, Mr. Bieri and CR took a chance on the sport, and turned it into a success. He said CR made capitol improvements in the backstretch and turned harness into a year-round operation that provided the horsemen with some stability. Mr. Axelrod said refusing CR its license would damage the harness industry and send horsemen out of California. He stated he was not conversant with the dispute between the parties, but he was sure it could be resolved in the courts, or mediated by the Board. Rod Blonien, representing LA, said the Board issued its Order in May 2003. At the July 2003 Regular Board Meeting LA asked that as a condition of licensing CR be required to make payment, however, a representative of CR stated his organization sued the Board and the matter should not be heard until the lawsuit was adjudicated. In October 2003 the parties met at CHRB headquarters to attempt to resolve the dispute. Mr. Blonien stated that Dr. Allred of LA indicated he would accept less money and made other compromises to end the controversy. A subsequent meeting was scheduled where Mr. Bieri indicated he did

not wish to pay anything, and would respond to Dr. Allred at a later date. There was no further contact between the parties. When the LA application was before the Board in November 2003 a representative of CR stated a temporary restraining order (TRO) was in place to stop the Board from enforcing its order. Mr. Blonien said Dr. Allred tried to contact Alan Horowitz of CR by telephone to see if something could be accomplished, but the call was not returned. Mr. Blonien asked how much more latitude would the Board give CR before it enforced its Order? He stated LA needed the funds to maintain its purse pool and keep its horsemen in California. CR's financial statement indicated the organization was holding over five hundred thousand dollars; LA wanted that money paid. Mr. Blonien stated the remaining \$2 million needed to be paid at least by the end of the year. He said LA requested that as a condition of license, CR be required to pay the monies it owed. Mr. Blonien added the Business and Professions Code, as well as numerous court of appeal cases, provided that the Board had plenary authority to do what was necessary to enforce the law and to provide for a reasonable administration of horse racing. He stated that was what LA wished the Board to do. Roy Minami, CHRB staff, asked Deputy Attorney General (DAG) Derry Knight to give the Board a status report on the litigation filed by the California Harness Horsemen's Association (CHHA) and the Order. DAG Knight said the Board issued the Order on May 12, 2003. A lawsuit was subsequently filed by the CHAA challenging the Order. The lawsuit was not filed in a timely manner, so a demurrer was filed on behalf of the Board challenging the timeliness of the action. DAG Knight stated that while there was a lawsuit pending, to his knowledge, there was no TRO

filed, and the Order was still in effect. David Neumeister, representing the CHHA stated in all his years in the industry no one had recommended that an application for license be denied because of an issue that was the subject of a legal dispute between an association and the Board. Mr. Neumeister said if the Board wanted a TRO the CHHA would produce one forthwith. He commented it was ordinarily inappropriate to discuss the merits of a case that was pending between the parties, but he had no choice. He stated the Order required CR to pay any impact fees that would have been due under the ZA. Mr. Neumeister said the document was drafted in 1997 when LA was not required by law to take the harness signal. LA was taking harness signals from out-of-state and not from in state. Mr. Neumeister said California's harness industry finally entered into an agreement wherein it would pay a fee in return for LA taking its signal. The initial agreement was not the ZA agreement; the ZA agreement was entered into one year later. Mr. Neumeister said the ZA was quid pro quo for racing at LA and it self-destructed when harness left Southern California. He stated there was no conceivable legal theory under which CR or CHHA could owe impact fees after the ZA expired. Mr. Neumeister said legislation that precluded impact fees, unless an association entered into a voluntary agreement to pay such a fee, was effective in 1999. He added, contrary to Mr. Blonien's statements, there were numerous California Supreme Court and court of appeals cases that indicated the Board lacked the power to award damages and limited its authority to fines, penalties, or exclusions. Mr. Neumeister quoted extensively from case law to support his contention. He stated if somehow the Board were able to award damages under the ZA, the harness industry

was willing to pay them – with the understanding that the agreement expired when LA expelled harness racing from its facility in 2000. Mr. Neumeister stated the ZA was entered into so harness could continue running at LA, and the heart of the agreement was that the horsemen would pay LA \$10,000 a week. Mr. Neumeister stated the fall meeting at LA was historically a harness meeting. Once harness ceased running at LA, the Board awarded the dates to LAQHRA, which caused quarter horse racing to overlap harness racing from Christmas to Easter. To ask harness to pay quarter horse an impact fee for dates that were not contemplated by the ZA was not right. Mr. Neumeister stated it had always been CHHA's position that after January 1, 1999, harness was no longer obliged to pay an impact fee as the Maddy legislation specifically provided otherwise. He said even if that were not the case, and harness was still contractually obligated to pay impact fees to LA through the duration of the ZA - after deducting winter and fall meetings, the harness industry only owed LA \$274,548.66 – not the \$3.3 million Board staff recommended. Mr. Neumeister said if the issue was immediately resolved, a check would be written forthwith. Mr. Neumeister said due to the Board's order LA was under the impression harness owed it an impact fee in perpetuity, despite the expiration of the ZA, and the Maddy legislation, which clearly precluded payment of impact fees. If the Board accepted staff's recommendation to deny the application for license, it would put harness racing out of business in California. In addition, ordering harness to pay \$3.3 million would have the same effect due to the resulting purse cut. Commissioner Landsburg asked Mr. Neumeister where he was on May 13, 2003, or the following meeting, when the Board laid down

the proposition that the issue needed to be resolved? He stated he grew up on harness racing and wanted to see it prosper in California, but the Board did not want to re-digest legal arguments that should have been made months ago. Mr. Neumeister said after the Order was issued, the subject was turned over to attorneys for litigation. As he understood the Order, harness was to comply with the ZA. Harness was willing to comply, but by his calculations, it only owed LA \$275,000. Dr. Allred said Mr. Neumeister was correct in claiming the ZA was no longer valid. He stated, however, the ZA was not relied upon to calculate the monies owed. The Maddy legislation contained a provision that allowed the horsemen to object to the importation of a signal on top of a live meeting. If the objection could not be resolved, the Board had the authority to broker a settlement between the parties. He stated the Maddy legislation was the basis for the impact fees. Dr. Allred said the quarter horse horsemen objected to the signal being imported during the live meeting. The horsemen were paid a fee, less 2 percent. Mr. Blonien said Mr. Neumeister claimed the Board did not have authority to award damages, however, LA was not asking for damages. He said the case citation used by Mr. Neumeister involved a person who was injured and wanted the Board to award damages. Mr. Blonien said LA was not claiming whiplash, it was asking that the Board's Order be enforced. He stated Business and Professions (B&P) Code Section 19605.3 gave the Board power to award fees or charges to be paid by any party. And, regarding the Maddy legislation, it provided that an association could be required to take the signal - subject to the provisions of B&P Code Section 19605.3. Mr. Blonien stated Senator Maddy was aware of the issue when he authored the

legislation. Mr. Blonien said LA was asking for less than what the current thoroughbred situation was. He stated LA only wanted CR to pay the \$500,000 and to enter into an agreement to pay the \$2 million. Mr. Bieri said, contrary to earlier statements, CR was financially stable, and the financial strength behind the organization was more than adequate. Commissioner Landsburg asked if there was an alternate to CR. Cristo Bardis, a former Board Member and a horse owner, said the matter could be held over and brought back to the Board with a simultaneous application from Cal-Expo itself. That would provide the Board with a back-up position if the issues could not be resolved. Mr. Bardis said he had run racing associations and would be happy to volunteer his services on an interim basis. Alan Horowitz of CR said the Board could appoint a committee to deal exclusively with the issue and find a solution. He stated if the committee worked with staff to filter the numbers through the various time lines produced by legal, legislative and contract events - to arrive at a determination - he was sure the harness industry, and hopefully LA, would abide by the outcome. Commissioner Landsburg asked if Mr. Horowitz was, in effect, asking the Board to act as a binding arbitrator. He stated he did not know if the Board would act in that capacity, but binding arbitration could be an answer. He commented in absence of the Board, binding arbitration might be the answer, but the Board knew the parties and the industry. Commissioner Landsburg **motioned** to withhold implementation of the Board's Order for 7 days if both parties agreed to binding arbitration. If the parties could not come to an agreement in that period of time, the Order would be enacted. DAG Knight said if more than two commissioners were involved in the arbitration, the

meetings would have to be properly noticed. He stated it would be easier to have a third party do the arbitration, especially if the Board subsequently sought compliance with its Order. Mr. Neumeister said the harness horsemen would agree to arbitration. Mr. Blonien stated the Board had an outstanding Order relating to the issue, and an Administrative Law Judge had also decided the issue; binding arbitration would only delay a final resolution. Mr. Blonien asked the Board to enforce its Order as a condition of license for CR. Mr. Horowitz asked if approval of the license application would be postponed pending binding arbitration. He stated if the Board approved CR's application for license, subject to the outcome of binding arbitration, CR would not have to return to the Board with an application, and would be under pressure to submit to the process. Commissioner Licht said he believed CR would have to dismiss its lawsuit, as it could not arbitrate an amount due under an award if it was disputing the legitimacy of the award. The sole issue for arbitration would be "How much did harness owe the quarter horse industry." Mr. Schiffer, speaking for the horsemen, said PCQHRA would not agree to binding arbitration under any circumstances. He stated the amount wagered was definite; there was a formula to calculate what was owed; and the PCQHRA was entitled to the money. Mr. Horowitz said CR would agree to the arbitration and dismiss its lawsuit if the Board approved the application contingent on the 7-day window. Chairman Harris asked if the Board could compel the parties to enter into arbitration. DAG Knight said the Board could not compel arbitration. Chairman Harris said arbitration appeared to be a good solution, but to make it work, all parties had to agree. Mr. Neumeister said the legal dispute was between the harness

