

WEINSTEIN

Court Reporters

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

BEFORE THE BOARD OF STEWARDS

ORIGINAL

IN THE MATTER OF THE)
COMPLAINT AGAINST:)

MICHAEL PENDER,)
TRAINER)

CASE NO. 19SA0143

RESPONDENT.)
_____)

TRANSCRIPT OF PROCEEDINGS

ARCADIA, CALIFORNIA

TUESDAY, MAY 14, 2019

REPORTED BY:

MICHELLE E. DERIEG,
HEARING REPORTER

JOB NO.: 19-SA064

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

BEFORE THE BOARD OF STEWARDS

IN THE MATTER OF THE)
COMPLAINT AGAINST:)
)
MICHAEL PENDER,)
TRAINER) CASE NO. 19SA0143
)
)
RESPONDENT.)
_____)

TRANSCRIPT OF PROCEEDINGS, TAKEN AT
SANTA ANITA RACETRACK, STEWARDS' OFFICE,
285 W. HUNTINGTON DRIVE, ARCADIA, CALIFORNIA,
ON TUESDAY, MAY 14, 2019, AT 10:00 A.M.,
HEARD BEFORE THE BOARD OF STEWARDS, REPORTED
BY MICHELLE E. DERIEG, HEARING REPORTER.

APPEARANCES:

BOARD OF STEWARDS:

GRANT BAKER
KIM SAWYER
LUIS JAUREGUI

FOR THE STATE:

ROBERT BRODNIK
GENERAL COUNSEL
STATE OF CALIFORNIA
CALIFORNIA HORSE RACING BOARD
1010 HURLEY WAY
SUITE 300
SACRAMENTO, CALIFORNIA 95825
(916) 263-6000
RJBRODNIK@CHRB.CA.GOV

FOR THE RESPONDENT:

LAW OFFICES OF LICHT & LICHT
ATTORNEY AT LAW
BY: ROGER H. LICHT
9230 W. OLYMPIC BOULEVARD
SUITE 202
BEVERLY HILLS, CALIFORNIA 90212
(310) 278-1920

ALSO PRESENT:

MIKE ALFORD
MIKE PENDER
MICHAEL ROGERS

I N D E X

OPENING STATEMENTS

	<u>PAGE</u>	<u>LINE</u>
MR. BRODNIK	8	12

CLOSING STATEMENTS

	<u>PAGE</u>	<u>LINE</u>
MR. BRODNIK	147	7
MR. LICHT	150	10

<u>STATE'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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MICHAEL VAN PENDER (FURTHER)	9 36			
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HEATHER WHARTON	37	50		
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RICK ARTHUR	60	72		
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<u>RESPONDENT'S WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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MICHAEL VAN PENDER	83	100		
--------------------	----	-----	--	--

MICHAEL ALFORD	102			
----------------	-----	--	--	--

HEATHER WARREN	119	130		
----------------	-----	-----	--	--

GENARO VALLEJO	136	141		
----------------	-----	-----	--	--

E X H I B I T S

<u>STATE'S:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
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1 - X-RAY OF "NEW KARMA" FRONT LEFT ANKLE, DATED FEBRUARY 25, 2019	15	116
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I N D E X (CONTINUED)

<u>STATE'S:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
2 - X-RAYS OF "NEW KARMA" FRONT LEFT ANKLE, DATED FEBRUARY 25, 2019	15	116
3 - X-RAY OF "NEW KARMA" FRONT LEFT ANKLE, DATED FEBRUARY 25, 2019	15	116
4 - 20-PAGE COMPLAINT PACKET CASE NO. 19SA0143	116	116
<u>RESPONDENT'S:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>RECEIVED IN EVIDENCE</u>
A - "NEW KARMA" LIFETIME PAST PERFORMANCES	147	147

1 ARCADIA, CALIFORNIA; TUESDAY, MAY 14, 2019

2 10:00 A.M.

3
4
5 STEWARD BAKER: TODAY IS MAY 14, 2019. WE'RE IN THE
6 STEWARDS' OFFICE AT SANTA ANITA PARK, ARCADIA, CALIFORNIA. THE
7 REASON WE'RE HERE TODAY IS TO HEAR COMPLAINT, CASE NUMBER
8 19SA0143. THE CALIFORNIA HORSE RACING BOARD HAS FILED A
9 COMPLAINT AGAINST TRAINER MICHAEL PENDER FOR ALLEGED VIOLATION
10 OF TWO RULES IN THEIR RULE BOOK, AND THOSE RULES ARE 1902.5,
11 ANIMAL WELFARE; AND RULE 1887, TRAINER OR OWNER TO ENSURE
12 CONDITION OF THE HORSE.

13 PRESENT FOR TODAY'S HEARING ARE TRAINER MICHAEL
14 PENDER. HE'S REPRESENTED BY ATTORNEY ROGER LICHT.
15 REPRESENTING THE CALIFORNIA HORSE RACING BOARD IS GENERAL
16 COUNSEL ROBERT BRODNIK. ALSO WITH THE C.H.R.B. IS INVESTIGATOR
17 MIKE ALFORD. THE STEWARDS HERE TODAY ARE LUIS JAUREGUI, KIM
18 SAWYER AND MYSELF, GRANT BAKER.

19 AS I STATED, MR. PENDER'S BEING REPRESENTED BY
20 MR. LICHT SO THERE'S NO REASON TO ASK THE QUESTIONS THAT WE
21 TYPICALLY ASK FOR LICENSEES NOT REPRESENTED BY COUNSEL. SO
22 WITH THAT -- ALSO, I WANT TO STATE THAT MICHELLE DERIEG FROM
23 WEINSTEIN COURT REPORTERS, LLC IS TRANSCRIBING THE PROCEEDINGS.

24 AND WITH THAT, MS. DERIEG, CAN YOU PLEASE SWEAR
25 IN MR. PENDER, PLEASE.

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MICHAEL VAN PENDER,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE STATE AND HAVING BEEN FIRST DULY SWORN BY THE HEARING REPORTER, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

STEWARD BAKER: WITHOUT OBJECTION, GENERALLY IN THESE PROCEEDINGS, WE HAVE THE INVESTIGATOR OPEN THE HEARING WITH THE READING OF THE COMPLAINT.

MR. LICHT: THAT'S FINE. AND THE C.H.R.B. WILL MAKE THEIR CASE FIRST; RIGHT?

STEWARD BAKER: CORRECT.

MR. ALFORD, CAN YOU TELL US WHY WE'RE HERE TODAY, PLEASE?

MR. ALFORD: YES, SIR. AS THE COMPLAINT READS, TRAINER PENDER KNOWINGLY WORKED THE HORSE "NEW KARMA" AFTER A VETERINARIAN EXAMINATION DISCLOSED A FRACTURE OF THE HORSE'S LEFT FRONT LEG. THE HORSE WAS THEN SHIPPED TO GOLDEN GATE FIELDS WHERE IT WAS ENTERED INTO A RACE, BUT SUBSEQUENTLY SCRATCHED DUE TO HIS INJURY.

STEWARD BAKER: OKAY. THANK YOU.

MR. BRODNIK, IS MR. ALFORD YOUR FIRST WITNESS?

MR. BRODNIK: DO YOU WANT US TO GIVE AN OPENING STATEMENT?

STEWARD BAKER: YEAH. WHY DON'T BOTH PARTIES GIVE AN OPENING STATEMENT.

1 MR. BRODNIK: AND JUST BEFORE WE DO THAT, I BELIEVE
2 DEFENSE COUNSEL AND I HAVE ONE STIPULATION, THAT THE HORSE "NEW
3 KARMA" DID HAVE A FRACTURE TO HIS LEFT FRONT SESAMOID.

4 IS THAT TRUE?

5 MR. LICHT: SO STIPULATED.

6 STEWARD BAKER: LEFT FRONT SESAMOID?

7 MR. BRODNIK: YES.

8 AND WITH THAT, I'M HAPPY TO GIVE AN OPENING
9 STATEMENT.

10 STEWARD BAKER: PROCEED.

11
12 OPENING STATEMENT

13
14 MR. BRODNIK: GOOD MORNING. THIS IS A CASE ABOUT THE
15 TREATMENT AND TRAINING OF "NEW KARMA" BY TRAINER MICHAEL
16 PENDER. WHAT I ANTICIPATE YOU WILL HEAR IS THAT DR. WHARTON
17 TREATED "NEW KARMA" ON FEBRUARY 25TH OF THIS YEAR AND AT THAT
18 POINT, SHE DIAGNOSED "NEW KARMA" WITH A LEFT FRONT SESAMOID
19 FRACTURE. SHE INFORMED TRAINER PENDER OF THIS AND DIRECTED HIM
20 TO EITHER HAVE THE HORSE HAVE SURGERY OR TO TURN THE HORSE OUT.
21 DESPITE THIS, TRAINER PENDER WORKED THE HORSE 30 DAYS LATER
22 HERE AT SANTA ANITA. HE THEN SHIPPED THE HORSE TO GOLDEN GATE
23 TO RUN, AND IT WAS THERE THE HORSE WAS REEXAMINED AND
24 RE-X-RAYED, AND IT WAS SEEN THAT THE SAME FRACTURE WAS PRESENT.

25 YOU WILL HEAR FROM DR. ARTHUR WHO HAS REVIEWED

1 THIS INFORMATION IN THIS CASE THAT THIS IS THE SAME FRACTURE,
2 THAT FRACTURES DO NOT HEAL WITHIN THAT TIME PERIOD.
3 ADDITIONALLY, DR. ARTHUR WILL TELL YOU THAT, IN HIS OPINION,
4 THIS WAS ABUSE TO WORK THIS ANIMAL WITH THIS PREEXISTING
5 FRACTURE IN A WORKOUT WITHOUT HAVING ANY KNOWLEDGE WHETHER THE
6 FRACTURE HAD HEALED OR SEEKING ANY FOLLOW-UP VETERINARY
7 TREATMENT BEFORE REQUIRING THE HORSE TO ENTER A WORKOUT.

8 AND WITH THAT, THAT IS MY OPENING STATEMENT.

9 STEWARD BAKER: THANK YOU.

10 MR. LICHT, DO YOU HAVE AN OPENING STATEMENT?

11 MR. LICHT: WE'LL DEFER UNTIL WE PRESENT OUR CASE.

12 STEWARD BAKER: OKAY. THANK YOU.

13 MR. BRODNIK, DO YOU HAVE YOUR FIRST WITNESS?

14 MR. BRODNIK: YES. ACTUALLY, THE C.H.R.B. AT THIS
15 POINT WOULD LIKE TO CALL MICHAEL PENDER.

16 STEWARD BAKER: MICHAEL PENDER. OKAY. PROCEED.

17
18 DIRECT EXAMINATION

19
20 BY MR. BRODNIK:

21 Q MR. PENDER, DO YOU HOLD A C.H.R.B. TRAINER'S
22 LICENSE?

23 A YES.

24 Q OKAY. AND YOU WERE THE TRAINER OF RECORD FOR
25 "NEW KARMA" FROM NOVEMBER 15, 2018 THROUGH ABOUT THE FIRST FEW

1 WEEKS OF APRIL OF THIS YEAR; IS THAT RIGHT?

2 A YES.

3 Q YOU BECAME THE TRAINER OF "NEW KARMA" AFTER THAT
4 HORSE WAS PURCHASED IN A \$20,000 CLAIMING RACE?

5 A THAT'S CORRECT.

6 Q AND "NEW KARMA" RACED FOR YOU IN JANUARY OF THIS
7 YEAR AND AGAIN ON FEBRUARY 19, 2019; IS THAT RIGHT?

8 A THAT'S CORRECT.

9 Q NOW, ON FEBRUARY 25, DID YOU HAVE DR. HEATHER
10 WHARTON LOOK AT "NEW KARMA"?

11 A YES.

12 Q OKAY. AND --

13 A WHAT'S THE DATE AGAIN ON THAT?

14 Q OKAY. TO YOUR RECOLLECTION, DID "NEW KARMA" RUN
15 ON FEBRUARY 19TH OF 2019?

16 A FEBRUARY 19TH? I DON'T HAVE HIS PP'S, BUT YES,
17 I THINK THAT'S ACCURATE.

18 Q OKAY. WOULD IT REFRESH YOUR RECOLLECTION TO
19 LOOK AT THAT?

20 STEWARD BAKER: AND CAN I INTERJECT REALLY QUICKLY?

21 MR. BRODNIK, I APOLOGIZE. IF YOU HAVE A COPY OF THE PAST
22 PERFORMANCES, CAN YOU PROVIDE ONE FOR THE STEWARDS ALSO? I
23 DON'T SEE IT IN THE COMPLAINT PACKET.

24 STEWARD SAWYER: ME, TOO.

25 STEWARD BAKER: AND ALSO A COPY FOR MR. LICHT IF HE

1 DOESN'T HAVE ONE.

2
3 (PAUSE IN THE PROCEEDINGS.)

4
5 BY MR. BRODNIK:

6 Q SO JUST TO REFRESH YOUR RECOLLECTION,
7 MR. PENDER, I'M GOING TO SHOW --

8 A CAN YOU ASK ME THE QUESTION AGAIN ABOUT --

9 Q LET ME ASK YOU THIS FIRST.

10 STEWARD BAKER: LET'S TAKE A QUICK BREAK. I WANT TO
11 MAKE SURE I'M HEARING EVERYTHING THAT'S SAID.

12 OKAY. I'M SORRY TO INTERRUPT. THIS IS HELPFUL.

13 BY MR. BRODNIK:

14 Q WOULD IT REFRESH YOUR RECOLLECTION, MR. PENDER,
15 TO SEE "NEW KARMA'S" PAST RACING HISTORY? WOULD THAT REFRESH
16 YOUR RECOLLECTION AS TO WHETHER HE RAN ON FEBRUARY 19TH OF THIS
17 YEAR?

18 A I KNEW HE RAN TWICE SINCE THE CLAIM IN NOVEMBER.
19 I DIDN'T KNOW THE EXACT DATE.

20 Q OKAY.

21
22 (PAUSE IN THE PROCEEDINGS.)

23
24 STEWARD BAKER: OKAY. WE'RE BACK ON THE RECORD.

25 GO AHEAD, MR. BRODNIK.

1 BY MR. BRODNIK:

2 Q MR. PENDER, DOES IT SOUND CORRECT THAT "NEW
3 KARMA" LAST RACED FOR YOU ON FEBRUARY 19TH [SIC] OF 2019?

4 A FEBRUARY 17, 2019. YES, THAT'S CORRECT.

5 Q OKAY. THANK YOU.

6 NOW, AFTER THAT RACE, DID YOU HAVE DR. HEATHER
7 WHARTON LOOK AT "NEW KARMA"?

8 A DR. WHARTON AND I GO OVER THE HORSES ON LIKE A
9 BIWEEKLY BASIS. AND ALL THE TIME SHE SAYS -- COMES INTO THE
10 BARN AND SAYS: LET'S TAKE A LOOK AT "X," "Y" AND "Z," AND I
11 BRING OUT "X," "Y" AND "Z." WE GO OVER THEM WITH A FINE TOOTH
12 COMB. BUT I DIDN'T REQUEST HER TO COME LOOK AT "NEW KARMA"
13 SPECIFICALLY.

14 Q OKAY. DID YOU HAVE ANY SUSPICION THAT "NEW
15 KARMA" WAS UNSOUND AFTER THE RACE ON FEBRUARY 17, 2019?

16 A NO. HE HAD THE NORMAL, YOU KNOW, ISSUES THAT A
17 43 LIFETIME HORSE WOULD HAVE. HEAT, INFLAMMATION. THE REGULAR
18 STUFF THAT AN OLD TIMER HAS.

19 Q OKAY. AND WHEN YOU HAD DR. WHARTON LOOK AT "NEW
20 KARMA," WAS AN X-RAY TAKEN OF "NEW KARMA," THE FRONT LEGS?

21 A YES, AS WELL AS OTHERS.

22 Q OKAY. AND DID YOU HAVE A CONVERSATION WITH
23 DR. WHARTON ABOUT THE RESULTS OF THE X-RAY TO "NEW KARMA'S"
24 FRONT LEFT LEG?

25 A WE WERE GOING OVER A LOT OF HORSES, BUT YES, HE

1 WAS INCLUDED.

2 Q OKAY. AND DURING THAT CONVERSATION, WERE YOU
3 INFORMED THAT "NEW KARMA" HAD A FRACTURE TO HIS FRONT LEFT
4 SESAMOID?

5 A THERE WAS AN OLD HAIRLINE. OLD HAIRLINE
6 FRACTURE IN THAT ANKLE.

7 Q OKAY. AND SHE MADE YOU AWARE OF THAT?

8 A YES. SHE SHOWED ME ONE RADIOGRAPH.

9 Q OKAY. DID SHE TELL YOU THAT YOU SHOULD EITHER
10 RETIRE THE HORSE OR HAVE IT HAVE SURGERY?

11 A NO. I NEVER HEARD THOSE WORDS THAT SHE NEEDED
12 SURGERY NOR TURN THE HORSE OUT.

13 Q YOU SAID THAT YOU SAW THE RADIOGRAPH OF "NEW
14 KARMA'S" FRONT LEFT SESAMOID; IS THAT RIGHT?

15 A YES.

16 Q AND TO YOU, WAS A FRACTURE VISIBLE?

17 A IT LOOKED LIKE AN OLD HAIRLINE FRACTURE.

18 MR. LICHT: TRY TO ANSWER "YES" OR "NO" ON YES-OR-NO
19 QUESTIONS.

20 THE WITNESS: OKAY.

21 MR. BRODNIK: I'D LIKE TO HAVE THESE MARKED REAL QUICK.
22 1, 2 AND 3.

23 STEWARD BAKER: OKAY. THE C.H.R.B. HAS PRESENTED ME
24 WITH THREE RADIOGRAPHS OF THE HORSE "NEW KARMA'S" LEFT FRONT
25 ANKLE.

1 DO YOU AGREE, MR. LICHT, THAT THOSE ARE WHAT
2 THEY ARE?

3 MR. LICHT: NO. I'D OBJECT. THERE'S NO CHAIN OF
4 CUSTODY TESTIMONY. THERE'S NO -- HOW DO WE KNOW WHO THE X-RAYS
5 ARE OF?

6 STEWARD BAKER: GO AHEAD AND FINISH.

7 MR. LICHT: WE HAVE NO CHAIN OF CUSTODY. WE DON'T KNOW
8 WHERE THESE X-RAYS HAVE BEEN. IF ONE OF THE DOCTORS WANTS TO
9 TESTIFY THAT HE OR SHE TOOK THOSE X-RAYS, AND THOSE ARE THE
10 X-RAYS, THEN I'LL WITHDRAW THE OBJECTION. BUT UNTIL THEN, I
11 WILL NOT. I WILL OBJECT.

12 MR. BRODNIK: I HAVEN'T ASKED TO MOVE THEM INTO
13 EVIDENCE YET, SO I THINK THIS OBJECTION IS PREMATURE. I'M JUST
14 ASKING THEM TO HAVE THEM MARKED, AND THEN I WILL ADMIT THEM
15 ONCE EVIDENCE OF A FOUNDATION HAS BEEN LAID.

16 STEWARD BAKER: MR. LICHT, WE'RE GOING TO NOTE YOUR
17 OBJECTION FOR THE RECORD, AND I'M GOING TO MARK THESE JUST AS
18 MR. BRODNIK'S DOCUMENTS --

19 MR. LICHT: OKAY.

20 STEWARD BAKER: -- AT THIS TIME.

21 AND THAT IS STATE -- HOW WOULD YOU LIKE TO
22 DIFFERENTIATE THESE THREE? DO YOU HAVE ANY PARTICULAR REQUEST?

23 MR. BRODNIK: JUST 1, 2 AND 3. NO PARTICULAR ORDER IS
24 FINE.

25 STEWARD BAKER: OKAY. SO THERE'S -- ACCORDING TO

1 MR. BRODNIK, THESE ARE X-RAYS OF "NEW KARMA'S" FRONT LEFT
2 ANKLE. WE'LL MARK THEM AS STATE EXHIBITS 1, 2 AND 3.

3 THANK YOU.

4
5 (STATE'S EXHIBITS 1, 2 AND 3 WERE
6 MARKED FOR IDENTIFICATION BY THE STEWARDS.)

7
8 MR. BRODNIK: I'M GOING TO SHOW THEM TO THE WITNESS.

9 MR. LICHT: ARE THOSE THE APRIL 9 -- DATED APRIL 9?

10 MR. BRODNIK: YEAH.

11 STEWARD BAKER: THESE HAVE A DATE OF FEBRUARY 25, 2019
12 AT THE TOP.

13 MR. LICHT: OKAY.

14 STEWARD BAKER: PROCEED.

15 BY MR. BRODNIK:

16 Q MR. PENDER, SHOWING YOU WHAT HAS BEEN MARKED AS
17 STATE EXHIBIT 1, DO YOU RECOGNIZE THAT?

18 A THAT WAS NOT THE X-RAY THAT I WAS SHOWN.

19 Q OKAY. SHOWING WHAT'S BEEN MARKED AS STATE
20 EXHIBIT 2. DO YOU RECOGNIZE THAT?

21 A YES.

22 Q OKAY. AND HOW DO YOU RECOGNIZE THAT?

23 A THAT'S THE HAIRLINE FRACTURE THAT I WAS SHOWN.

24 Q OKAY. AND THIS IS THE X-RAY THAT YOU WERE SHOWN
25 BY DR. PENDER [SIC] --

1 A DR. WHARTON.

2 Q EXCUSE ME. YES. SORRY.

3 A ON FEBRUARY 25. YES.

4 Q DOES THIS LOOK LIKE A TRUE AND ACCURATE COPY OF
5 WHAT YOU SAW?

6 A YES.

7 Q OKAY. AND ON STATE EXHIBIT 2, THERE'S A RED
8 CIRCLE IN THE CENTER OF THE PHOTO. WOULD YOU AGREE?

9 A YES.

10 Q OKAY. AND WITHIN THAT CIRCLE, IS THAT THE AREA
11 THAT YOU WERE TALKING ABOUT WHEN YOU MENTIONED THE FRACTURE
12 THAT YOU OBSERVED?

13 A YES.

14 Q OKAY. AND SHOWING YOU WHAT'S BEEN MARKED AS
15 STATE EXHIBIT 3. DO YOU RECOGNIZE THAT?

16 A NO. ONLY STATE EXHIBIT 2.

17 Q OKAY. SO YOU WERE SHOWN ONE RADIOGRAPH OF A
18 FRACTURE OF THE LEFT FRONT LEG OF "NEW KARMA" ON OR ABOUT
19 FEBRUARY 25TH OF 2019; CORRECT?

20 A YES.

21 Q OKAY. NOW, YOU HAD "NEW KARMA" PERFORM A
22 WORKOUT ON MARCH 24TH OF 2019; CORRECT?

23 A YES.

24 Q OKAY. AND FAIR TO SAY THAT WAS ABOUT 30 DAYS
25 LATER?

1 A YES.

2 Q WAS THAT THE FIRST WORKOUT THAT "NEW KARMA" HAD
3 PERFORMED SINCE THE CONVERSATION WITH DR. WHARTON ON
4 FEBRUARY 25?

5 A YES.

6 Q OKAY. NOW, WHEN "NEW KARMA" WORKED OUT ON
7 FEBRUARY 25, 2019, YOU DID THIS KNOWING THAT THIS HORSE HAD AN
8 INJURY; CORRECT?

9 A NO.

10 Q OKAY. YOU KNEW THAT THERE WAS A FRACTURE THAT
11 EXISTED IN THE LEFT FRONT LEG; RIGHT?

12 A NO.

13 Q ON FEBRUARY 25, YOU HAD A CONVERSATION WITH
14 DR. WHARTON; CORRECT?

15 A YES.

16 Q AND SHE SHOWED YOU A RADIOGRAPH OF "NEW KARMA'S"
17 LEFT LEG INDICATING A FRACTURE; CORRECT?

18 A YES.

19 Q OKAY. AND YOU JUST TESTIFIED THAT YOU SAW THAT
20 FRACTURE; CORRECT?

21 A YES.

22 Q OKAY. AND YOU HAD THE HORSE WORK OUT 30 DAYS
23 LATER; CORRECT?

24 A OKAY.

25 Q AND DID YOU THINK THAT FRACTURE STILL EXISTED?

1 A YES.

2 Q OKAY. NOW, BETWEEN FEBRUARY 25 AND WHEN THE
3 HORSE WORKED OUT ON MARCH 24, DID YOU EVER HAVE OR REQUEST THAT
4 FRONT LEG TO BE RE-X-RAYED AGAIN?

5 A GIVE ME THE DATES AGAIN.

6 Q BETWEEN FEBRUARY 25TH OF 2019, WHEN YOU HAD A
7 CONVERSATION WITH DR. WHARTON, AND MARCH 24TH OF 2019, WHEN
8 "NEW KARMA" WORKED OUT AT SANTA ANITA PARK, DID YOU HAVE "NEW
9 KARMA'S" FRONT LEFT LEG RE-X-RAYED?

10 A NO.

11 Q DO YOU THINK THAT THIS WAS A DANGEROUS CHOICE TO
12 HAVE "NEW KARMA" ENTER A WORKOUT WITHIN 30 DAYS WITHOUT HAVING
13 THE HORSE RE-X-RAYED?

14 A NO.

15 Q WHY?

16 A I WAS UNDER THE IMPRESSION THAT THIS WAS A
17 HAIRLINE STRESS FRACTURE, AND I GOT A LOT OF SECOND OPINIONS
18 AND DID A LOT OF WORK WITH FORMER TRAINERS AND ASKED THEIR
19 OPINIONS AND WAS CERTAIN THAT THE HORSE WAS NOT GOING TO BREAK
20 DOWN IN ANY WORKOUT.