industry and the Board. If there were arbitration, it would be between those two parties. Mr. Neumeister said, although the quarter horse industry would be impacted by a decision, he did not understand why it would have to agree to arbitration when it was not a party to the lawsuit. He stated if the Board agreed to arbitration, the harness industry was ready to participate. DAG Knight said the litigation between the Board and the harness industry was a side issue. He stated the root of the problem was the outstanding Order, which required both parties to do something. What was needed was a resolution of the obligations between the two parties. Commissioner Licht said PCQHRA was opposed to the idea, and asked if CR was also opposed. Mr. Blonien said LA was opposed to arbitration. He stated the Board issued an Order that was not appealed in a timely manner. What the harness industry wanted to do was renegotiate the issue through arbitration. Mr. Blonien said the Board should respect and enforce its Order. Commissioner Licht said he understood, but the monies involved were questionable. Mr. Blonien said the quarter horse industry worked with Board staff on the numbers and were in complete agreement. Mr. Reagan said the calculation of the formula was not in dispute. The time frames upon which the calculations were based were in dispute. When staff calculated the monies owed, it went back to the last day the prior settlement between the parties was made. The calculations were on spreadsheets, so once the time frame was determined, staff could add the dates and arrive at a dollar amount. Commissioner Licht asked what would happen if the Court granted the demurrer. How would the dollar amount be calculated? Mr. Blonien said if the demurrer was denied, the Board could conduct a hearing to determine the

numbers. There was a precedent for a hearing in an earlier dispute between various northern tracks, wherein the Board conducted meetings; heard evidence from all parties; and issued a ruling. If the Board wished to look at its Order and interpret it in terms of the attachments to the ZA, LA would agree. However, Mr. Blonien stated LA requested the Board order CR to pay the five hundred thousand dollars it was holding. Commissioner Licht asked if LA would agree to a third party arbitrator. Mr. Blonien stated LA would not agree to a third party; there was precedent for the Board to hear the evidence and decide the issue. DAG Knight said the issue was already appealed to, and decided by, the Board. He said it was the very Order that was before the Board, and it did not seem like the process needed to begin again. Commissioner Landsburg said the Board did not want to destroy harness racing in California. The Board was looking for a solution. Mr. Bieri said arbitration was something CR would consider, but he did not want to state arbitration would lead to a solution. The parties were too far apart with respect to the amounts owed, and to determine what was "fair and reasonable" was very difficult. The issue could be resolved if the purported monies owed could be cut in half - to 1.6 million - the horsemen would pay half and CR would pay half. DAG Knight said The Board's Order provided for the parties to agree. If the parties were to agree to such a settlement, it would be acceptable. Commissioner Licht suggested the parties meet and either decide on binding arbitration or to let the court hearing progress. If the demurrer were successful, the Board would decide the numbers. Mr. Blonien said LA was willing to talk only if members of the Board act as arbitrators, and the issues were limited to interpreting the Order in terms

of the ZA. Mr. Schiffer said the PCQHRA would agree on the same terms. Commissioner Licht said the harness lawsuit would have to be dismissed with prejudice if members of the Board were to act as arbitrators. Chairman Harris excused the parties to meet and return to the Board with an agreement. (The parties left to meet, and returned.) Mr. Blonien said he believed the parties agreed to have the Board arbitrate two issues: "What should be the fee, if any, going forward beginning January 1 of 2004?" and "Taking the attachment to the ZA and applying it to the Board's Order, what is the amount of money owed?" Mr. Neumeister said as he understood the issues, they were: "For what time periods, if any, was harness obligated to pay any impact fee?" and "Was harness obligated to pay anything prospectively; and if it was, on what terms?" He stated the parties would continue to talk. Mr. Schiffer said PCQHRA did not want to discuss whether an impact fee was due. His organization was willing to negotiate the time period for the fee, based on the Order. The PCQHRA would negotiate the amount of an impact fee but not whether there should be a fee. He stated PCQHRA wanted to begin with the stipulation that there was an impact fee. Mr. Neumeister said apparently harness misunderstood the agreement. CR would not prospectively concede it owed an impact fee. It was a matter to be decided in arbitration: if and how much, retroactively and prospectively; that was his understanding of what would be arbitrated. Dr. Allred said LA believed it would be appropriate to negotiate with the Board's intervention if an impact fee agreement could not be reached, but it would not stipulate there was no fee owed. He stated the Board decided the issue; an Order had been issued; and there was no reason to believe it

would be different in the future. Mr. Neumeister said the Order did not require harness to pay an impact fee prospectively. He stated that was one of the questions, and the amount of the fee was to be arbitrated. Dr. Allred said the amount of the fee could be anything, but whether it was due was not to be arbitrated. Mr. Neumeister stated if the question of a payment was not the subject of arbitration, harness would take its legal position that it did not owe an impact fee prospectively. Commissioner Licht suggested the application be tabled until the next Regular Board Meeting to see if the parties could return with an agreement. He stated, in addition, the court might have ruled by that time. Mr. Bieri said he and Dr. Allred agreed to meet on Wednesday, January 29, 2004, at LA, to discuss the numbers. He stated it was possible there could be an agreement, but he did not fully understand the numbers. Mr. Bieri said he needed to understand the impact on the bottom line to know what he was agreeing to. He and Dr. Allred would quantify all the proposed numbers, and possibly reach an understanding. However, he could not make any promises because he did not know what the numbers would add up to. Commissioner Landsburg said the Board was told CR could not conduct its meeting if another month passed. He asked if that was true. Mr. Bieri said the longer the parties took to reach an agreement, the greater the potential for harm. If CR did not know by February 19, 2004, that its license would be approved, there could be some attrition, and horsemen could be lost, but he did not think it would be fatal to harness. Commissioner Landsburg said the Board had a responsibility to see the issue through to a finish. That meant the Board could refuse CR's license and seek other parties to run the meeting. Commissioner Landsburg said he did not want to wait until

mid-February because he did not want to see harness injured. He stated the Board issued an Order that was ignored, and he was only willing to extend it seven days. Mr. Bieri said the parties would continue to meet and attempt to work towards a solution. Chairman Harris said the item would be deferred to the February 19, 2004, Regular Board Meeting, absent sooner resolution.

**DISCUSSION AND ACTION BY THE BOARD ON THE APPROVAL OF THE DISTRIBUTION OF A PORTION OF THE UNCLAIMED REFUND MONIES, ADJUSTED FOR INFLATION, TO THE JOCKEY'S GUILD HEALTH AND WELFARE TRUST, PURSUANT TO BUSINESS AND PROFESSIONS CODE SECTION 19612.9**

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John Reagan, CHRB staff, said the horse racing law provided that funds from unclaimed refund monies be given to the Jockey's Guild (Guild) health and welfare trust to provide for the health and welfare of California jockeys. Under the law, Thoroughbred Owners of California (TOC) would negotiate an agreement with the Guild to provide for disbursement of the funds. Previously, the Guild bought commercial insurance, however, in 2002, it began a self-insurance program. The Guild would cover jockeys in a self-insurance program up to \$75,000, and then a policy covering anything over that amount took over. Darryl Haire of the Guild said his organization's insurance plan worked well; he was not aware of any problems. John Van de Kamp of TOC said his organization entered into a contract with the Guild in 2000. He stated the Guild recently asked to enter into a new contract. After checking with Board staff, TOC learned there were problems in receiving audit reports from the Guild in a timely manner. He stated TOC would not go forward with a new contract

until Board staff was satisfied with the Guild's audit material. Mr. Van De Kamp said a new contract was written, and it would go into effect once Board staff indicated the audit requirements were met. He said the request before the Board would set aside an increase from unclaimed refunds. The monies would go into the Trust, which paid costs incurred by the Guild. Mr. Van de Kamp said he understood the Guild wanted a 15 percent adjustment. No expenditures would be made out of the Trust until a contract was in place, and adequate audit reports were made. Albert Fiss of the Guild said the issue before the Board was to release monies from 2003 to the Guild to reimburse it for funds that it had already expended. Mr. Reagan said staff received financial information from 2002. He stated he contacted Mr. Fiss and told him the \$610,000 in the Trust at that time could be drawn down to settle the 2002 costs. Mr. Reagan said he assumed the Guild took the money that was authorized, and the Trust was at a zero balance. He stated staff did not have financial information for 2003, but there would have to be some funding to reimburse the Guild. Chairman Harris asked if the Guild paid medical expenses for 2003. Mr. Fiss said the guild subsidized the jockeys for the entire year. The monies came from the Guild's general account. Mr. Reagan said the Guild's auditors were slow to provide staff with the necessary financial information. The Guild's agreement with TOC provided that the monies would not be withdrawn from the Trust until audit information was forwarded to Board staff. Chairman Harris asked where the monies from uncashed tickets went if they were not paid into the Trust. Mr. Reagan said the unclaimed funds were held for three years. After three years, they were paid to the State of California's Controller's office.