21 Q THE SECOND OPINIONS THAT YOU HAD WERE FROM
22 TRAINERS; IS THAT RIGHT?

23 A TRAINERS, VETERINARIANS, THE WHOLE NINE YARDS.

24 Q WAS THE HORSE EVER RE-X-RAYED?

25 A NO. WE WERE JUST GOING ON THE X-RAY THAT WAS

1 TAKEN ON FEBRUARY 25.

2 Q SO YOU NEVER DID ANOTHER X-RAY BEFORE THE
3 MARCH 24TH WORKOUT TO CONFIRM THAT THE FRACTURE HAD, IN FACT,
4 HEALED?

5 A NO.

6 Q OKAY. YOU THEN CHOSE TO SHIP "NEW KARMA" TO
7 GOLDEN GATE; IS THAT RIGHT?

8 A THAT'S CORRECT.

9 Q AND THAT WAS WITH THE INTENTION TO ENTER HIM IN
10 \$12,500 CLAIMING RACE; IS THAT RIGHT?

11 A YES.

12 Q WHY DID YOU SEND THE HORSE TO GOLDEN GATE?

13 A HE HAS A HISTORY OF RUNNING WELL AT GOLDEN GATE.

14 Q OKAY. WHY DID YOU DROP HIM IN CLASS?

15 A BECAUSE HE DESERVED THE DROP. HE WASN'T
16 PERFORMING. I MEAN, HE RAN FOR 20 OR 18. I PUT HIM IN FOR 18.
17 HE RAN SECOND. I WANTED HIM TO --

18 THE REPORTER: SAY THAT AGAIN.

19 THE WITNESS: I DROPPED HIM TO 12/5. I WANTED TO GET
20 THE WIN.

21 BY MR. BRODNIK:

22 Q WHEN "NEW KARMA" WORKED OUT ON MARCH 24, 2019,
23 IS IT FAIR TO SAY THAT THAT WAS THE FASTEST THAT HE HAD RUN
24 FOUR FURLONGS IN THE LAST YEAR?

25 MR. LICHT: I'LL OBJECT TO THAT. RUN, DOES THAT MEAN

1 THAT HE NEVER RAN A 47 TIME BEFORE IN A RACE? ARE YOU JUST
2 TALKING ABOUT WORKOUTS?

3 STEWARD BAKER: CAN YOU BE MORE SPECIFIC, MR. BRODNIK?

4 MR. BRODNIK: SURE.

5 BY MR. BRODNIK:

6 Q MR. PENDER, ARE YOU AWARE OF HOW "NEW KARMA"
7 PERFORMED ON THE WORKOUT ON MARCH 24, 2019?

8 A YES.

9 Q OKAY. AND WAS THAT WORKOUT FASTER THAN HE HAD
10 PERFORMED ON SIMILAR WORKOUTS ON SIMILAR TRACK CONDITIONS AND
11 IN A SIMILAR DISTANCE WITHIN THE LAST SIX MONTHS, OR WAS IT
12 BETTER?

13 A THE JANUARY 27TH WORKOUT, HE WENT 35 AND CHANGE
14 AND GALLOPED OUT IN 48 FLAT. SO IT WAS PAR FOR THE COURSE FOR
15 HIM.

16 Q OKAY. SO ON FEBRUARY -- IS IT FAIR TO SAY THAT
17 ON FEBRUARY 24, 2019 [SIC] HE RAN FOUR FURLONGS AT 47:80?

18 A YES.

19 STEWARD BAKER: CAN YOU GIVE THAT DATE AGAIN,

20 MR. BRODNIK?

21 BY MR. BRODNIK:

22 Q MARCH 24TH OF 2019, WAS IT FAIR TO SAY THAT HE
23 RAN FOUR FURLONGS AT 47:80?

24 A YES.

25 Q OKAY. THE PRIOR WORKOUT ON FEBRUARY 10, HE RAN

1 FOUR FURLONGS AT 51:40; CORRECT?

2 A YES.

3 Q AND THEN THE PRIOR FOUR FURLONG WORKOUT WAS
4 JANUARY 4TH; RIGHT?

5 A NO. IT WAS JANUARY 27.

6 Q AND THAT WAS A THREE FURLONG DISTANCE; IS THAT
7 RIGHT?

8 A YES. HAD I CALLED IT IN AS A HALF, HE WOULD'VE
9 GONE 40, 47 AND 44.

10 Q OKAY. YOU DIDN'T CALL IT IN, THOUGH, ON THE
11 THREE FURLONG; RIGHT?

12 HE WAS TIMED FOR A THREE FURLONG WORK; RIGHT?

13 A YES.

14 Q OKAY. AND LOOKING AT PRIOR FOUR FURLONG WORKS,
15 IS THAT ACCURATE THAT THAT'S THE FASTEST HE HAD RUN WITHIN THE
16 LAST SIX MONTHS?

17 A YEAH, MOST LIKELY.

18 Q OKAY. SO YOU PURCHASED THE HORSE IN NOVEMBER
19 FOR \$20,000, AND HE HAD RUN FASTER ON FOUR FURLONGS IN MARCH,
20 AND YOU CHOSE TO DROP HIM IN CLASS. IS THAT FAIR?

21 A YES.

22 Q OKAY. YOU SHIPPED THE HORSE TO GOLDEN GATE
23 FIELDS TO BE ENTERED INTO A RACE IN APRIL; CORRECT?

24 A THAT'S CORRECT.

25 Q AND PRIOR TO SHIPPING HIM TO GOLDEN GATE FIELDS,

1 HAD THE HORSE BEEN RE-X-RAYED, HIS FRONT LEFT LEG?

2 A NO.

3 Q OKAY. THE HORSE WAS EVENTUALLY RE-X-RAYED WHEN
4 HE GOT TO GOLDEN GATE FIELDS; IS THAT RIGHT?

5 A I'M NOT SURE WHAT THE DATES ARE UP THERE, BUT
6 SUDDENLY A LOT OF X-RAYS STARTED TAKING PLACE THE DAY OF, THE
7 DAY AFTER, FIVE DAYS AFTER.

8 Q OKAY. AND WERE YOU MADE AWARE THAT THOSE WERE
9 ALSO HIS X-RAYS?

10 A ON THE DAY OF THE SCRATCH OF THE RACE, I WAS
11 MADE AWARE JUST THROUGH A LETTER. NO RESULTS OF THE X-RAYS.

12 Q OKAY. WHAT WERE YOU TOLD?

13 A A COURIER DROPPED OFF A LETTER TO ME TO MY
14 OFFICE FROM DR. ARTHUR.

15 Q OKAY. WHAT DID THE LETTER SAY?

16 A NO MORE WORKS. NO MORE ENTERING THIS HORSE
17 UNTIL FURTHER NOTIFIED.

18 Q OKAY. DID YOU ASK WHY?

19 A YEAH. I SAID: CAN YOU GIVE ME DR. ARTHUR'S
20 PHONE NUMBER.

21 Q AND WHAT DID YOU DO IN RESPONSE TO THAT?

22 A CALLED HIM.

23 Q DID YOU TRY TO FIND OUT WHY YOUR HORSE HAD BEEN
24 SCRATCHED?

25 A YES.

1 Q AND WHAT WERE YOU ABLE TO FIND OUT?

2 A NOTHING.

3 Q SO YOU HAVE NO IDEA TO THIS DAY WHY YOUR HORSE
4 WAS SCRATCHED?

5 A WELL, I DO NOW. ON THAT PARTICULAR DAY, NO.

6 Q AND HOW WERE YOU ABLE TO FIND OUT?

7 A THROUGH ALL OF THIS.

8 Q OKAY. AND ARE YOU AWARE THAT THE HORSE
9 CONTAINED A FRACTURE IN HIS FRONT LEFT SESAMOID?

10 A YOUR DEFINITION OF A FRACTURE IS DIFFERENT THAN
11 MINE.

12 Q WHAT'S YOUR DEFINITION OF A FRACTURE?

13 A I SAW A HAIRLINE.

14 Q WHAT DOES THAT MEAN?

15 A A HAIRLINE STRESS FRACTURE THAT I'VE SEEN IN
16 HORSES FOR DOZENS OF YEARS.

17 Q DOES A HAIRLINE STRESS FRACTURE CAUSE YOU ANY
18 CONCERN?

19 A YEAH.

20 Q SO YOU'RE AWARE OF A HAIRLINE STRESS FRACTURE
21 THAT DIDN'T CAUSE YOU CONCERN IN THIS PARTICULAR HORSE?

22 A NO.

23 Q WHY?

24 A BECAUSE OF HIS HISTORY.

25 Q SPECIFICALLY, WHAT DOES HIS HISTORY HAVE TO DO

1 WITH WHY IT WOULDN'T CAUSE YOU CONCERN?

2 A HE'S TRAINING SOUND. HE'S JOGGING SOUND. HE'S
3 MOVING LIKE A HORSE THAT'S READY TO RUN A WINNING RACE, AND
4 I'VE GOTTEN SECOND OPINIONS FROM OTHERS WHO HAVE NOTIFIED ME
5 THAT THIS IS AN OLD INJURY, INCLUDING SOME IMPORTANT PEOPLE
6 THAT I TRUST THEIR OPINION ON.

7 Q OKAY. MY QUESTION, MR. PENDER, TO YOU IS THIS:
8 SO YOU'RE MADE AWARE OF THIS FRACTURE ON FEBRUARY 25, 2019, AND
9 IT DOESN'T CAUSE YOU ENOUGH CONCERN TO HAVE THE HORSE
10 RE-X-RAYED BEFORE ENTERING INTO A RACE; RIGHT?

11 A THAT'S CORRECT.

12 Q OKAY. AND THAT'S ALSO TRUE ABOUT A WORKOUT THAT
13 YOU HAD THE HORSE PERFORM. IT DIDN'T CAUSE YOU ENOUGH CONCERN
14 TO ENSURE THAT THE FRACTURE WAS HEALED TO HAVE THE HORSE
15 RE-X-RAYED BEFORE ENTERING INTO A WORKOUT; RIGHT?

16 A I GAVE MY LIST TO THE PROPER -- I NOTIFIED THE
17 PROPER PEOPLE THAT THE HORSE WAS TO BE WORKED. I HAD NO IDEA
18 THAT THIS WAS AN ISSUE.

19 Q WHAT DO YOU MEAN YOU GAVE YOUR LIST TO THE
20 PROPER PEOPLE?

21 A WELL, NOW WITH THE NEW PROTOCOLS, WITH THE NEW
22 SAFETY PROTOCOLS, WE HAVE STATE VETS COMING BY AND DOING
23 MULTIPLE TESTING OF ALL THE HORSES, AND WE HAVE OUR PERSONAL
24 PRIVATE VETS COMING BY AND DOING TESTING, AND IT'S WORKING
25 BEAUTIFULLY. I'VE TURNED OUT TONS OF HORSES JUST TO MAKE SURE,

1 YOU KNOW, NOTHING HAPPENS. I CAN GIVE YOU MULTIPLE EXAMPLES.
2 BUT WITH THIS PARTICULAR HORSE, I TURNED IN MY WORK LIST WHICH
3 YOU'RE SUPPOSED TO DO NOWADAYS TO AMI ATKINSON, AND I WENT AND
4 WORKED THE HORSE.

5 Q OKAY. DID YOU TELL -- WHO'S AMI ATKINSON?

6 A SHE'S THE ONE THAT YOU HAVE TO TURN YOUR
7 WORKOUTS INTO PRIOR TO THE WORKOUTS, SO IT CAN GO THROUGH THE
8 PROPER PROTOCOLS TO MAKE SURE THAT THE HORSE ISN'T ON ANY
9 PARTICULAR LIST OR THERE ISN'T ANY PROBLEM.

10 Q OKAY. AND THAT'S WHAT YOU DID IN MARCH?

11 A YES.

12 Q OKAY. YOU STILL KNEW ABOUT THE FRACTURE,
13 THOUGH; CORRECT?

14 MR. LICHT: I'LL OBJECT. ASKED AND ANSWERED. THIS
15 QUESTION HAS BEEN ASKED AND ANSWERED 22 TIMES.

16 STEWARD BAKER: OKAY. THANK YOU.

17 MR. BRODNIK: I'LL MOVE ON.

18 BY MR. BRODNIK:

19 Q MR. PENDER, HAVE YOU SEEN THE X-RAYS FROM
20 APRIL 9TH OF 2019?

21 A YES.

22 Q OKAY. AND DOES THE X-RAY DEPICT IN YOUR OPINION
23 THE SAME FRACTURE THAT YOU SAW IN FEBRUARY? A HAIRLINE
24 FRACTURE?

25 A NO.

1 Q OKAY. WHAT'S DIFFERENT?

2 A IT JUST LOOKS DIFFERENT.

3 Q AND WHY DO YOU SAY THAT?

4 A IT LOOKS A BIT MORE GRAPHIC, LIKE THERE'S BEEN
5 SOME CHANGES.

6 Q OKAY. FOR THE WORSE OR FOR THE BETTER? IN YOUR
7 OPINION.

8 A FOR THE WORSE.

9 Q OKAY. AND WHY DO YOU THINK THAT IS?

10 A I DON'T KNOW. I'M NOT SURE.

11 MR. BRODNIK: I DON'T HAVE ANY FURTHER QUESTIONS FOR
12 MR. PENDER AT THIS TIME.

13 STEWARD BAKER: THANK YOU.

14 MR. PENDER, WHERE IS "NEW KARMA" TODAY?

15 THE WITNESS: HE IS AT BLISS CANYON IN BRADBURY
16 RECOVERING FROM SURGERY.

17 STEWARD BAKER: WHEN WAS THE SURGERY?

18 THE WITNESS: SURGERY DATE WAS APRIL 20, 2019.

19 STEWARD BAKER: WHO ARE THE OWNERS OF "NEW KARMA"?

20 THE WITNESS: CHRIS ST. HILAIRE, PENDER RACING, AND
21 ROBERT FETKIN.

22 STEWARD BAKER: WHAT PERCENTAGE OF THE HORSE DO YOU
23 OWN?

24 THE WITNESS: 25.

25 STEWARD BAKER: AND HOW IS THE OWNERSHIP BREAKDOWN

1 ON --

2 THE WITNESS: CHRIS ST. HILAIRE, 50 PERCENT, FETKIN, 25
3 AND PENDER, 25.

4 STEWARD BAKER: CAN YOU SHARE WITH US THE LONG-RANGE
5 PLANS OF "NEW KARMA"?

6 THE WITNESS: THE PROGNOSIS WAS SOMETHING LIKE 80
7 PERCENT FULL PROGNOSIS TO RETURN TO RACING AND FOUR MONTHS OFF
8 AT THE FARM.

9 STEWARD BAKER: SO IS THERE A ROUGH ESTIMATE OF THE
10 RETURN OF "NEW KARMA" TO THE RACETRACK?

11 THE WITNESS: YES.

12 STEWARD BAKER: WHAT IS THAT ESTIMATE?

13 THE WITNESS: I WAS GOING TO BRING HIM IN TO DEL MAR.

14 STEWARD BAKER: OKAY. HAVE YOU HAD AN OPPORTUNITY TO
15 LOOK AT THE EQUIBASE PAST PERFORMANCE WORKOUTS ON "NEW KARMA"?

16 THE WITNESS: I LOOKED AT THEM BEFORE I CLAIMED THE
17 HORSE. HUH-HUH.

18 STEWARD BAKER: THE LIFETIME WORKOUTS?

19 THE WITNESS: UH-HUH.

20 MR. LICHT: ANSWER "YES" OR "NO."

21 THE WITNESS: YES.

22 STEWARD BAKER: ANYTHING EXTRAORDINARY ABOUT THAT? LET
23 ME REPHRASE THAT.

24 IS THERE ANYTHING EXTRAORDINARY ABOUT THESE
25 THREE PAGES OF WORKOUTS THAT ARE INCLUDED IN THE COMPLAINT

1 PACKET?

2 THE WITNESS: I DON'T KNOW IF THEY'RE IN THE COMPLAINT
3 PACKET. ARE THEY?

4 STEWARD BAKER: YES.

5 THE WITNESS: OH, A LOT OF THESE -- YES. A LOT OF
6 THESE WORKOUTS ARE AT GOLDEN GATE.

7 STEWARD BAKER: BESIDES THAT, ANYTHING ELSE STAND OUT
8 TO YOU?

9 THE WITNESS: NO. JUST A LOT OF MILES LOGGED.

10 STEWARD BAKER: IT APPEARS TO ME -- AND THIS IS JUST A
11 NONQUESTION OBVIOUSLY -- BUT THERE'S TWO OR THREE YEAR
12 UNINTERRUPTED STRING OF WORKOUTS, IS WHAT I NOTICE. AND THAT'S
13 JUST A COMMENT I WANT TO MAKE WITHOUT ANY PREJUDICE OF ANY
14 SORT.

15 AND FOLLOWING UP ON THAT COMMENT, WHEN WAS THE
16 LAST TIME "NEW KARMA" WAS TURNED OUT? AND THAT MEANS TAKEN TO
17 A FARM FOR "R" AND "R."

18 THE WITNESS: I CLAIMED HIM IN NOVEMBER.

19 STEWARD BAKER: DO YOU KNOW ANYTHING ABOUT HIS HISTORY
20 PRIOR TO YOU CLAIMING HIM AS FAR AS WHEN HE WAS TURNED OUT
21 EVER?

22 THE WITNESS: NOT THE TURN OUT RECORD.

23 STEWARD BAKER: OKAY. HOW LONG WAS "NEW KARMA" AT
24 GOLDEN GATE FIELDS BEFORE IT WAS IN TO RUN?

25 THE WITNESS: THREE DAYS.

1 STEWARD BAKER: THREE DAYS. AND WHO WAS THE LISTED
2 TRAINER IN THE PROGRAM ON THAT DAY AT GOLDEN GATE FIELDS?

3 THE WITNESS: IT WAS ME, BUT I SHIPPED HIM TO ARI
4 HERBERTSON, IF THAT'S WHAT YOU'RE ASKING.

5 STEWARD BAKER: OKAY. WERE YOU INTERVIEWED BY THIS
6 GENTLEMAN, MR. ALFORD, AT ALL PRIOR TO THIS HEARING?

7 THE WITNESS: YES.

8 STEWARD BAKER: WAS IT IN PERSON OR WAS IT ON
9 TELEPHONE?

10 THE WITNESS: IT WAS IN PERSON ON THE BRIDGE.

11 STEWARD BAKER: HERE AT SANTA ANITA?

12 THE WITNESS: YES.

13 STEWARD BAKER: OKAY. THANK YOU.

14 EARLIER YOU STATED YOU GOT A LOT OF SECOND
15 OPINIONS. I BELIEVE YOU WERE ASKED THIS, BUT I DIDN'T CATCH
16 IT. WHO GAVE YOU SOME SECOND OPINIONS AND WHAT TYPE OF LICENSE
17 DID THEY HAVE? C.H.R.B. LICENSE.

18 THE WITNESS: I GOT AN OPINION FROM FORMER TRAINER
19 GENARO VALLEJO WHO IS A TRAINER WHO TRAINED THIS HORSE. I GOT
20 AN OPINION FROM VET DR. HERB WARREN. AND THAT'S ABOUT IT.

21 STEWARD BAKER: DR. WARREN, WHAT WAS HIS OPINION BASED
22 OFF OF? DID HE EXAMINE THE HORSE?

23 THE WITNESS: YES.

24 STEWARD BAKER: ROUGHLY WHEN DID HE EXAMINE THE HORSE?

25 THE WITNESS: LET'S SEE, THE DATE WAS SOMEWHERE BETWEEN

1 MARCH -- I'D SAY 2ND AND MARCH 20TH, SOMEWHERE IN THAT RANGE.
2 IT WAS DEFINITELY BEFORE THE WORK. NOT AFTER.

3 STEWARD BAKER: OKAY. THERE'S A LOT OF VETERINARIANS
4 IN THE -- THAT THEY MENTION IN THE INVESTIGATIVE REPORT. AT
5 LEAST A HALF DOZEN. I DON'T SEE DR. WARREN'S NAME IN THERE.

6 WHAT WAS DR. WARREN'S ANALYSIS OF THIS HORSE'S
7 HEALTH, PARTICULARLY HIS SOUNDNESS FOLLOWING HIS EXAMINATION?

8 THE WITNESS: HE SAID, YOU KNOW, JOGS SOUND, LOOKS
9 GOOD. HE FLEXED THE ANKLE. HE SAID NOTHING THERE. AND --

10 STEWARD BAKER: I'M SORRY.

11 THE WITNESS: HE LIKED WHAT HE WAS LOOKING AT.

12 STEWARD BAKER: DID DR. WARREN GET A CHANCE TO LOOK AT
13 THE RADIOGRAPHS OF THE LEFT ANKLE?

14 THE WITNESS: YES.

15 STEWARD BAKER: SO HIS ANALYSIS WAS A COMBINATION OF
16 PHYSICAL EXAMINATION AND AN OBSERVATION OF THE RADIOGRAPHS. IS
17 THAT FAIR TO SAY?

18 THE WITNESS: THAT'S FAIR TO SAY.

19 STEWARD BAKER: DO YOU THINK YOU'LL RUN THIS HORSE
20 AGAIN SOME DAY?

21 THE WITNESS: UNDER NORMAL CIRCUMSTANCES, ABSOLUTELY.
22 UNDER THESE -- IT'S A WHOLE NEW WORLD OUT HERE, SO I DON'T
23 KNOW. I MEAN, IF HE SO MUCH AS HICCUPS IN HIS COMEBACK,
24 PROBABLY NOT.

25 STEWARD BAKER: OKAY. THANK YOU.

1 MR. PENDER, LOOKING BACK ON THE CHAIN OF EVENTS,
2 IF YOU HAD TO DO IT ALL OVER AGAIN, WOULD YOU HAVE HANDLED
3 ANYTHING DIFFERENTLY WITH REGARDS TO "NEW KARMA"?

4 THE WITNESS: NO.

5 STEWARD BAKER: OKAY. MR. JAUREGUI, DO YOU HAVE ANY
6 QUESTIONS?

7 STEWARD JAUREGUI: I DO.

8 I SEE THE WORKOUTS ARE KIND OF SPREAD OUT HERE,
9 MR. PENDER. IS THAT YOUR TYPICAL WORK PATTERN FOR MOST HORSES
10 OR JUST THIS HORSE?

11 THE WITNESS: THANK YOU FOR ASKING THAT, LUIS. I'M NOT
12 A SEVEN-DAY PATTERN GUY. NOT EVEN A 15-DAY PATTERN GUY. I
13 MEAN, I GALLOP THEM, YOU KNOW, INTO THEIR RACES, AND I'LL PUT
14 IN A SNAPPY DRILL. I MEAN, I'VE GOT MULTIPLE HORSES THAT HAVE
15 THE EXACT SAME PATTERN AS THIS HORSE. I CAN GIVE YOU MANY
16 EXAMPLES.

17 STEWARD JAUREGUI: OKAY. ON WORKOUT DAY, WHAT DO YOU
18 DO TO EXAMINE YOUR HORSES PRIOR TO WORKOUT?

19 THE WITNESS: WE HAVE DR. WHARTON USUALLY COME IN AND
20 GO OVER THEM, AND I TURN IN THE WORK LIST.

21 STEWARD JAUREGUI: DID SHE EXAMINE THE HORSE THAT DAY
22 PRIOR TO THE WORKOUT?

23 THE WITNESS: ON THIS PARTICULAR DAY, I'D HAVE TO REFER
24 TO HER.

25 STEWARD JAUREGUI: OKAY. DID THIS HORSE RECEIVE ANY

1 MEDICATIONS PRIOR TO THAT WORKOUT?

2 THE WITNESS: NOTHING.

3 STEWARD JAUREGUI: NOTHING. NO --

4 THE WITNESS: NO.

5 STEWARD JAUREGUI: OKAY. WAS THE HORSE TESTED BY THE
6 C.H.R.B. AFTER A WORKOUT?

7 THE WITNESS: NO.

8 STEWARD JAUREGUI: NO. ALL RIGHT. NO FURTHER
9 QUESTIONS.

10 STEWARD BAKER: MS. SAWYER?

11 STEWARD SAWYER: YES, JUST A COUPLE. THROUGH THE
12 QUESTIONS AND ANSWERS ABOUT THE FRACTURE. THE TERM ANKLE WAS
13 USED AS WELL AS THE TERM SESAMOID. I THINK WE'RE ONLY TALKING
14 ABOUT SESAMOIDS IN THE ANKLE AREA. IS THAT OKAY TO CONFIRM
15 THAT?

16 THE WITNESS: YES.

17 STEWARD SAWYER: EARLY IN YOUR ANSWERS, IT WAS ASKED
18 ABOUT THE HORSE AFTER IT RACED, AND YOU SAID THAT HE HAD NORMAL
19 ISSUES. HEAT AND INFLAMMATION.

20 WHERE DID HE HAVE THE HEAT AND INFLAMMATION?

21 THE WITNESS: HE HAD HEAT IN HIS RIGHT HOCK. HIS LEFT
22 STIFLE. A LITTLE HEAT IN THE RIGHT FRONT KNEE. AND HE ALWAYS
23 HAS THIS BUGGY LITTLE CORNER CRACK THAT HEATS UP.