Because a specific refund could not be assigned to a specific person, the funds were held in the Controller's office. He said they did not benefit the industry, so staff was careful to keep the funds available to the Guild. Mr. Van de Kamp said the monies were held by the various tracks and released to the Trust upon instruction from Board staff. Mr. Reagan stated that was the routine for several years, however, in 2004 he was contacted by the federal Department of Labor, which asked the Guild to provide "LM-2 Reports" for 2001 through 2003. Mr. Reagan said staff proposed that if the Board approved the allocation, it be contingent upon those reports being submitted to the Board as well as to the federal agency. Mr. Fiss said the Board was overstepping its boundaries if it took the reports into consideration. He said the Guild submitted the report for 2001 and 2002 would soon be ready. Mr. Reagan said staff was simply asking for copies of the reports. Paul Atkinson, a jockey, said California jockeys had questions regarding the Trust. He requested a committee of jockeys, elected by their peers, be constituted to ensure the Guild provided the best insurance and that Guild members have their questions answered. Commissioner Licht said he was in agreement with Mr. Atkinson. He stated the Guild should make disclosure to its members to the fullest extent of the law. Commissioner Licht said it was important disclosure be utilized so there were no lingering questions. Mr. Haire said the Guild was forming a committee of jockeys to oversee the California health and welfare plan. He stated Laffit Pincay, Jr. was an honorary member of the committee. Commissioner Licht **motioned** to approve the distribution of a portion of the unclaimed refund monies, adjusted by 15 percent for inflation, to the Guild's Health and Welfare Trust,

contingent on an agreement with TOC and submission of the Department of Labor LM-2 reports. Commissioner Moretti **seconded** the motion. Commissioner Bianco asked how advance deposit wagering (ADW) had affected the dollar amounts available. Mr. Reagan said the last time the funds were paid was in May 2003 for the year 2002, the first year of ADW. He stated at that time there was not a major drop in the refunds. He stated staff would watch carefully when it dropped the refunds for 2003. The motion was **unanimously** carried.

**STAFF REPORT BY THE AD HOC COMMITTEE ON SECURITY.**

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Commissioner Licht said the committee met twice and received tremendous industry support. He stated the racing associations were cooperative and provided experts in the field of security. In addition, Board staff was helpful in providing information regarding activities on the backside. Commissioner Licht said the committee was looking primarily at security cameras to determine if they were an acceptable and useful tool in backside security and surveillance. He commented such cameras ranged in price from several hundred to several thousands of dollars, and the committee was going to see demonstrations regarding the viability of such systems. Commissioner Licht said the committee also discussed enforcing existing regulations and policies, such as the posting "In-Today" signs, and the "5-hour" rule wherein horses shipped in must be on the grounds within 5 hours before their race. Commissioner Licht stated the most important accomplishment of the committee was encouraging Board investigators to make backside security their highest priority. He said the committee was aware of

budget constraints, but the industry felt the most important role of Board investigators was to be aware of the activities on the backside. Investigators needed to be highly visible and trained, and to act as a deterrent to illegal activities on the track. Commissioner Licht said the committee also discussed freezing equine test samples for long periods of time. That would allow the Board to look backwards if there were statistical aberrations. He commented the committee was not unanimous regarding criminal activity at the track, but the entire committee agreed there was a problem with perception. Board investigators needed to be motivated to make sure everything was done to deter or quell that perception.

**STAFF REPORT ON ADVANCE DEPOSIT WAGERING HANDLE FOR 2003.**

John Reagan, CHRB staff, said advance deposit wagering (ADW) totaled \$315 million in 2003. Mr. Reagan explained the ADW chart, which was included in the Board meeting package. He stated the information included California Horse Racing Information System data for the entire year, including all posts, hubs, track and breeds. Mr. Reagan said hub fees were about \$14 million, purses were over \$14 million and the track were over \$14 million. Aaron Bauman, a horse owner and racing fan, spoke about ADW in California and his belief that Magna Entertainment Corp. had misused its license. Chairman Harris said the issue concerned a lot of people, and was something about which Commissioner Landsburg had held hearings. He stated he believed the issue was better referred to the Pari-Mutuel Operations (PMO) Committee for an in-depth examination. Commissioner Landsburg said Mr. Bauman's concerns

were appropriate, and he would like to hear the concerns discussed in the PMO Committee. He stated the PMO Committee had discussed two issues regarding ADW. One concerned the licensing regulations, and a recommendation to have all signals made available to all licensed ADW providers. The second issue was that the horsemen's agreements would be a "new ball game" according to Thoroughbred Owners of California (TOC). The horsemen's agreements were negotiated by TOC, who declared none of the old rules would apply in 2004. Commissioner Landsburg said the Board was aware of Mr. Bauman's issues and he was pleased to hear them articulated by someone other than himself.

**STAFF REPORT ON THE FOLLOWING CONCLUDED RACE MEETINGS:**

- A. **PACIFIC RACING ASSOCIATION AT GOLDEN GATE FIELDS FROM DECEMBER 26, 2002, THROUGH DECEMBER 21, 2003.**
  - B. **BAY MEADOWS OPERATING COMPANY AT BAY MEADOWS FROM APRIL 2, THROUGH NOVEMBER 2, 2003.**
  - C. **CHURCHILL DOWNS FALL OPERATING COMPANY AT HOLLYWOOD PARK FROM NOVEMBER 11, THROUGH DECEMBER 21, 2003.**
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John Reagan, CHRB staff, said on-track and off-track handle was down several percentage points and total handle was down with a range of 4 percent, to less than 1 percent. He stated advance deposit wagering (ADW) could be having an impact, but staff was still monitoring it to determine the exact difference. Chairman Harris commented there must be a way to improve the numbers. He stated he was not sure if the application process assessed the strength of the associations' customer service and promotion.

REPORT FROM THE MEDICATION COMMITTEE.

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Dr. Ron Jensen, CHRB Equine Medical Director, said the Medication Committee (Committee) met on January 21, 2004. The Committee discussed a non-regulatory survey to determine the prevalence of the use of alkalizing agents, or "milkshakes" to enhance performance. The Committee thought a survey would be useful to see if rumors of the illicit use of milkshakes were true. Dr. Jensen commented there were no State funds available to conduct a survey, but through the generosity of an anonymous donor and Oak Tree Racing Association, funds were provided. Chairman Harris stated the survey would be confidential. He said blood tests would be conducted on every horse in a particular race, but it would not be known which race until the horses were in the receiving barn. Dr. Jensen said the Committee also discussed the Racing Medication and Testing Consortium (Consortium), a national organization attempting to develop model rules to promote and achieve uniformity in medication and drug testing. Dr. Jensen said California was well represented on the Consortium. On December 10, 2003, the first model rules were presented to regulators. The Consortium was made up of representatives from throughout the industry, but had no regulatory powers. Dr. Jensen said the Committee compared various Consortium regulations against those of the Board and found there was not a great deal of difference between the two. The Committee also discussed testing for the erythropoietin antibody, which was being conducted in the province of Ontario, Canada, and in New York. He stated such testing began in 2003, and to date, there did not appear to be a large number of positive tests.

**GENERAL BUSINESS**

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Commissioner Landsburg asked if there was any progress on the revision of the license application. Commissioner Licht said amending rules was problematic as Governor Schwarzenegger mandated no rules or regulations be amended or issued for a period of time.

**OLD BUSINESS**

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Commissioner Licht said the lawsuit filed by Racing Services and North Dakota against Stevenson and Associates was dismissed. He stated he had the pleasure of visiting the hub at Caliente. He said it was fascinating to watch how wagers were simultaneously brought in from all over the world.

**MEETING ADJOURNED AT 2:12 P.M.**

**STAFF ANALYSIS  
CTHF NOMINATIONS**

**REGULAR BOARD MEETING  
MARCH 25, 2004**

**Background:**

The California Thoroughbred Horsemen's Foundation, Inc., (CTHF), the welfare fund for thoroughbred backstretch workers, has nominated two new directors to its board as outlined in the attached letter. Pursuant to CHRB Rule 2049, they have submitted those nominations to the CHRB for approval.

The two nominees are Robert Bean, a licensed Thoroughbred trainer, and Geri Forrester, a licensed Thoroughbred owner. With the recent departure of Director Mike Ames, the two new members would bring the number of directors at the CTHF to six. The two nominees are not currently directors on the boards of the horsemen's organizations (TOC or CTT). The same can be said of the current CTHF directors. As such, the CTHF board will fully comply with the requirements of CHRB Rule 2049.

**Recommendation:**

Staff recommends that the Board approve this request.

CALIFORNIA THOROUGHBRED HORSEMEN'S FOUNDATION, INC.

"Assisting Horsemen in Need"



January 28, 2004

NOBLE THREEWITT  
*President*

*Board of Directors*  
MIKE AMES  
LEONARD DORFMAN  
DORIS JOHNSON  
NOBLE THREEWITT  
RALPH STEIGER M.D.  
LYNDA ROSS

PETER TOMMILA  
*Chief Executive Officer*

ROBERT FORGNONE  
*Counsel*

Mr. Roy C. Wood, Jr.  
Executive Director  
California Horse Racing Board  
1010 Hurley Way, Suite 300  
Sacramento, CA 95825

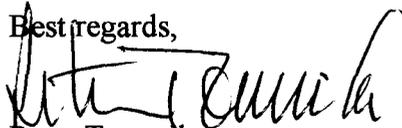
Dear Roy,

At the board meeting of the California Thoroughbred Horsemen's Foundation, Inc. held on January 20, 2004 Director Mike Ames resigned effective January 12, 2004. Robert Bean (Licensed Thoroughbred Trainer) and Geri Forrester (Licensed Thoroughbred Owner) nominated for two year terms, commencing January 20, 2004. Term to expire January 20, 2006.

Pursuant to Rule 2049 (a) of the California Horse Racing Board Rules and Regulations, the nominations of Robert Bean and Geri Forrester are submitted to the CHRB for approval, via this letter. The nomination brings our board to six members.