24 STEWARD SAWYER: IN WHICH FOOT?

25 THE WITNESS: LEFT FRONT. IT'S OLD.

1 STEWARD SAWYER: AND ON HORSES THAT HAVE INFLAMMATION
2 AFTER THEY RUN HARD, I MEAN, A LOT OF THEM, YOU LIKE TO HAVE
3 THEM ICE COLD AND TIGHT. AT THIS POINT, DO YOU MEDICATE THEM
4 TO REDUCE THE INFLAMMATION AND BEFORE YOU BEGIN TRAINING AGAIN?
5 WHAT'S YOUR PROTOCOL WHEN A HORSE COMES BACK THE NEXT MORNING
6 WHEN THEY HAVE HEAT AND INFLAMMATION?

7 THE WITNESS: NOTHING. JUST ICE AND I'LL ICE THEM AND
8 PAIN THEM. YOU KNOW, THERE'S NOT A WHOLE LOT OF MEDICATING
9 GOING ON ANYMORE.

10 STEWARD SAWYER: AND YOUR COMMENT OR YOUR ANSWER, IT
11 SOUNDED LIKE YOU FEEL THAT THE WORD "FRACTURE" IS DIFFERENT
12 FROM THE WORD "HAIRLINE FRACTURE." IS THAT A CORRECT --

13 THE WITNESS: YES.

14 STEWARD SAWYER: TO ME, IT SOUNDED LIKE -- AND YOU TELL
15 ME WHAT YOU THINK -- THAT A HAIRLINE FRACTURE IS NOT AS
16 IMPORTANT AS USING JUST THE TERM FRACTURE.

17 THE WITNESS: YEAH. I MEAN, I'M NO EXPERT IN IT. I'M
18 NOT GOING TO MAKE MYSELF OUT TO BEING SOME KIND OF VET. BUT
19 YOU CAN LOOK AT AN X-RAY AND KNOW IF SOMETHING'S DETACHED FROM
20 THE BONE, AND THIS WAS NOT DETACHED.

21 STEWARD SAWYER: OKAY. IS IT FAIR TO SAY THAT IF A
22 HAIRLINE FRACTURE IS NOT A HUNDRED PERCENT HEALED, IT CAN TURN
23 INTO A DETACHED FRACTURE WITH THE CONTINUANCE OF TRAINING OR
24 RACING?

25 THE WITNESS: I'VE SEEN THESE ON MULTIPLE HORSES OVER

1 THE YEARS, AND IF THE HORSE IS GOING GOOD, THEY DON'T MOVE.

2 STEWARD BAKER: YOU'RE SAYING YOU DON'T FEEL A HAIRLINE
3 FRACTURE HAS TO BE TOTALLY HEALED TO CONTINUE RACING?

4 THE WITNESS: NOT IF IT'S OLD AND IT'S BEEN THERE FOR A
5 LONG TIME.

6 STEWARD SAWYER: BUT IS IT ALSO FAIR TO SAY IF IT'S AN
7 OLD FRACTURE THAT WON'T HEAL, MAYBE THAT'S WHEN SURGERY IS
8 REQUIRED?

9 THE WITNESS: SAY IT AGAIN.

10 STEWARD SAWYER: IF YOU HAVE A FRACTURE -- I AGREE THAT
11 SOMETIMES THERE'S FRACTURES THAT WILL NEVER HEAL. TO GET A
12 FRACTURE TO HEAL, THAT USUALLY REQUIRES SURGERY. IS THAT A
13 FAIR STATEMENT IN YOUR OPINION?

14 THE WITNESS: NO. USUALLY YOU CAN TURN A HORSE OUT,
15 AND THEY CAN MINERALIZE, AND THEY CAN COME BACK, AND THAT LINE
16 IS STILL THERE AND, YOU KNOW, IT'S STRONGER FROM THE TURNOUT.

17 STEWARD SAWYER: STRONGER BECAUSE MAYBE SOME CALCIUM
18 HAS FORMED?

19 THE WITNESS: RIGHT.

20 STEWARD SAWYER: OKAY. LET ME ASK THIS QUESTION. WHY
21 DID YOU CHOOSE TO OPERATE ON THIS HORSE'S SESAMOID?

22 THE WITNESS: BECAUSE I MADE SOME CALLS AND THEY SAID
23 YOU HAVE TWO OPTIONS: DO SURGERY OR TURN THE HORSE OUT. AND I
24 CALLED MY OWNERS AND I SAID: HEY, LOOK. THERE'S SOME
25 QUESTIONING GOING ON ABOUT THIS. I THINK WE NEED TO DO WHAT'S

1 IN THE BEST INTEREST OF THE CURRENT CRISIS THAT WE'RE HAVING
2 HERE AT SANTA ANITA, WHAT'S THE CURRENT -- THE C.H.R.B. WOULD
3 LIKE US TO DO. THEY SAID, NO. WE DON'T WANT TO SPEND ANY
4 MONEY ON A 7-YEAR-OLD. I SAID: HEY, LOOK. JUST DO IT IF YOU
5 WANT TO EVER SEE YOUR HORSE RUN AGAIN.

6 STEWARD SAWYER: I'M JUST GOING TO MAKE A QUICK
7 COMMENT. I THINK THAT'S WHY THE INDUSTRY IS WHERE IT IS NOW,
8 IS TO HAVE ALL THIS PRECAUTIONARY ISSUES SO WE DON'T HAVE
9 ANYMORE BREAKDOWNS. BUT THANK YOU FOR ANSWERING ALL THE
10 QUESTIONS.

11 STEWARD BAKER: MR. ALFORD, DO YOU HAVE ANY QUESTIONS
12 FOR MR. PENDER?

13 MR. ALFORD: NO, SIR.

14 STEWARD BAKER: MR. LICHT?

15 MR. LICHT: I'M GOING TO DEFER UNTIL WE PUT ON THE
16 RESPONDENT'S CASE.

17 STEWARD BAKER: OKAY.

18 MR. BRODNIK: IF I CAN JUST ASK ONE FOLLOW-UP ABOUT
19 YOUR QUESTIONS.

20 STEWARD BAKER: ARE YOU OKAY WITH THAT, MR. LICHT?

21 MR. LICHT: YES.

22 STEWARD BAKER: GO AHEAD, MR. BRODNIK.

23 ///

24 ///

25 ///

1 FURTHER DIRECT EXAMINATION

2
3 BY MR. BRODNIK:

4 Q MR. PENDER, DR. HERBERT WARREN, WHO YOU INDICATE
5 EXAMINED "NEW KARMA" SOMETIME BETWEEN MARCH 2ND AND MARCH 20TH,
6 DID HE TAKE AN X-RAY OF "NEW KARMA"?

7 A NO, HE DID NOT.

8 Q OKAY. AND YOU INDICATED THAT YOU RECEIVED THAT
9 OPINION FROM MR. VALLEJO WHO IS A TRAINER?

10 A UH-HUH.

11 Q IS THAT RIGHT?

12 A YES.

13 Q WAS THAT PRIOR TO THE WORKOUT ON MARCH 24, 2019?

14 A YES.

15 MR. BRODNIK: I DON'T HAVE ANY FURTHER QUESTIONS.

16 STEWARD BAKER: THANK YOU. MR. BRODNIK, DO YOU HAVE
17 YOUR NEXT WITNESS?

18 MR. BRODNIK: YES. DR. WHARTON.

19 STEWARD BAKER: WE'RE OFF THE RECORD FOR A SECOND.

20
21 (PAUSE IN THE PROCEEDINGS.)
22

23 STEWARD BAKER: OKAY. WE'RE BACK ON THE RECORD IN THE
24 MICHAEL PENDER MATTER.

25 DR. WHARTON HAS APPEARED AT THE HEARING.

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MS. DERIEG, CAN YOU PLEASE SWEAR IN MS. WHARTON.

HEATHER WHARTON,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE STATE AND HAVING BEEN FIRST DULY SWORN BY THE HEARING REPORTER, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

THE REPORTER: CAN YOU STATE AND SPELL YOUR NAME FOR THE RECORD, PLEASE.

THE WITNESS: YES. H-E-A-T-H-E-R, W-H-A-R-T-O-N

STEWARD BAKER: GO AHEAD, MR. BRODNIK.

DIRECT EXAMINATION

BY MR. BRODNIK:

Q DR. WHARTON, HOW ARE YOU?

A I'M FINE. THANK YOU, AND YOURSELF?

Q GOOD. HOW ARE YOU EMPLOYED?

A PRIVATELY.

Q AND ARE YOU EMPLOYED AS A VETERINARIAN?

A YES.

Q AND HOW LONG HAVE YOU BEEN A VETERINARIAN?

A FIVE YEARS.

Q ARE YOU LICENSED IN THE STATE OF CALIFORNIA?

A YES.

1 Q AND ARE YOU LICENSED BY THE C.H.R.B. AS A
2 VETERINARIAN?

3 A YES.

4 Q ARE YOU FAMILIAR WITH THE HORSE "NEW KARMA"?

5 A YES.

6 Q OKAY. SPECIFICALLY, WHEN THAT HORSE WAS TRAINED
7 BY MICHAEL PENDER, DID YOU EVER TREAT THE HORSE "NEW KARMA"?

8 A YES.

9 Q DO YOU RECALL TREATING THE HORSE "NEW KARMA" ON
10 FEBRUARY 25TH OF THIS YEAR?

11 A YES.

12 Q AND WHY WERE YOU ASKED TO LOOK AT "NEW KARMA"?

13 A THE HORSE HAD COME BACK FROM THE TRACK THAT
14 MORNING SORE, AND THE ASSISTANT TRAINER ASKED ME TO HAVE A LOOK
15 AT HIM.

16 Q OKAY. AND WERE YOU GIVEN ANY OTHER INFORMATION
17 ABOUT "NEW KARMA" AT THAT TIME?

18 A JUST THAT HE HAD BEEN AT THE TRACK THAT MORNING.

19 Q AND WAS THAT FOR A WORKOUT?

20 A NOT TO MY KNOWLEDGE.

21 Q DO YOU RECALL WHAT IT WAS FOR?

22 A I DON'T.

23 Q DID YOU TREAT "NEW KARMA" THAT DAY?

24 A NO.

25 Q WHAT DID YOU DO NEXT IN RESPONSE TO THE CONCERNS

1 ABOUT "NEW KARMA"?

2 A I EXAMINED HIM AND DID FOLLOW-UP DIAGNOSTICS.

3 Q HOW DID YOU EXAMINE HIM?

4 A I JOGGED HIM. PALPITATED THE ANKLE; LOOKED AT
5 EVERYTHING; FLEXED HIS JOINTS.

6 Q OKAY. AND DID THAT INCLUDE THE LEFT FRONT LEG?

7 A YES.

8 Q YOU INDICATED THAT YOU DID FURTHER FOLLOW-UP
9 EXAMS; IS THAT RIGHT?

10 A YES.

11 Q DID THAT INCLUDE RADIOGRAPHS OR X-RAYS?

12 A YES.

13 Q AND WHEN WERE THOSE COMPLETED?

14 A THAT VERY MINUTE.

15 Q OKAY. WAS THAT FEBRUARY 25TH OF THIS YEAR?

16 A YES, IT WAS.

17 Q OKAY. LET ME SHOW YOU WHAT'S BEEN MARKED AS
18 STATE EXHIBIT 1, 2 AND 3. IF YOU CAN LOOK AT THOSE.

19 A YES.

20 Q WITH REGARDS TO STATE'S EXHIBITS 1, 2 AND 3, DO
21 YOU RECOGNIZE THESE?

22 A YES, I DO.

23 Q AND HOW DO YOU RECOGNIZE THEM?

24 A I TOOK THEM.

25 Q DO THEY ACCURATELY REFLECT THE HORSE "NEW

1 KARMA'S" FRONT LEFT LEG?

2 A YES.

3 Q AND WHAT, IF ANYTHING, DID YOU OBSERVE IN THE
4 RADIOGRAPHS YOU TOOK OF "NEW KARMA'S" FRONT LEFT LEG ON
5 FEBRUARY 25TH OF THIS YEAR?

6 A THE HORSE HAD A LEFT FRONT --

7 THE REPORTER: SAY THAT AGAIN, PLEASE, SLOWER.

8 THE WITNESS: LEFT FRONT MEDIAL APICAL SESAMOID
9 FRACTURE.

10 BY MR. BRODNIK:

11 Q WAS THAT READILY OBSERVABLE TO YOU?

12 A YES.

13 Q AND DID THAT CAUSE YOU ANY CONCERN?

14 A YES.

15 Q WHY?

16 A THAT PORTION OF THE SESAMOID IS WHERE THE
17 INSERTION OF THE SUSPENSORY APPARATUS IS AND IS CRUCIAL TO THE
18 SUPPORT AND STABILITY OF THAT JOINT.

19 Q OKAY. UPON SEEING THIS FRACTURE WITHIN THE
20 RADIOGRAPHS THAT YOU TOOK ON FEBRUARY 25, 2015, DID YOU HAVE AN
21 OPPORTUNITY TO SPEAK WITH THE TRAINER OF "NEW KARMA," MICHAEL
22 PENDER?