Please let me know if there is anything we can do to assist the process. I look forward to hearing from you.

Best regards,

  
Peter Tommila

**STAFF ANALYSIS**  
**REPORT ON ADW RESULTS FOR 2003 AND 2004**

**REGULAR BOARD MEETING**  
**MARCH 25, 2004**

**Background:**

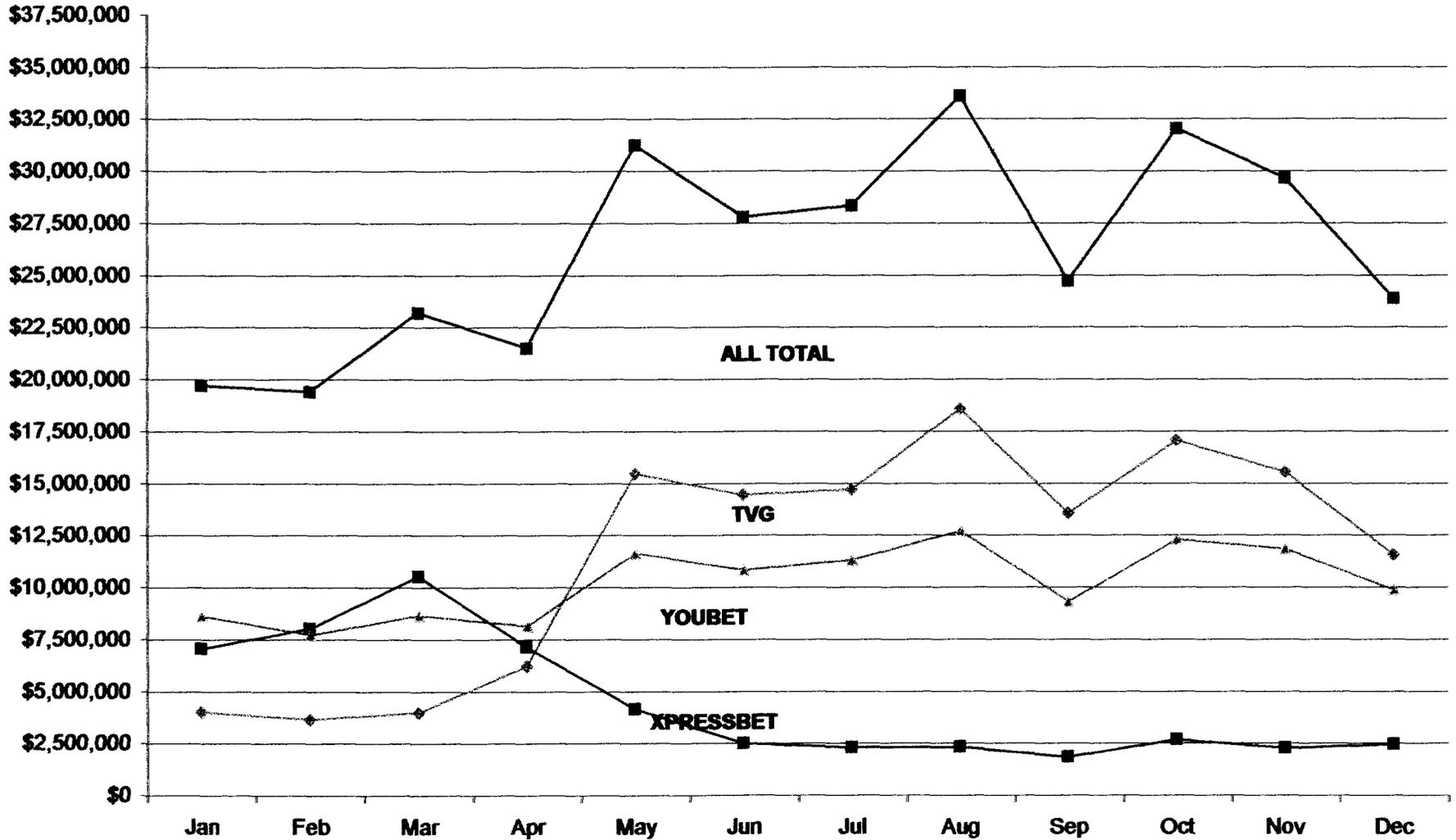
The ADW handle for 2003 is shown on the attached chart. The chart has a total line and a line for each of the three ADW hubs/providers. For calendar 2003 the total ADW handle was \$312 million as compared to the 2002 ADW handle of \$177 million. From the \$312 million handle, California horsemen received \$13.9 million in purses funds, the tracks received \$14.3 million in commissions and the ADW providers received a total of \$14.1 million in hub fees.

In addition, there is a worksheet that shows the first two months of 2004 versus the same period in 2003. The emphasis here is not so much the total handle but the mix of the handle, i.e., the market share of the three ADW providers in 2004 as compared to 2003. The data shows TVG and Youbet have continued to expand their influence while Xpressbet appears to have lost ground so far this year.

**Recommendation:**

This item is for information and discussion.

**ADW TOTAL 2003 HANDLE**  
**Jan 1, 2003, Through December 31, 2003**



<b>ADW California Handle</b>						
<b>FIRST TWO MONTHS OF 2003 VS 2004</b>						
Period 1/1 -2/25						
<b>ADW Hub</b>	<b>2004 Handle</b>	<b>% of Total</b>	<b>2003 Handle</b>	<b>% of Total</b>	<b>Change</b>	<b>% Change</b>
TVG	\$12,438,662	34.70%	\$6,813,806	23.06%	\$5,624,856	82.55%
Xpressbet	9,425,659	26.29%	11,970,264	40.52%	(2,544,605)	-21.26%
Youbet.com	13,983,725	39.01%	10,759,942	36.42%	3,223,783	29.96%
<b>Total</b>	<b>\$35,848,046</b>	<b>100.00%</b>	<b>\$29,544,012</b>	<b>100.00%</b>	<b>\$6,304,034</b>	<b>21.34%</b>
<b>TVG</b>						
<b>Contributions to participants from ADW Handle</b>	<b>2004</b>		<b>2003</b>		<b>Change</b>	
CA Horsemen's Purses	\$622,365		\$336,705		\$285,660	
CA Breeders	53,661		28,716		24,945	
CA Track Commissions	642,434		347,368		295,066	
ADW Hub Fees	746,242		408,828		337,414	
<b>Xpressbet</b>						
<b>Contributions to participants from ADW Handle</b>	<b>2004</b>		<b>2003</b>		<b>Change</b>	
CA Horsemen's Purses	\$509,856		\$646,399		-\$136,543	
CA Breeders	46,828		58,233		-11,405	
CA Track Commissions	525,343		666,677		-141,334	
ADW Hub Fees	440,491		559,301		-118,810	
<b>Youbet.com</b>						
<b>Contributions to participants from ADW Handle</b>	<b>2004</b>		<b>2003</b>		<b>Change</b>	
CA Horsemen's Purses	\$748,560		\$554,881		\$193,679	
CA Breeders	67,627		49,313		18,314	
CA Track Commissions	771,432		571,770		199,662	
ADW Hub Fees	732,926		548,754		184,172	
<b>TOTAL</b>						
<b>Contributions to participants from ADW Handle</b>	<b>2004</b>		<b>2003</b>		<b>Change</b>	
CA Horsemen's Purses	\$1,880,781		\$1,537,985		\$342,796	
CA Breeders	168,116		136,262		31,854	
CA Track Commissions	1,939,209		1,585,815		353,394	
ADW Hub Fees	1,919,659		1,516,883		402,776	

**STAFF ANALYSIS  
XPRESSBET, TOC, AND ADW**

**REGULAR BOARD MEETING  
MARCH 25, 2004**

**Background:**

According to recent articles in the Daily Racing Form, the Xpressbet organization “struck a deal” with a group of horseplayers to process their wagers as account holders. According to the articles that are included here, the arrangement allowed for rebates on those wagers.

Xpressbet/Magna and the TOC will update the Board on the status of that situation.

**Recommendation:**

This item is for information and discussion.

# Some details emerge about rebate operation

By **MATT HEGARTY**

As officials for the Thoroughbred Owners of California and Magna Entertainment prepare for a meeting on Saturday to discuss Magna's rebate policy, some details are emerging about Players Services Group, which recently obtained rebates through XpressBet, Magna's account-wagering service.

Players Services Group was founded by Don Johnson, a former race-track executive, in the late 1990's to secure rebates from betting sites. The group has struck deals with a small account-wagering company at the Couer d'Alene Casino, a Native American casino in Idaho, and most recently with XpressBet. Players Services handles wagers for Johnson's own betting syndicate as well as wagers from other individual customers, some of whom also operate partnerships.

Players Services and its clients had been wagering through XpressBet for several weeks until March 3, when the TOC raised objections and Players Services was cut off by XpressBet. TOC officials complained to Magna that they had not been told of the agreement and requested details. Magna officials complied last Friday, and the two sides will meet on Saturday to discuss the issue further.

TOC officials have declined to discuss details of the agreement. In an interview last week, Magna's chief executive officer, Jim McAlpine, said that the agreement was intended to "maximize the returns to the tracks and horsemen" by "cutting out the middleman."

The agreement between Magna and Racing Services has opened a

window into the world of rebating, where the biggest players prefer anonymity. No rebate shop has openly described details of its policies in the past five years, even as annual handle from rebated players has grown to an estimated \$15 billion, or approximately 10 percent of the national handle on Thoroughbred racing, according to industry associations. Individual rebates can range from 10 to 18 percent of handle, depending on the type of wager.

Johnson has steadfastly declined to provide details about Players Services and about the agreement with XpressBet, saying that knowledge of the agreement would damage his company's ability to strike deals with other rebate shops.

But in several conversations since March 3, Johnson has described himself as the manager of a professional betting syndicate that focuses on tri-fecta, superfecta, and pick six wagers. Johnson has said that his group began seeking rebates in the late 1990's in order to compete with other professional bettors who were already receiving rebates.

"We have to get the best deal we can get because we can't compete against some of these other guys who are getting ridiculous rebates," Johnson said Tuesday.

According to the Idaho Racing Commission, handle through the Idaho casino that previously had an agreement with Johnson was \$55 million in 2002. Johnson would not confirm the handle for Players Services that year but said that at least \$40 million was from clients of Players Services, including his own betting group.

Rebate rates typically increase as the volume of handle grows, and the

money wagered by clients of Players Services is aggregated for the purposes of obtaining the biggest rebate, racing officials said.

One player, who receives the rebates and who spoke on the condition of anonymity, said: "Once you get rebates, you can never go back."

According to the player, all clients of the company make individual wagers through their own accounts, and all payoffs on winning bets are credited to their account.

According to the bettor, at the end of each week, Players Services would distribute rebates to each of its clients, on scales that increased, as a rule, as takeout for a specific wager at a specific track increased. The bettor said that he assumed that Players Services took several percentage points of his rebate as a fee but that he was never told how Players Services was compensated.

Some racing officials have already complained about Players Services Group. Three years ago, officials of The Meadowlands accused Johnson of recruiting players at the track, and The Meadowlands eventually cut off its signal to the Idaho casino.

"I will readily admit that we had a problem with him," said Bruce Garland, executive vice president of The Meadowlands, referring to Johnson. "We called him in, he was very evasive about it, but that's exactly what happened. He took our players right from the track."

Players Services recently enlisted Jerry Brown, the owner of the popular handicapping service Thoro-Graph, to recruit players for the XpressBet operation. Brown has said that he sent hundreds of e-mails to clients of Thoro-Graph detailing some aspects of the rebate operation.

## Wood, Roy

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**From:** mike.marten [mike.marten@prodigy.net]  
**Sent:** Tuesday, March 16, 2004 2:49 PM  
**To:** Wood, Roy  
**Subject:** rebate articles

TOC, Magna Entertainment meet over XpressBet rebates  
(Thoroughbred Times Website)

Officials from the Thoroughbred Owners of California met with officials from Magna Entertainment Corp. on March 13 to address a recent three-week period in which Magna offered rebates to a betting service through Magna's account-wagering platform XpressBet.

Magna cut off the service on March 3 after TOC demanded details about the arrangement and complained that it had not been notified. Ten days later, TOC Executive Director Drew Couto and Chairman Ron Charles met with Magna officials for approximately two hours. Couto declined to comment specifically on the meeting.

"I can't discuss a lot because it's ongoing and I'm reluctant to deal with issues in the press," Couto said. "We have some matters that we're still trying to work through, and it's going to take a little longer for everyone to get an understanding of what happened and why. This is the start of a process. There are going to be follow-up meetings. The exact dates have not been set."

Magna President Jim McAlpine, who attended the meeting, could not be reached for comment.

California regulations require state racetracks and horsemen to place provisions in their agreements with off-track betting services that prohibit the practice of rebates. Couto said TOC has not determined whether Magna's agreement with the betting service broke state laws.

Roger Licht, vice chairman of the California Horse Racing Board, said the board has asked the state attorney general's office to review the regulations. The issue will be discussed at the next CHRB meeting on March 25, Licht said.

Licht conceded that the board sometimes did not enforce its rules against rebating.

"The CHRB has certainly approved contracts negotiated by the tracks and the TOC with suspected rebaters," said Licht, who served as CHRB chairman in 2003. "I think rebating has become a necessary part of the industry. I tend to think [rebates] add to the bottom line."

Couto said TOC has come to an opposite stance.

"The racing industry's current economic model is not one that is well set up for rebating," Couto said. "Unless there's a different model, rebating is a long-term detrimental practice for the industry. Our position is that, unless there are significant and dramatic changes in the way that we deal with rebaters, it's going to be very harmful to us in the long run."

Players Services Group, the service Magna dealt with, previously wagered through a Native American casino in Idaho, according to Daily Racing Form. Members of the service collectively bet more than \$20-million a year.-Jeff Lowe

DRF

Magna said to halt rebates

By MATT HEGARTY

Officials at Magna Entertainment Corp. have told the Thoroughbred Owners of California that the company's account-wagering business, XpressBet, has stopped offering rebates to customers, representatives of the owners' group said Monday.

The owners received the assurance on Saturday during a meeting at Santa Anita with Magna's CEO, Jim McAlpine. The owners' group requested the meeting after it had asked Magna to stop awarding rebates through XpressBet because of concerns over the financial impacts of the practice.

Drew Couto, the executive director of the owners' group, would not comment Monday on details of the discussions. He did say, however, that McAlpine stressed that Magna had ceased what it had termed an "experiment" and had no plans to renew rebating in the near future.

Couto said that the owners expected to meet with Magna officials again within the next two weeks to continue discussion about Magna's account-wagering policies.

McAlpine, who was said to be traveling on Monday, did not return a phone call.

**STAFF ANALYSIS**  
**CHRB RULE 1950.1 - REBATES ON WAGERS**

**REGULAR BOARD MEETING**  
**MARCH 25, 2004**

**Background:**

In 1996 the CHRB adopted Rule 1950.1 (included in this item) in response to industry concerns about the Nevada method of giving gamblers cash/voucher rebates based on the volume of wagers made. The rule addressed the Nevada issue but also was general enough to include all simulcast contracts. Since the thrust of the rule was to require California tracks and simulcast organizations to include in their simulcast contracts a prohibition against discounts on wagers or providing "consideration" based on the volume of wagers, CHRB staff worked with the simulcast coordinators statewide to ensure that such a clause was included in their simulcast contracts. Some examples of the contractual prohibitions are included with this item.

**Recommendation:**

This item is for information and discussion.

**1950.1. Rebates on Wagers.**

No racing association or simulcast organization shall enter into an agreement with any off-track betting facility unless the agreement contains a provision that prohibits programs where the off-track betting facility accepts less than the face amount of wagers from patrons, or agrees to refund or rebate any consideration based on the face amount of any wagers to patrons.

NOTE: Authority cited: Sections 19420, 19440 and 19602, Business and Professions Code.  
Reference: Sections 19420, 19440 and 19602, Business and Professions Code.

**HISTORY:**

1. New rule filed 5-21-96; effective 6-20-96.

# LATC

## LATC Common Pool Contract - Penn National Race Course

Secondary Recipient with all terms, conditions, obligations and covenants applicable to a Guest and/or Secondary Recipient hereunder." so that the paragraph reads as follows:

(L) **Third Parties** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any person other than the Parties, the Host and Guest Racing Commissions, and their respective successors and permitted transferees and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement. However, whenever this Agreement contemplates action by a third party, such action shall not be an obligation of a Party to this Agreement unless expressly stated herein, but only a condition of the obligations of the Parties hereto. Notwithstanding the foregoing, Guest shall be responsible for compliance by any Secondary Recipient with all terms, conditions, obligations and covenants applicable to a Guest and/or Secondary Recipient hereunder.

28. Paragraph 19(M) is amended by replacing "of the" with the words "with respect to this" so that the paragraph reads as follows:

(M) **Time** The Parties expressly agree that time is of the essence with respect to this Agreement.

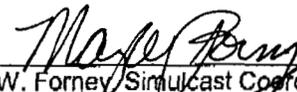
29. Paragraph 17(N) is amended to adding to the end of the paragraph "Notwithstanding the foregoing, without the consent of Guest, Host may assign this Agreement to any related entity, any associate or affiliate by operation of law or as part of an assignment of all or substantially all of any business or all or substantially all of the assets of Host." so that the paragraph reads as follows:

(N) **Assignment** This Agreement and the rights of the Parties hereto may not be conveyed, assigned or transferred to any other person without the written consent of the Parties. Notwithstanding the foregoing, without the consent of Guest, Host may assign this Agreement to any related entity, any associate or affiliate by operation of law or as part of an assignment of all or substantially all of any business or all or substantially all of the assets of Host.

30. Paragraph 17(P) is added in its entirety as follows:

(P) **Rebates on Wagers.** Guests (and any Secondary Recipients) shall not accept less than the face amount of wagers from patrons and shall not refund or rebate to patrons any consideration based on the amount of any wagers.

**Los Angeles Turf Club, Incorporated:**

  
\_\_\_\_\_  
Mary W. Forney Simulcast Coordinator

12-22-03  
Date

**Penn National Race Course**

  
\_\_\_\_\_  
Name: Richard T. Schnaars  
Title: VP and GM

12/22/03  
Date

  
\_\_\_\_\_  
Witness

12/22/03  
Date

than the Parties, the Host and Guest Racing Commissions, and their respective successors and permitted transferees and assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over or against any party to this Agreement. However, whenever this Agreement contemplates action by a third party, such action shall not be an obligation of a Party to this Agreement unless expressly stated herein, but only a condition of the obligations of the Parties hereto. Notwithstanding the foregoing, Guest shall be responsible for compliance by any Secondary Recipient with all terms, conditions, obligations and covenants applicable to a Guest and/or Secondary Recipient hereunder.