23 A YES, I DID.

24 Q DO YOU RECALL IF THAT WAS ON THAT DAY?

25 A YES, IT WAS.

1 Q OKAY. WHAT DID YOU TELL HIM? .

2 A I TOLD HIM THAT THE HORSE HAD A FRACTURE AND
3 REQUIRED SURGERY.

4 Q DID YOU PROVIDE HIM ANY OTHER INFORMATION SUCH
5 AS IF HE DIDN'T WANT TO HAVE SURGERY, THAT THE HORSE SHOULD BE
6 RETIRED?

7 A YES, I DID.

8 Q WAS THAT AN OPINION THAT YOU GAVE HIM?

9 A YES, IT WAS.

10 Q OKAY. AND WAS THAT OPINION MADE TO HIM?

11 A YES.

12 Q WHERE DID THAT OCCUR?

13 A VERBALLY, OVER THE PHONE.

14 Q OKAY. DO YOU HAVE ANY WAY TO TELL HOW OLD THAT
15 FRACTURE WAS?

16 A WELL, OUR ONLY CLINICAL INDICATION IS THE
17 APPEARANCE OF THE FRACTURE. THE FRACTURE LINES THEMSELVES WERE
18 VERY CRISP AND CLEAR, WHICH TO ME, INDICATES THAT IT WAS ACUTE.
19 THAT IT HAD RECENTLY OCCURRED.

20 Q OKAY.

21 A CHRONIC FRACTURE LINES USUALLY HAVE A CALLOUS OR
22 EXTRA BONY PROLIFERATION AROUND IT WHICH "NEW KARMA'S" DID NOT.

23 Q IN YOUR OPINION, WHAT WOULD A FRACTURE LIKE THIS
24 TAKE TO HEAL?

25 A ON ITS OWN?

1 Q YES.

2 A TIME.

3 Q OKAY. WHY DID YOU RECOMMEND SURGERY?

4 A FOR THE HORSE'S CAREER. YOU COULD LET THAT BONE
5 HEAL ON ITS OWN, IF YOU WILL, BUT IT WILL ALWAYS BE A RISK,
6 UNFORTUNATELY, SO THE BEST ACTION FOR THAT HORSE, IF YOU WERE
7 TO CONTINUE RACING, WOULD BE TO REMOVE THE FRAGMENT AND TO
8 ASSESS THE STABILITY OF THE SUSPENSORY APPARATUS AND ITS
9 INVOLVEMENT WITH THE FRACTURE.

10 Q OKAY.

11 MR. BRODNIK: THANK YOU. I DON'T HAVE ANY FURTHER
12 QUESTIONS.

13 STEWARD BAKER: THANK YOU.

14 DR. WHARTON, CAN YOU GIVE US A SNAPSHOT OF YOUR
15 EDUCATIONAL BACKGROUND, PLEASE?

16 THE WITNESS: SURE. I HAVE A BACHELOR'S DEGREE IN
17 MOLECULAR BIOLOGY AND HEALTH SCIENCE. I ALSO HAVE A GRADUATE
18 DIPLOMA IN ANIMAL SCIENCE AND A DOCTOR OF VETERINARY MEDICINE,
19 DOCTOR'S DEGREE.

20 STEWARD BAKER: AND WHAT INSTITUTIONS DID YOU OBTAIN
21 YOUR DEGREES?

22 THE WITNESS: I OBTAINED MY BACHELOR'S DEGREE FROM THE
23 UNIVERSITY OF CALIFORNIA, SANTA CRUZ. AND MY FURTHER TWO
24 DEGREES AT MASS UNIVERSITY IN NEW ZEALAND.

25 STEWARD BAKER: THANK YOU.

1 ARE YOU YOUR OWN BOSS, OR DO YOU WORK FOR A
2 VETERINARY GROUP?

3 THE WITNESS: I WORK UNDER DR. MELINDA BLUE.

4 STEWARD BAKER: AND DR. BLUE, DOES SHE PAY YOU?

5 THE WITNESS: YES.

6 STEWARD BAKER: OKAY. THANK YOU.

7 HOW LONG HAVE YOU KNOWN MICHAEL PENDER?

8 THE WITNESS: TWO YEARS. WELL, ALMOST TWO YEARS IN
9 JULY.

10 STEWARD BAKER: HOW LONG HAVE YOU WORKED FOR MICHAEL
11 PENDER?

12 THE WITNESS: SAME AMOUNT OF TIME.

13 STEWARD BAKER: OKAY. DID YOU KNOW THAT THE HORSE
14 SHIPPED TO GOLDEN GATE FIELDS TO RACE?

15 THE WITNESS: NOT AT THE TIME.

16 STEWARD BAKER: WHEN DID YOU FIND THAT OUT? ROUGHLY.

17 THE WITNESS: ONCE I DISCOVERED THE HORSE WAS ENTERED
18 TO RUN, I SAW THE OVERNIGHT.

19 STEWARD BAKER: YOU SAW THE GOLDEN GATE FIELDS
20 OVERNIGHT?

21 THE WITNESS: UH-HUH.

22 STEWARD BAKER: SO YOU KNEW IT WAS IN TO RUN BEFORE THE
23 RACE DATE? IS THAT FAIR TO SAY?

24 THE WITNESS: ONLY ONCE THE OVERNIGHT BECAME PUBLIC. I
25 DID NOT KNOW PRIOR TO THAT.

1 STEWARD BAKER: RIGHT. ONCE THE OVERNIGHT BECAME
2 PUBLIC, DID YOU HAVE ANY DIALOGUE WITH THE ENTRY OF THIS HORSE
3 WITH ANYONE?

4 THE WITNESS: MY BOSS.

5 STEWARD BAKER: AND THAT'S DR. BLUE?

6 THE WITNESS: YES.

7 STEWARD BAKER: AND WHAT TYPE OF DISCUSSION CAN YOU
8 SHARE WITH US TOOK PLACE?

9 THE WITNESS: I JUST -- WELL, SHE KNEW ABOUT THE
10 FRACTURE PRIOR. I COMMUNICATE ALL MY FINDINGS TO HER, SO I
11 BROUGHT TO HER ATTENTION THAT THE HORSE HAD A FRACTURE AND WAS
12 ENTERED TO RUN AND THAT WAS BASICALLY IT.

13 STEWARD BAKER: WHAT WAS HER RESPONSE TO THAT? FINDING
14 OUT THAT.

15 THE WITNESS: SHE WASN'T HAPPY THAT THE HORSE WAS
16 ENTERED BECAUSE OBVIOUSLY THE HORSE WAS AT RISK, BUT THERE WAS
17 NOTHING FURTHER THAT SHE COULD DO ABOUT IT.

18 STEWARD BAKER: OKAY. DID EITHER YOU OR DR. BLUE
19 CONTACT ANYONE FROM THE C.H.R.B. REGARDING THE ENTRY OF THE
20 HORSE?

21 THE WITNESS: DR. BLUE DID.

22 STEWARD BAKER: AND WHEN DID SHE DO THAT?

23 MR. LICHT: I'M GOING TO OBJECT TO THAT AS ALL HEARSAY.
24 IF DR. BLUE WANTS TO TESTIFY TO THAT, SHE CAN. I MEAN --

25 STEWARD BAKER: THAT'S FAIR. THAT'S FAIR.

1 SO, STRIKE THAT. THANK YOU.

2 LET ME ASK YOU KIND OF A GENERALIZATION
3 QUESTION. BUT TYPICALLY, ON A BEST CASE SCENARIO, HOW LONG
4 AFTER A SESAMOID SURGERY COULD A HORSE BE EXPECTED TO RETURN TO
5 THE RACETRACK TO BEGIN LIGHT TRAINING? CAN YOU GIVE US A
6 TIMELINE BASIS?

7 THE WITNESS: ANY BONY INJURY TAKES ROUGHLY FOUR MONTHS
8 TO HEAL, SO WE GENERALLY GIVE THEM FOUR TO FIVE MONTHS OFF AND
9 BRING THEM BACK TO SLOWLY TRAIN, DEPENDING ON HOW THEY'VE
10 HEALED, AND ONCE WE'VE RE-RADIOGRAPHED AND ASSESSED THE JOINT.
11 SO IT'S ENTIRELY DEPENDENT ON HOW THE HORSE HEALS AND HOW THE
12 SURGERY WENT. BUT IF EVERYTHING GOES WELL, GENERALLY, YOU
13 KNOW, FOUR TO FIVE MONTHS.

14 STEWARD BAKER: AND GENERALLY, ARE THOSE HORSES BROUGHT
15 BACK RIGHT AWAY TO THE RACETRACK, OR DO THEY GO TO A TRAINING
16 FACILITY SOMEWHERE TO GET LEGGED UP, IF YOU WILL?

17 THE WITNESS: THEY GENERALLY GET TURNED OUT TO A FARM
18 OR REHABILITATION FACILITY DEPENDING ON WHAT THE INJURY WAS.

19 STEWARD BAKER: SO THAT FOUR MONTHS CAN CONCEIVABLY
20 TURN INTO EVEN GREATER AMOUNT OF TIME. IS THAT FAIR?

21 THE WITNESS: IT COULD. YES.

22 STEWARD BAKER: THANK YOU.

23 DO YOU KNOW WHO THE ATTENDING VETERINARIAN UP AT
24 GOLDEN GATE FIELDS WAS TO THIS HORSE?

25 THE WITNESS: I DO NOT.

1 STEWARD BAKER: DO YOU KNOW A DR. STEVE BOYER?

2 THE WITNESS: I KNOW THE NAME, BUT I'VE NEVER MET HIM.

3 STEWARD BAKER: OKAY. THANK YOU. I HAVE NOTHING
4 FURTHER.

5 MR. JAUREGUI, DO YOU HAVE ANY QUESTIONS?

6 STEWARD JAUREGUI: YEAH. JUST A QUICK QUESTION. PRIOR
7 TO THE WORKOUT ON MARCH 24TH, DID YOU EXAMINE THE HORSE?

8 THE WITNESS: PRIOR TO THAT DAY, YES.

9 STEWARD JAUREGUI: YOU DID. WHAT WAS YOUR FINDING?
10 DID YOU GIVE ANY RECOMMENDATIONS OR ANYTHING?

11 THE WITNESS: WELL, THAT'S ENTIRELY DEPENDENT ON WHEN
12 YOU'RE --

13 STEWARD JAUREGUI: IN THE MORNING, PRIOR TO THE
14 WORKOUT.

15 THE WITNESS: THAT DAY? NO, I DID NOT.

16 STEWARD JAUREGUI: YOU DID NOT?

17 THE WITNESS: HUH-HUH.

18 STEWARD JAUREGUI: DID YOU TREAT THE HORSE PRIOR TO
19 THAT?

20 THE WITNESS: THAT MORNING?

21 STEWARD JAUREGUI: OR THE DAY BEFORE?

22 THE WITNESS: I DO NOT RECALL. MOST LIKELY. YOU KNOW,
23 WE CHECK OUR HORSES PRETTY REGULARLY.

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25 (INTERRUPTION BY OUTSIDE PERSONNEL.)

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STEWARD BAKER: WHO ARE YOU?

OFF THE RECORD.

(PAUSE IN THE PROCEEDINGS.)

STEWARD BAKER: WE'RE BACK ON THE RECORD IN THE MICHAEL PENDER MATTER. MICHAEL ROGERS IS PRESENT AND OF THE STRONACH GROUP ENTERED THE HEARING AND IS AN OBSERVER AT THIS HEARING.

GO AHEAD, MR. JAUREGUI.

STEWARD JAUREGUI: DID YOU TREAT THE HORSE PRIOR TO THE WORKOUT?

THE WITNESS: AGAIN, YOU'RE GOING TO HAVE TO BE MORE SPECIFIC --

STEWARD JAUREGUI: A COUPLE DAYS BEFORE -- TO PREP FOR THE WORKOUT?

THE WITNESS: NO.

STEWARD JAUREGUI: OKAY. ALL RIGHT.

DO YOU TYPICALLY EXAMINE HORSES PRIOR TO WORKOUTS FOR MR. PENDER?

THE WITNESS: I TYPICALLY EXAMINE THEM PRIOR TO THE DAYS THAT THEY BREEZE. WHEN WE GIVE THEM LASIX IN THE MORNING, I USUALLY EXAMINE THEM.

STEWARD JAUREGUI: JUST RUN THROUGH QUICKLY HOW YOU EXAMINE A HORSE.

THE WITNESS: I PALPATE THEM. MAKE SURE THAT THEIR

1 LEGS ARE COLD, THERE'S NO INFUSION, NOTHING FLEXES. IF THERE'S
2 SOMETHING I'M SUSPICIOUS OF, I'LL JOG THE HORSE.

3 IF THE HORSE IS NOT SOUND, I'LL BRING IT TO THE
4 TRAINER'S ATTENTION, AND WE'LL CANCEL THE WORKOUT FOR THAT DAY.

5 STEWARD JAUREGUI: OKAY. NO FURTHER QUESTIONS.

6 STEWARD BAKER: MS. SAWYER?

7 STEWARD SAWYER: JUST A FOLLOW-UP ON THAT ONE. SO ON
8 THE MARCH 24TH, YOU SAID YOU DID NOT EXAMINE THE HORSE THAT
9 MORNING, BUT YOU MUST HAVE EXAMINED IT PRIOR TO HANDING IN THE
10 PERMISSION FOR THE WORKOUT SLIP.