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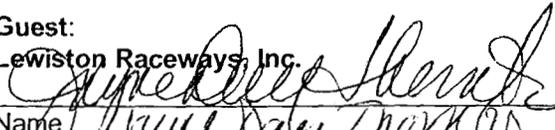
30. Paragraph 17(P) is added in its entirety as follows:

(P) **Rebates on Wagers.** Guests (and any Secondary Recipients) shall not accept less than the face amount of wagers from patrons and shall not refund or rebate to patrons any consideration based on the amount of any wagers.

Host: Pacific Racing Association d/b/a Golden Gate Fields

  
Name: Kay Webb  
Title: Simulcast Coordinator

12/31/03  
Date

Guest:  
Lewiston Raceways, Inc.  
  
Name: Wayne Day  
Title: Treasurer

12/29/03  
Date

Witness

Date

**GGF**

# Capitol

12. This agreement shall be governed by and interpreted in accordance with the laws of the state of California.

13. CALIFORNIA HORSE RACING BOARD REQUIREMENTS. This agreement is subject to requirements of the California Horse Racing Board or the GUEST State Racing Commission, required to be set forth herein, is specifically incorporated herein by reference. Without limiting the foregoing, GUEST hereby acknowledges Rule 1950.1 of the California Horse Racing Board, which prohibits rebates on wagers, and GUEST agrees that it shall not accept less than the face amount of wagers from patrons and shall not refund or rebate any consideration based on the face amount of wagers from patrons and shall not refund or rebate any consideration based on the face amount of any wagers to patrons.

In witness wherefore, the parties have executed this agreement the day and year first above written.

Capitol Racing L.L.C.  
Christopher J. Schick

Director of Simulcasting

Association: Penn National

By: Richard J. Schnease

Signature:

Title: P and GM

**Exhibit N: Host's Changes to RACING INDUSTRY UNIFORM SIMULCAST WAGERING AGREEMENT, Version 001**

Set forth in this Exhibit N are those changes that the Host Track has made to the Standard Simulcast Agreement constituting Sections 1 through 19, above. Host and Guest agree that the Standard Simulcast Agreement and these Exhibits, including but not limited to this Exhibit N, are further modified by the Schedules to this Agreement that follow hereafter, including but not limited to Schedule N.



**Rebates on Wagers:** GUEST shall not accept less than the face amount of wagers from patrons, or agrees to refund or rebate any consideration based on the face amount of any wagers to patrons.



For purposes of **Section 8 (B) Payment**, a "race week" is defined as ending on Monday.

For the purposes of **Section 12 (C)**: Guest represents and warrants to Host that (I) Guest is acting at all times under this Agreement as principal, and not as an agent for Secondary Recipients, bettors or others, and (ii) Guest is a "United States person" within the meaning of Section 7701 (a)(30) of the Internal Revenue Code of 1986 as amended (the "code"). Guest agrees to provide such documentary substantiation of the foregoing, including but not limited to, Internal Revenue Service ("IRS") forms W2G and/or 1042S as is reasonably requested by Host from time to time. Guest agrees that it, and not Host, is responsible for any U.S. federal income tax withholding required with respect to any payments which are ultimately made, pursuant to this Agreement and related arrangements, to Secondary Recipients, bettors or others who are non-United States persons. Guest agrees to indemnify, save, defend and hold harmless Host and its officers, directors, agents and employees, and the successors and assigns of the foregoing, from and against the full amount of any taxes (including withholding taxes), penalties, additions to tax, and interest with respect thereto, as well as any related costs, expenses, and disbursements, including attorneys' fees, claimed by the IRS or other governmental taxing authority with respect to (x) any payments by Host to Guest under this Agreement, (y) any other payments made (or deemed by any governmental taxing authority to be made) by Host pursuant to this Agreement, and (z) any payments to Secondary Recipients, bettors or others which are contemplated by this Agreement.

For the purposes of **Section 1**, this agreement specifically permits Guest to provide live Simulcasts of Hosts races in licensed racetracks and off-track betting facilities according to the terms contained therein. Beyond licensed racetracks and off-track betting facilities, the audiovisual display of live racing from Host on television, via Internet video streaming, or any other electronic media is prohibited under the terms of the Agreement.

For the purposes of **Section 2**, Under the terms of the Agreement, the Guest is prohibited from accepting any account wagers by means of the Internet/Personal Computer or other electronic devices and is prohibited from accepting account wagers by telephone on live races conducted by Host from residents of the following thirteen (13) states: California, Indiana, Idaho, Kentucky, Louisiana, Maryland, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon and Wyoming. This list may be expanded from time to time.

For the purposes of **Section 4 (G)**, the illegal interception, unscrambling and re-broadcast of the audiovisual display of Host live races and the acceptance of interstate account wagers on live races in the absence of a specific agreement to do so constitute violations of federal statutes, state statutes and common law entitling Del Mar to various remedies.

**Del Mar Thoroughbred Club**

Signature: \_\_\_\_\_

Name: Paul A. Porter

Title: Simulcast Sales Manager

Date: May 23, 2003

Signature: \_\_\_\_\_

Name: G. CARMICHAEL

Title: Director

Date: 7.12.03

~~Pari-Mutuel & OTB Operations~~

LACF

**Exhibit 4: Decoder Services and Other Contractor Services**

A. Decoder Services

Fairplex will provide an Autotote decoder request form. The completed form should be faxed to (212) 754-4391. If you are currently using an Autotote decoder to receive the Del Mar signal you may continue to use the decoder for Fairplex.

B. Past Performance and Other Program Information Services

Fairplex past performances are available through Equibase. Please contact the simulcast office for further information.

C. Totalisator Company

Autotote  
Don Sanborn  
(909) 623-3111

D. Telephone Company

To order a phone line, please call Paul A. Porter at (858) 792-4232.

**Exhibit 5: Compensation Rates; Method of Payment**

Please refer to Schedule E

**Exhibit 6: Trademarks and Service Marks**

From Sections 15(A) and 15(B):

Guest shall not harm or disparage the marks and shall use the marks only in a high quality manner. Fairplex reserves the right to request that Guest remove any advertisements bearing the marks which do not adequately reflect the quality required of Fairplex from the marketplace. Upon receipt of any such request, Guest shall promptly remove any such advertisements.

**Exhibit N: Host's Changes to RACING INDUSTRY UNIFORM SIMULCAST WAGERING AGREEMENT, Version 001**

Set forth in this Exhibit N are those changes that the Host Track has made to the Standard Simulcast Agreement constituting Sections 1 through 19, above. Host and Guest agree that the Standard Simulcast Agreement and these Exhibits, including but not limited to this Exhibit N, are further modified by the Schedules to this Agreement that follow hereafter, including but not limited to Schedule N.



**Rebates on Wagers:** GUEST shall not accept less than the face amount of wagers from patrons, or agrees to refund or rebate any consideration based on the face amount of any wagers to patrons.



**Payment:** For purposes of section 8B a "race week" is defined as ending on Monday.

**REPORT ON  
JOCKEYS' GUILD PROPOSAL FOR  
JOCKEY WEIGHT ALLOWANCES**

**Regular Board Meeting  
March 25, 2004**

**BACKGROUND**

The California Horse Racing Board's rules and regulations govern every aspect of jockey weight allowances. Board rules declare when a jockey must report to the jockey's room; procedures for weighing out; items that can be included in the jockey's weight; and procedures for weighing in. In addition, the Board's rules provide a scale of weights for age that set forth the weight to be carried if the conditions for a race do not specify otherwise.

The Jockeys' Guild (Guild) has written a proposal to amend the jockeys' weight allowance program in California. The Guild's proposal was to be heard at the February 19, 2004, Regular Board Meeting, but the item was held over. The Guild is now prepared to bring the proposal to the Board for discussion.

**RECOMMENDATION**

Staff recommends the Board hear from the Jockeys' Guild representative.

**STAFF ANALYSIS**  
**TOC AGREEMENT WITH THE JOCKEYS' GUILD**

**REGULAR BOARD MEETING**  
**MARCH 25, 2004**

**Background:**

Business and Professions Code Section 19612.9 mandates a health and welfare program for California jockeys. The law requires an agreement between the Thoroughbred Owners of California and the Jockeys' Guild in order to implement that program. The two parties have recently concluded negotiations on a new contract presented here for Board approval.

**Recommendation:**

Staff recommends that the Board approve this request.

## AGREEMENT

It is hereby agreed by and between the Jockeys' Guild, Inc. (the "GUILD") and the Thoroughbred Owners of California, Inc. (the "TOC") on this 10th day of March, 2004 that subject to the approval of the California Horse Racing Board (the "BOARD") both parties enter into this Agreement to extend the prior Agreement implementing the provisions of California Business and Professions Code 19612.9 (the "STATUTE") and to provide health and welfare benefits to California licensed jockeys, former California licensed jockeys, and their dependents (the "CALIFORNIA JOCKEYS").

1. The GUILD represents that it was certified by the BOARD on December 6, 1996 as the representative of a majority of the licensed CALIFORNIA JOCKEYS.
2. The TOC represents that it is the organization responsible for negotiating purse agreements, satellite wagering agreements, and all other business agreements on behalf of the horsemen participating in California racing meetings.
3. The GUILD represents that its principal office address is at 134 East Chestnut Avenue, Monrovia, California 91016.
4. The parties acknowledge that this Agreement is expressly conditioned upon approval by the BOARD pursuant to the STATUTE, and will have no force or effect unless and until such approval is obtained.
5. The GUILD has established a trust known as the Jockeys' Guild Health and Welfare Trust (the "TRUST") for the purpose of holding and expending all monies distributed pursuant to Section 19612.9 (2). The TRUST shall continue to be maintained at all times as a tax-exempt entity. The TOC and the BOARD shall have the right upon reasonable notice to the TRUST to review the books and records of the TRUST at any time.
6. The GUILD shall appoint a Certified Public Accountant for the purpose of providing an annual audit to the TOC and the BOARD of all monies received and expended by the TRUST pursuant to Section 19612.9. Semiannually, the GUILD shall present to the TRUST, the TOC, and the BOARD an audited statement of amounts expended to defray the cost of administration and the provision of health and welfare benefits to eligible CALIFORNIA JOCKEYS ("AUDITED STATEMENTS"). Beginning in plan year 2004, the AUDITED STATEMENTS for the periods ending December 31 of each calendar year shall be filed with the TOC and the BOARD no later than 120 days following the end of the reporting period. Beginning in plan year 2004, the AUDITED STATEMENTS for the periods ending June 30 of each calendar year shall be filed in the same fashion, no later than 90 days from the end of the reporting period. The GUILD shall also file annually with the BOARD and TOC an audited statement of the revenue and expenditures made of The Jockeys' Guild Benefit Plan.

7. If in a given period, the amounts expended by the GUILD on behalf of eligible CALIFORNIA JOCKEYS is less than the amounts received by the TRUST pursuant to this Agreement, said excess amount will be retained and reinvested by the TRUST to be utilized in the event there are periods in which the amounts received by the TRUST are less than the amounts expended by the GUILD to provide such benefits to eligible CALIFORNIA JOCKEYS. All of the monies paid to the TRUST by the State of California pursuant to the STATUTE will be spent solely to defray the cost of administration and the provision of health and welfare benefits paid for eligible CALIFORNIA JOCKEYS.
8. By the term, health and welfare benefits (“BENEFITS”) is meant eligible CALIFORNIA JOCKEYS shall participate in plans the GUILD has established for health insurance, aid to disabled jockeys, life insurance, and related benefits. Attached to this Agreement as Schedule A is a summary of the terms of the health and benefit plans which the GUILD made available to CALIFORNIA JOCKEYS pursuant to this Agreement effective July 1, 2003. If the GUILD adopts any material amendments to those BENEFITS, the terms of said amendments shall be filed with the BOARD and the TOC. The GUILD shall be reimbursed for the expenditures in providing health insurance (less health insurance premiums contributed by the CALIFORNIA JOCKEYS), life insurance, temporary disability, and permanent disability (including medical aid and monthly disbursements) to participating CALIFORNIA JOCKEYS. An independent insurance broker, appointed by the GUILD, shall determine based on sound actuarial principles the total cost of health and life insurances, to be provided for CALIFORNIA JOCKEYS pursuant to this Agreement, such determination to be filed with the BOARD and the TOC.
9. By the term, administrative expenses (“EXPENSES”) is meant expenditures related to the maintenance of this Agreement, including administrative, legal, accounting, and/or related costs. Beginning with the plan year 2004, the GUILD will agree to limit the amount of actual expenses it can annually be reimbursed to no more than fifteen percent (15%) of the total amount expended on BENEFITS for CALIFORNIA JOCKEYS. In the event of extraordinary or increasing EXPENSES, should EXPENSES exceed the maximum allowed, the GUILD may petition the TOC and the BOARD for relief.
10. Pursuant to Section 19612.9 (c), the GUILD shall develop reasonable non-discriminatory criteria for eligibility for said BENEFITS to be paid for by the monies expended by the TRUST. CALIFORNIA JOCKEYS who are not members of the GUILD shall be entitled to become and remain eligible for said BENEFITS available for CALIFORNIA JOCKEYS who are members of the GUILD. To be eligible for benefits under this program, an active jockey must (a) ride at least 100 mounts in legal pari-mutuel races per year in the United States and (b) at least 50 of said mounts must be in the State of California. The mount requirements can be obtained in the previous year or the current year. If a jockey qualifies in the current year, benefits will commence at the beginning of the qualification month. If a jockey qualifies in the previous year, he or she is eligible for benefits for the entire subsequent calendar year. Retired jockeys must (a) not hold a license as a jockey in any racing jurisdiction, (b) must have ridden 10,000 career mounts in the United States or ten (10) years as a licensed California jockey, and (c) ridden at least 100 mounts in legal pari-mutuel races per year in the United States for five (5) consecutive years before retirement

and ridden at least 50 of the aforementioned mounts per year must have been in the State of California for five (5) consecutive years before retirement. Permanently disabled retired jockeys must (a) not hold a license as a jockey in any racing jurisdiction and (b) must have suffered a career-ending injury at a California racetrack recognized by the BOARD or must achieve the retired member qualifications if injured at a track outside of California. In January of each year of this Agreement, the GUILD shall notify each California jockey eligible for benefits under this program of the opportunity to participate in this program by mailing a letter describing the program to the address maintained for such jockey by the BOARD.

11. All participating CALIFORNIA JOCKEYS shall, in accordance with the federal Health Insurance Portability and Accountability Act of 1996, sign a waiver to release their name, dependency status, and aggregate insurance totals for health insurance premiums paid, life insurance premiums paid, disability disbursements received, medical aid for permanently disabled disbursements received or paid on behalf of CALIFORNIA JOCKEYS for distribution to the BOARD and the TOC upon request and appropriate GUILD sanctioned committees; none of the aforementioned personal information will be released to parties outside of the aforementioned distribution groups. If the jockey refused to sign the waiver, the information shall be forwarded with the personally identifiable information removed.
12. Qualifying mounts shall be calculated by the GUILD from Horsemen's Bookkeeper reports already provided to the GUILD. A jockey may dispute the GUILD's mount calculation by providing the GUILD a report from an independent source at his or her own expense.
13. GUILD and non-GUILD members must contribute subsidized health insurance premiums payable to the GUILD bimonthly, two months in advance. CALIFORNIA JOCKEYS, both GUILD and non-GUILD members must contribute mount fees pursuant to the GUILD's by-laws.
14. Thirty-days (30) after receipt of the semiannual AUDITED STATEMENTS by the TOC and the BOARD, the GUILD, unless there are objections by the TOC and/or BOARD alleging in writing inadequacies in the AUDITED STATEMENTS, may withdraw the expenditures associated with the BENEFITS and EXPENSES paid for eligible CALIFORNIA JOCKEYS presuming adequate funds exist. Once an objection is filed, the BOARD shall confer with the parties within fifteen (15) days to resolve the issue. If the BOARD fails to schedule and hold the meeting within the specified time, the funds shall be released.
15. The BOARD shall notify the GUILD in writing by August of each calendar year a breakdown of actual racetrack contributions to be deposited into the TRUST. The BOARD, on its own motion, shall perform all due diligence to ensure unclaimed refunds are appropriated to the TRUST by August of each calendar year.
16. Upon approval of this Agreement by the BOARD, the TOC assigns to the TRUST its right, title, and interest in an amount pursuant to Section 19612.9 (2) of the STATUTE of \$450,000.00, adjusted annually for inflation, pursuant to Section 19612.9 upon assurance

from the BOARD that adequate funds exist for the assignment. Should the funds be insufficient to meet the requirement, the assignment will be limited to the funds available. The BOARD shall notify the GUILD in writing the inflationary adjustments as soon as determined.

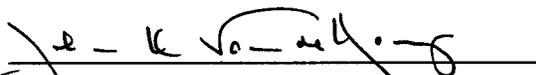
17. This Agreement shall be in effect for three years from July 1, 2003 through June 30, 2006.
18. Pursuant to Section 19612.9 (3) of the STATUTE, if a new Agreement is not reached before the regular meeting of the BOARD in November of any calendar year, the BOARD, on its own motion, shall provide that the provisions of the existing Agreement, if any, shall remain in effect until a subsequent Agreement is reached.



Dr. L. Wayne Gertmenian  
President & CEO  
Jockeys' Guild, Inc.

10 March 04

Date



John K. Van de Kamp  
President & General Counsel  
Thoroughbred Owners of California, Inc.

10 March 04

Date

## **SCHEDULE A CONT.**

### **QUALIFICATIONS FOR PARTICIPATION**

#### **ACTIVE RIDER QUALIFICATIONS**

1. At least 100 mounts in legal pari-mutuel races per year in the United States in the previous or current year, and
2. At least 50 of aforementioned mounts must be in the State of California in the previous or current year

#### **RETIRED MEMBER QUALIFICATIONS**

1. Must not hold a license as a jockey in any racing jurisdiction, and
2. Must have ridden 10,000 career mounts in the United States or ten (10) years as a licensed California jockey, and
3. At least 100 mounts in legal pari-mutuel races per year in the United States for five (5) consecutive years before retirement and ridden at least 50 of the aforementioned mounts per year must have been in the State of California for five (5) consecutive years before retirement

#### **PERMANENTLY DISABLED QUALIFICATIONS**

1. Must not hold a license as a jockey in any racing jurisdiction, and
2. Must have suffered a career-ending injury at a California racetrack recognized by the California Horse Racing Board or must achieve the retired member qualifications if injured at a track outside of California

**STAFF ANALYSIS**  
**STATUS OF NORTHERN CALIFORNIA RACING**

**REGULAR BOARD MEETING**  
**MARCH 25, 2004**

**Background:**

Included in this package is the memo from the CHRB Race Dates Committee that was recently sent to the California racing industry. One of several issues that the Committee will likely address this year is the form and substance of thoroughbred racing in Northern California, more specifically, the Bay Area.