11 THE WITNESS: THERE WAS NO PERMISSION --

12 STEWARD SAWYER: THE SLIP THAT YOU -- DON'T THEY HAVE
13 TO FILL OUT THE --

14 THE WITNESS: NOT AT THAT TIME, NO. THAT RULE DIDN'T
15 GO INTO EFFECT.

16 STEWARD SAWYER: IT WASN'T THERE ON MARCH 24TH?

17 THE WITNESS: NO.

18 STEWARD SAYWER: OKAY. THAT'S A POSSIBILITY.

19 ONE OTHER THING. WHEN YOU INFORMED MR. PENDER
20 OF THE RESULTS OF THE X-RAY AND YOUR RECOMMENDATIONS, WHAT WAS
21 HIS RESPONSE?

22 THE WITNESS: HIS RESPONSE WAS "OKAY." WE DISCUSSED
23 SURGERY AND HE SAID, OKAY. AND THAT WAS MY UNDERSTANDING --
24 HIS UNDERSTANDING WAS THAT THE HORSE NEEDED SURGERY, AND HE WAS
25 GOING TO ARRANGE IT.

1 STEWARD SAWYER: SO THAT'S KIND OF THE INDICATION YOU
2 GOT WAS SURGERY WAS PROBABLY GOING TO BE THE INEVITABLE?

3 THE WITNESS: YES, MA'AM.

4 STEWARD SAWYER: WHEN HE CLAIMED HIM IN, I THINK,
5 NOVEMBER, UP UNTIL WHEN YOU TOOK THOSE X-RAYS, HAD YOUR
6 VETERINARIAN PRACTICE TAKEN ANY OTHER X-RAYS OF THIS HORSE?

7 THE WITNESS: NOT TO MY KNOWLEDGE.

8 STEWARD SAWYER: AND LET ME ASK YOU THIS. DOES
9 MR. PENDER, USUALLY WHEN HE WORKS THESE HORSES, DOES HE GIVE
10 THEM THE LASIX FOR WORKOUTS?

11 THE WITNESS: YES. WELL, WE DO.

12 STEWARD SAWYER: WELL, HE HIRES YOU TO --

13 THE WITNESS: YES, MA'AM.

14 STEWARD SAWYER: DOES HE HIRE YOU TO GIVE ANY
15 ANTI-INFLAMMATORIES PRIOR TO WORKOUTS?

16 THE WITNESS: NO.

17 STEWARD SAWYER: THAT'S IT.

18 STEWARD BAKER: MR. BRODNIK, I'M SORRY. PROCEDURALLY,
19 WHERE ARE WE?

20 MR. BRODNIK: I'VE ASKED REDIRECT.

21 STEWARD BAKER: GO AHEAD. PROCEED, MR. LICHT.

22 MR. LICHT: THANK YOU.

23 STEWARD BAKER: I DIDN'T FORGET YOU.

24 MR. LICHT: I WOULD NOT LET YOU.

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CROSS-EXAMINATION

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BY MR. LICHT:

Q DID YOU HAVE THE OPPORTUNITY TO DISCUSS YOUR TESTIMONY HERE TODAY WITH ANYBODY PRIOR TO COMING HERE?

A NO.

Q YOU DIDN'T DISCUSS IT WITH MELINDA BLUE?

A WELL, YES. MELINDA AND I SPOKE ABOUT IT.

Q WHAT WAS THE ESSENCE OF WHAT YOU TOLD MELINDA BLUE?

MR. BRODNIK: OBJECTION. RELEVANCE.

STEWARD BAKER: WE'LL NOTE THAT FOR THE RECORD.

GO AHEAD.

THE WITNESS: WE JUST DISCUSSED -- I'VE NEVER BEEN IN ONE OF THESE HEARINGS, IF YOU WILL, BEFORE. WE DISCUSSED HOW TO ANSWER, YOU KNOW, GIVE "YES" OR "NO" SORT OF QUESTIONS. ANSWER HONESTLY. TELL THEM THE TRUTH. THAT'S BASICALLY ALL WE DISCUSSED.

BY MR. LICHT:

Q HAVE YOU EVER DISCUSSED THE CONDITION OF "NEW KARMA" WITH ANYONE OTHER THAN MR. PENDER OR MELINDA BLUE?

A YES. THE ASSISTANT TRAINER MIGUEL GONZALEZ.

Q AND NO OUTSIDE THIRD PARTIES?

A NO.

Q DO YOU TYPICALLY LOOK AT OVERNIGHTS FOR MULTIPLE

1 RACETRACKS EVERY DAY?

2 A ONLY THE ONES IN CALIFORNIA WHERE OUR TRAINERS
3 MIGHT BE ENTERING.

4 Q AND TO YOUR KNOWLEDGE, "NEW KARMA" DID NOT
5 RECEIVE LASIX ON THE DAY OF THE WORK; CORRECT?

6 A CORRECT.

7 Q SO WOULD THERE BE ANY REASON IN YOUR OPINION
8 THAT MR. PENDER WOULD'VE RETAINED YOU TO LOOK AT THE HORSE THAT
9 DAY?

10 A NO.

11 Q YOUR FIRM -- MAYBE NOT YOU SPECIFICALLY -- BUT
12 THE MELINDA BLUE FIRM IS THE VET FOR RICHARD BALTAS; CORRECT?

13 A CAN I ASK WHY THAT'S RELEVANT?

14 MR. BRODNIK: I WOULD OBJECT TO RELEVANCE.

15 STEWARD BAKER: THAT'S HIS JOB.

16 THE WITNESS: SORRY.

17 STEWARD BAKER: DO YOU WANT TO COMMENT ON --

18 MR. LICHT: YEAH. RICHARD BALTAS TRAINED THE HORSE,
19 AND I WANT TO SEE IF SHE TOOK THE TIME TO LOOK AT ANY OF THE
20 X-RAYS THAT WERE ON THE HORSE.

21 STEWARD BAKER: OKAY. WELL, I DON'T THINK THAT WAS
22 ESTABLISHED ON THE RECORD. BUT YOU STILL HAVE -- RICHARD
23 BALTAS PREVIOUSLY TRAINED THIS HORSE, YOU SAID?

24 MR. LICHT: YES.

25 STEWARD BAKER: DOES THAT CHANGE YOUR OBJECTION AT ALL,

1 COUNSEL?

2 MR. BRODNIK: NO. I STILL OBJECT AS TO RELEVANCE.
3 CANDIDLY, I'M NOT SURE THAT THE FOUNDATION HAS BEEN LAID AS TO
4 WHEN MR. BALTA'S TRAINED THIS HORSE.

5 STEWARD BAKER: OKAY. WELL, WE'LL NOTE YOUR OBJECTION
6 FOR THE RECORD AND RULE ON IT AT A LATER TIME.

7 BY MR. LICHT:

8 Q IT APPEARS FROM THE PAST PERFORMANCES PRODUCED
9 BY C.H.R.B. THAT RICHARD BALTAS TRAINED "NEW KARMA" BETWEEN --

10 STEWARD BAKER: JUST ONE THING, MR. LICHT. I'M NOT
11 SURE -- I THINK YOUR CLIENT'S CAUGHT SOMETHING THERE. I'M SURE
12 THIS IS IN THE --

13 MR. LICHT: OKAY. I'LL WITHDRAW THE QUESTION.

14 STEWARD BAKER: OKAY.

15 BY MR. LICHT:

16 Q DID YOU EVER DO ANY VETERINARIAN WORK FOR JERRY
17 HOLLENDORFER?

18 A NO.

19 MR. BRODNIK: OBJECTION. RELEVANCE.

20 STEWARD BAKER: I'M GOING TO OVERRULE THAT OBJECTION.

21 BY MR. LICHT:

22 Q DID YOU EVER DO ANY VETERINARIAN WORK FOR GENARO
23 VALLEJO?

24 A YES.

25 Q DID YOU PROVIDE VETERINARIAN SERVICES FOR

1 MR. VALLEJO BETWEEN MAY OF 2018 AND SEPTEMBER OF 2018?

2 A YES.

3 Q DID YOU PERSONALLY DO ANY VET WORK FOR "NEW
4 KARMA" DURING THAT PERIOD?

5 A YES, I DID.

6 Q AND DID YOU TAKE ANY X-RAYS OF "NEW KARMA'S"
7 ANKLES DURING THAT PERIOD?

8 A NO.

9 Q DO YOU KNOW IF ANY WERE TAKEN?

10 A NOT TO MY KNOWLEDGE.

11 Q DID YOU EVER DISCUSS THE CONDITION OF THE ANKLES
12 WITH MR. VALLEJO?

13 A YES.

14 Q AND WHAT DID YOU TELL HIM AT THAT TIME?

15 A AT THAT TIME --

16 MR. BRODNIK: OBJECTION. RELEVANCE.

17 STEWARD BAKER: WE'LL RULE ON THAT AT A LATER TIME.

18 THE WITNESS: YES. I WAS CONCERNED THERE WAS SOME
19 INFUSION IN THE RIGHT ANKLE. AT THE TIME, THE HORSE HAD ALWAYS
20 CARRIED A LITTLE BIT OF EXTRA INFUSION IN THAT ANKLE. ALTHOUGH
21 THERE WAS NO CLINICAL INDICATION THAT THERE WAS ANYTHING WRONG
22 WITH IT OTHER THAN MILD SYNOVITIS.

23 Q YOU DIDN'T RECOMMEND ANY X-RAYS AT THAT TIME?

24 A NO.

25 Q DO YOU HAVE ANY IDEA WHAT THE TERM "HIGH RISK

1 LIST" MEANS?

2 A YES.

3 Q CAN YOU EXPLAIN WHAT THAT MEANS TO ME, PLEASE?

4 A THAT THE HORSE IS AT RISK OF POOR PERFORMANCE, I
5 GUESS. I DON'T KNOW THE SPECIFICS OF IT, BUT I HAVE A GENERAL
6 UNDERSTANDING OF IT.

7 Q AND HOW DOES A HORSE OBTAIN THE STATURE OF BEING
8 PUT ON A HIGH RISK LIST?

9 A FROM MY UNDERSTANDING, IT'S BASED ON THEIR
10 WORKOUTS AND PERFORMANCE RECORD.

11 Q SO IT'S A HIGH RISK OF NOT PERFORMING WELL.
12 IT'S NOT A RISK OF HIGH INJURY -- RISK OF INJURY. IS THAT
13 CORRECT?

14 A THAT'S MY UNDERSTANDING. YES.

15 Q SO YOU AS A VETERINARIAN HAVE NOTHING TO DO WITH
16 THE INPUT OF WHAT HORSES GO ON THAT LIST?

17 A CORRECT.

18 Q HOW MANY X-RAY VIEWS DID YOU TAKE OF "NEW KARMA"
19 WHEN YOU TOOK THE X-RAYS IN FEBRUARY?

20 A SIX.

21 Q AND HOW MANY DID YOU SHOW MR. PENDER?

22 A I SHOWED HIM THE TWO THAT WERE MOST RELEVANT
23 THAT EASILY DISPLAYED THE FRACTURE LINE.

24 Q AND WHY DID YOU NOT SHOW THE OTHER VIEWS?

25 A BECAUSE THEY WOULD NOT SHOW THE FRACTURE LINE AS

1 EASILY, AND I WANTED TO BE CLEAR.

2 Q BUT HE PAID FOR THOSE X-RAYS; DIDN'T HE?

3 A SURE. HE COULD'VE REQUESTED THE FULL SET IF HE
4 WANTED TO LOOK AT THE REST OF THEM.

5 Q DID YOU EVER INJECT "NEW KARMA"?

6 A YES.

7 Q WHILE HE WAS UNDER THE TRAINING OF MICHAEL
8 PENDER?

9 A YES.

10 Q WHEN DID YOU INJECT HIM, AND WHAT DID YOU INJECT
11 HIM WITH?

12 A I BELIEVE IT WAS EARLIER IN FEBRUARY. I BELIEVE
13 AROUND THE 10TH, I INJECTED HIS HOCKS, RIGHT ANKLE AND RIGHT
14 KNEE.

15 Q NEVER INJECTED THE RIGHT ANKLE?

16 A NO.

17 Q YOU NEVER HAD ANY DISCUSSIONS ABOUT THIS HORSE
18 WITH DR. RICK ARTHUR?

19 A NOT UNTIL AFTER WE WERE CONTACTED BY MR. PENDER
20 TO DISCLOSE OUR X-RAYS TO HIM.

21 Q A FEW MINUTES AGO YOU TESTIFIED THAT THE ONLY
22 PERSON YOU DISCUSSED IT WITH WAS MR. PENDER'S ASSISTANT,
23 MELINDA, AND MR. PENDER. DO YOU WISH TO CHANGE THAT TESTIMONY
24 NOW?