Currently there are 21 weeks assigned to Golden Gate Fields with an equal amount assigned to Bay Meadows. Although race dates are assigned to Bay Meadows through the remainder of 2004, Magna has not yet indicated to the Race Dates Committee the status of the facility after 2004. It is anticipated that this issue will be fully aired during the course of the Committee's meetings that will be held in the next few months to set the 2005 racing calendar.

**Recommendation:**

This item is for information and discussion.

## CALIFORNIA HORSE RACING BOARD

**M e m o r a n d u m**

**Date** : March 11, 2004

**To** : ALL RACING ASSOCIATIONS  
ALL RACING FAIRS AND CARF  
ALL HORSEMEN'S ORGANIZATIONS  
THE JOCKEYS' GUILD

**From** : **CHRB Race Dates Committee**  
Commissioner Sheryl Granzella, Chairman  
Commissioner Marie Moretti, Member

**Subject** : **2005 RACING CALENDAR**

The Race Dates Committee will be discussing next year's racing calendar a little earlier than usual this year. The first meeting to discuss 2005 dates may take place in April. In preparation for that event, we are requesting that you forward your written proposals and comments to Roy Wood in Sacramento **by March 29, 2004**. Proposals should contain not only the commencement and ending dates of race meets planned for 2005, but also the number of race days and the number of live race events that this represents.

For further information regarding this request, please contact John Reagan at (916) 263-6023.

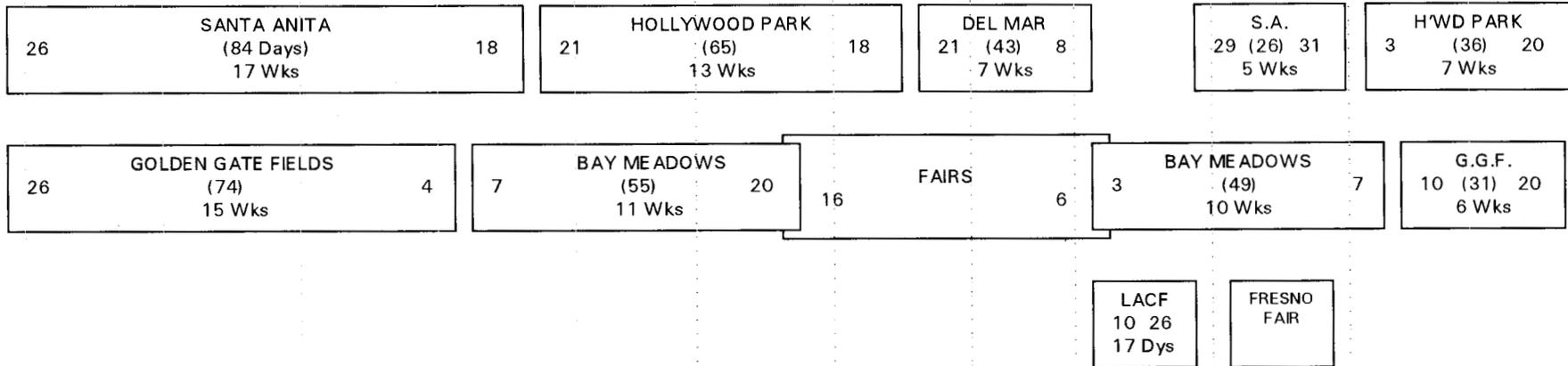
1010 Hurley Way, Suite 300, Sacramento, CA 95825

Phone: (916) 263-6000 ■ FAX: (916) 263-6042

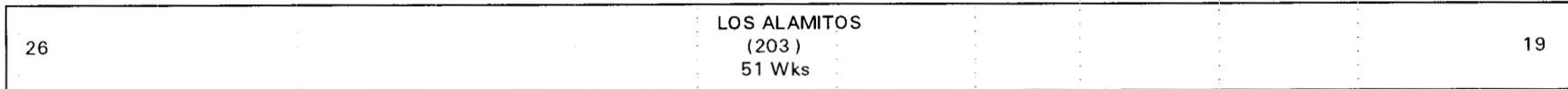
2004 RACING CALENDAR  
 CHRB APPROVED RACE DATES

DEC JAN FEB MAR APR MAY JUNE JULY AUG SEP OCT NOV DEC JAN

THOROUGHBRED & FAIR MEETINGS



QUARTER HORSE MEETING



HARNESS MEETINGS



NORTHERN FAIRS (RACING DAYS)  
 STOCKTON (10), JUNE 16 - JUNE 27  
 PLEASANTON (11), JUNE 30 - JULY 11  
 VALLEJO (10), JULY 14 - JULY 25  
 SANTA ROSA (12), JULY 28 - AUG 9  
 SAN MATEO (12), AUG 11 - AUG 23  
 FERNDALE (10), AUG 12 - AUG 22  
 SACRAMENTO (12), AUG 25 - SEPT 6  
 FRESNO FAIR (11), OCT 6 - OCT 17

Approved August 21, 2003

ITEM 10

**STAFF ANALYSIS**  
**STAFF REPORT ON END-OF-MEET RESULTS**

**REGULAR BOARD MEETING**  
**MARCH 25, 2004**

**Background:**

This item contains end-of-meet reports for concluded race meets. Staff is prepared to answer questions regarding the information presented.

**Recommendation:**

This item is for information and discussion.

## END-OF-MEET OUTLINE SUMMARY

For the California Horse Racing Board meeting, March 25, 2004. This report includes a summary for the following racing meeting: CAPITOL RACING ASSOCIATION.

### Capitol Racing Association at Cal Expo, Sacramento

September 26 – February 29, 2004

Race days: 87

## AVERAGE DAILY STATISTICS

	PERCENTAGE CHANGE
Ave. Daily handle	2.84%
Ave. On-track	-3.91%
Ave. Off-track	8.91%
Ave. Interstate-exported	-1.54%
Ave. ADW	392.71%
Ave. Daily attendance-Calif.	-5.10%
Ave. On-track	-37.27%
Ave. Off-track	-1.21%

### CAPITOL RACING at CAL EXPO

YEAR	Fall 1999	Fall 2000	Fall 2001	Fall 2002	Fall 2003
TOTAL RACE DAYS	29	28	50	46	87
TOTAL HANDLE	25,336,656	25,980,920	45,623,242	41,612,833	80,939,449
ON-TRACK	2,074,476	2,111,795	3,930,881	3,332,960	6,056,937
OFF-TRACK	16,658,356	17,743,195	30,578,063	27,524,320	56,696,734
INTERSTATE	6,603,824	6,125,930	11,114,298	9,766,282	18,185,779
ADW	0	0	0	989,271	9,218,707
LIVE	20,115,644	19,664,225	34,619,354	32,713,458	61,914,515
INTERSTATE IMPORTED	5,221,012	6,316,695	11,003,888	8,535,894	18,707,952
INTERNATIONAL IMPORTED	0	0	0	363,481	316,982
AVERAGE DAILY HANDLE	873,678	927,890	912,465	904,627	930,338
ON-TRACK	71,534	75,421	78,618	72,456	69,620
OFF-TRACK	574,426	633,686	611,561	598,355	651,687
INTERSTATE	227,718	218,783	222,286	212,310	209,032
AVE. ADW	0	0	0	21,506	105,962
AVE. CALIF. DAILY HANDLE	645,960	709,107	690,179	670,810	721,307
AVERAGE LIVE	693,643	702,294	692,387	711,162	711,661
INTERSTATE IMPORTED	180,035	225,596	220,078	185,563	215,034
INTERNATIONAL IMPORTED	0	0	0	7,902	3,643
TOTAL TAKEOUT	5,591,022	5,844,034	10,314,888	9,159,894	18,266,983
EFFECTIVE TAKEOUT	22.07%	22.49%	22.61%	22.01%	22.57%
STATE LICENSE FEES	101,782	117,365	208,305	186,215	369,565
STATE %	0.40%	0.45%	0.46%	0.45%	0.46%
TRACK COMMISSIONS	1,301,161	1,372,920	2,394,512	2,154,255	4,298,294
ADW COMMISSIONS	0	0	0	48,781	493,275
TOTAL COMMISSIONS	1,301,161	1,372,920	2,394,512	2,203,036	4,791,569
TRACK %	5.14%	5.28%	5.25%	5.18%	5.31%
HORSEMEN'S PURSES	1,216,498	1,282,616	2,237,966	2,014,110	4,009,844
ADW PURSES	0	0	0	45,713	460,816
TOTAL ADW	1,216,498	1,282,616	2,237,966	2,059,823	4,470,660
HORSEMEN'S %	4.80%	4.94%	4.91%	4.84%	4.95%

**CAPITOL RACING at CAL EXPO**

YEAR	Fall 1999	Fall 2000	Fall 2001	Fall 2002	Fall 2003
CALIFORNIA ATTENDANCE	129,365	129,092	203,448	186,184	334,164
ON-TRACK	13,240	12,447	23,289	20,082	23,824
OFF-TRACK	116,125	116,645	180,159	166,102	310,340
DAILY ATTENDANCE	4,461	4,610	4,069	4,047	3,841
AVERAGE DAILY ON - TRACK	457	445	466	437	274
AVERAGE DAILY OFF - TRACK	4,004	4,166	3,603	3,611	3,567
TOTAL RACE EVENTS	378	363	619	569	1,120
STARTS	2,860	2,790	4,631	4,260	8,769
AVERAGE STARTS PER EVENT	7.6	7.7	7.5	7.5	7.8
AVERAGE HANDLE PER START	7,033	7,048	7,476	7,679	7,061

### CAPITOL RACING AT CAL EXPO AVERAGE DAILY HANDLE