25 A OKAY. YES. I'M SORRY. BY THE TIMELINE, YES.

1 I REDISCUSSED IT WITH DR. ARTHUR ONCE WE SUBMITTED THE X-RAYS
2 TO HIM.

3 Q AND WHAT DID YOU TELL HIM?

4 A THAT THE HORSE HAD A FRACTURE LINE AND
5 MR. PENDER HAD BEEN NOTIFIED OF IT.

6 Q AS PART OF YOUR LICENSING IN CALIFORNIA, YOU'RE
7 AWARE OF BUSINESS AND PROFESSIONS CODE 4857, I ASSUME. MAYBE
8 NOT BY NUMBER.

9 A NOT BY NUMBER.

10 MR. BRODNIK: OBJECTION. RELEVANCE.

11 STEWARD BAKER: WHERE ARE YOU HEADED WITH THIS?

12 MR. LICHT: THAT THERE'S CONFIDENTIALITY REQUIREMENTS
13 UNDER THE LAW OF REVIEWING THE CONDITION OF A HORSE TO ANYBODY.

14 STEWARD BAKER: WE'LL RULE ON THAT OBJECTION AT --

15 THE WITNESS: CAN I MAKE A --

16 STEWARD BAKER: ONE MOMENT.

17 -- AT A LATER TIME. GO AHEAD, MR. LICHT.

18 BY MR. LICHT:

19 Q ARE YOU AWARE THAT THERE ARE CONFIDENTIALITY
20 REQUIREMENTS OF A VETERINARIAN IN THE STATE?

21 A YES.

22 Q AND WHAT'S YOUR UNDERSTANDING WHAT THOSE
23 CONFIDENTIAL REQUIREMENTS ARE?

24 A MY UNDERSTANDING ARE THAT THE INFORMATION OF
25 MEDICAL RECORDS ARE TO REMAIN CONFIDENTIAL UNLESS REQUESTED BY

1 THE OWNER OR THE TRAINER, WHICH THEY WERE. MR. PENDER
2 CONTACTED ME HIMSELF AND ASKED ME TO DISCLOSE THE X-RAYS TO
3 DR. ARTHUR.

4 Q DID HE ASK YOU TO DISCUSS THE CONDITION OF THE
5 HORSE WITH DR. ARTHUR?

6 A NO. BUT AT THAT POINT, THE INFORMATION WAS
7 PUBLIC -- WELL, IT WAS KNOWN TO DR. ARTHUR.

8 Q SO THE ANSWER IS NO, HE DIDN'T ASK YOU TO
9 DISCUSS IT WITH DR. ARTHUR; CORRECT?

10 A NO.

11 MR. BRODNIK: OBJECTION. RELEVANCE.

12 MR. LICHT: THIS IS VERY RELEVANT.

13 STEWARD BAKER: I MEAN, THIS IS AN IMPORTANT THING. I
14 WANT TO HEAR IT ANYWAY. BUT AS FAR AS A FORMAL RULING ON THE
15 OBJECTION, I'M GOING TO WAIT UNTIL A LATER TIME.

16 CAN YOU READ BACK THE LAST QUESTION, MS. DERIEG?

17

18 (RECORD READ.)

19

20 STEWARD BAKER: THANK YOU, MS. DERIEG.

21 GO AHEAD, MR. LICHT.

22 BY MR. LICHT:

23 Q DID YOU EVER TREAT "NEW KARMA" AFTER THE WORKOUT
24 IN APRIL?

25 A YES. AFTER SURGERY, HE RECEIVED ANTIBIOTICS AND

1 BANDAGING.

2 Q DID YOU EVER INJECT ANY PART OF HIS BODY DURING
3 THE PERIOD AFTER THE X-RAY AND PRIOR TO THE SURGERY?

4 A JUST THE ANTIBIOTICS.

5 Q DID YOU EVER WATCH "NEW KARMA" JOG DURING THE
6 PERIOD OF APRIL -- MARCH OR APRIL OF 2019?

7 A NO.

8 Q ISN'T JOGGING ON THE ROAD THE BEST INDICATION OF
9 A HORSE'S SOUNDNESS?

10 A A FIRM SURFACE. NOT NECESSARILY A ROAD.

11 Q AND YOU DIDN'T FEEL IT WAS IMPORTANT TO DO THAT
12 EVEN THOUGH YOU THOUGHT THERE WAS A PROBLEM WITH THE HORSE?

13 A NO. I WAS WORRIED THAT THE HORSE HAD A
14 FRACTURE, AND I DID NOT WANT TO DO ANY MORE STRESS TO THAT
15 JOINT.

16 Q IF SOMEBODY WERE TO PALPATE THE AREA WITH
17 STRENGTH, COULD THAT CAUSE THE INJURY TO EXACERBATE?

18 A TO EXACERBATE? SURE, IF THEY WERE TO REALLY
19 WRENCH ON THE ANKLE. YEAH.

20 MR. LICHT: NO FURTHER QUESTIONS.

21 STEWARD BAKER: THANK YOU.

22 MR. BRODNIK?

23 MR. BRODNIK: NO. THANK YOU.

24 STEWARD BAKER: ARE YOU FINE, MR. ALFORD?

25 MR. ALFORD: I'M GOOD.

1 STEWARD SAWYER: I JUST WANT TO CONFIRM ONE THING.
2 WHEN THE ASSISTANT ASKED YOU TO EXAMINE THE HORSE, IT WAS ON
3 2/25. IS THAT THE CORRECT DATE?

4 THE WITNESS: UH-HUH.

5 STEWARD SAWYER: OF WHICH THE HORSE WAS SORE AND THAT'S
6 WHY YOU WERE ASKED TO EXAMINE IT?

7 THE WITNESS: CORRECT.

8 STEWARD SAWYER: OKAY. I JUST WANT TO GET THE DATE
9 RIGHT. THANK YOU.

10 STEWARD BAKER: UNLESS ANYBODY HAS ANYTHING FURTHER FOR
11 DR. WHARTON.

12 DR. WHARTON, THANK YOU VERY MUCH FOR YOUR TIME.
13 WE REALLY APPRECIATE IT.

14 MR. BRODNIK?

15 MR. BRODNIK: DR. ARTHUR.

16 MR. LICHT: CAN WE DO A TEN-MINUTE BREAK?

17 STEWARD BAKER: YES.

18

19 (RECESS.)

20

21 STEWARD BAKER: WE'RE BACK ON THE RECORD IN THE MICHAEL
22 PENDER MATTER. 11:16 A.M. CALIFORNIA HORSE RACING BOARD,
23 EQUINE MEDICAL DIRECTOR RICK ARTHUR HAS ENTERED THE HEARING.

24 AND IS HE A WITNESS OF YOURS, MR. BRODNIK?

25 MR. BRODNIK: YES.

1 STEWARD BAKER: AND WITH THAT, MS. DERIEG, CAN YOU
2 SWEAR IN THE WITNESS?

3
4 RICK ARTHUR,
5 PRODUCED AS A WITNESS BY AND ON BEHALF OF THE STATE AND HAVING
6 BEEN FIRST DULY SWORN BY THE HEARING REPORTER, WAS EXAMINED AND
7 TESTIFIED AS FOLLOWS:

8
9 STEWARD BAKER: GO AHEAD, MR. BRODNIK.

10
11 DIRECT EXAMINATION

12
13 BY MR. BRODNIK:

14 Q GOOD MORNING, DR. ARTHUR. HOW ARE YOU EMPLOYED?

15 A I'M EMPLOYED BY THE SCHOOL OF VETERINARIAN
16 MEDICINE AT THE UNIVERSITY OF CALIFORNIA. I WORK FOR THE
17 REGENTS OF THE UNIVERSITY OF CALIFORNIA.

18 Q OKAY. ARE YOU CURRENTLY THE EQUINE MEDICAL
19 DIRECTOR FOR THE CALIFORNIA HORSE RACING BOARD?

20 A I'M THE EQUINE MEDICAL DIRECTOR FOR THE SCHOOL
21 OF VETERINARIAN MEDICINE ASSIGNED TO THE CALIFORNIA HORSE
22 RACING BOARD.

23 Q AND HOW LONG HAVE YOU HELD THAT POSITION?

24 A IT'S BEEN 12 AND A HALF YEARS.

25 Q AND WHAT ARE SOME OF THE RESPONSIBILITIES OF

1 YOUR POSITION AS EQUINE MEDICAL DIRECTOR?

2 A WELL, I ADVISE THE BOARD ON VETERINARY
3 PRACTICES, DRUG TESTING, ANIMAL WELFARE AND SAFETY ISSUES.

4 Q WHAT EDUCATION AND TRAINING DO YOU HAVE TO HOLD
5 SUCH A POSITION?

6 A I HAVE A BACHELOR'S DEGREE IN GENETICS AND A
7 DOCTORATE IN VETERINARY MEDICINE FROM THE UNIVERSITY OF
8 CALIFORNIA DAVIS.

9 Q ARE YOU A LICENSED VETERINARIAN IN CALIFORNIA IN
10 GOOD STANDING?

11 A YES, I AM.

12 Q AND DO YOU SIT AS A MEMBER ON ANY ORGANIZATIONS
13 RELATED TO VETERINARY MEDICINE?

14 A YES. I HAVE BEEN THE PAST PRESIDENT OF THE
15 AMERICAN ASSOCIATION OF EQUINE PRACTITIONERS. I'M THE PAST
16 PRESIDENT OF THE ASSOCIATION FOR EQUINE SPORTS MEDICINE. AND I
17 SERVE AS THE I.G.S.R.V., THAT'S THE INTERNATIONAL GROUP OF
18 SPECIALISTS RACING VETERINARIANS. I'M ON THE I.F.H.A. ADVISORY
19 COUNSEL FOR PROHIBITED SUBSTANCES AND WELFARE COMMITTEE.

20 Q HAVE YOU EVER BEEN DESIGNATED FOR ANY CALIFORNIA
21 HORSE RACING BOARD MEETINGS?

22 A YES. QUITE A FEW TIMES.

23 Q HOW MANY TIMES?

24 A DOZEN. MORE. TWO DOZEN.

25 Q NOW, DR. ARTHUR, IN YOUR EXPERIENCE AS A

1 VETERINARIAN, HAVE YOU HAD REASON TO REVIEW X-RAYS?

2 A YES. A BIG PART OF THE PRACTICE OF VETERINARIAN
3 MEDICINE AT THE RACETRACK, I WAS IN CHARGE OF THE RADIOLOGY
4 SECTION OF THE EQUINE HOSPITAL HERE FOR YEARS. AND I THINK I'M
5 STILL THE ONLY NONPRACTICING VETERINARIAN THAT PRESENTED THE
6 RADIOLOGY PANEL AT THE AMERICAN ASSOCIATION OF EQUINE
7 PRACTITIONERS.

8 Q NOW, IN YOUR PRACTICE AND IN YOUR EXPERIENCE IN
9 THOSE DIFFERENT POSITIONS, HAVE YOU HAD THE OPTION TO REVIEW
10 X-RAYS RELATED TO FRACTURES OR INJURIES OF THE SESAMOID?

11 A ALL THE TIME. THEY'RE A VERY COMMON FRACTURE IN
12 HORSE RACING.

13 Q OKAY. NOW, I'D LIKE TO ASK YOU ABOUT WHETHER
14 YOU HAD THE OPPORTUNITY TO REVIEW X-RAYS FROM A HORSE NAMED
15 "NEW KARMA." HAVE YOU HAD AN OPPORTUNITY TO DO THAT?

16 A YES, I HAVE.

17 Q OKAY. AND DID YOU HAVE AN OPPORTUNITY TO REVIEW
18 X-RAYS FROM THE HORSE -- RADIOGRAPHS FROM THE HORSE "NEW KARMA"
19 TAKEN BOTH FEBRUARY 25TH AND APRIL 9TH OF THIS YEAR?

20 A YES. THE APRIL 9TH WERE TAKEN BY DR. BOYAR AT
21 GOLDEN GATE FIELDS. AND THE FEBRUARY 25TH, I THINK IT IS, WERE
22 TAKEN EITHER BY DR. WHARTON OR DR. BLUE HERE AT SANTA ANITA.
23 IT MIGHT HAVE BEEN DR. MC AFOOS. SOMEBODY IN THE BLUE
24 PRACTICE. DR. BLUE HAD SENT THEM TO ME.

25 Q OKAY. AND WHEN REVIEWING THE TWO X-RAYS -- OR

1 EXCUSE ME. WHEN REVIEWING THE X-RAYS FROM BOTH THOSE DATES,
2 FEBRUARY 25TH AND APRIL 9TH OF 2019, IN YOUR OPINION, DOES THIS
3 APPEAR TO BE THE SAME INJURY?

4 A YES, IT IS. IT'S IN THE SAME LOCATION. IN
5 FACT, THE SAME SILHOUETTE. SO IT'S THE SAME INJURY. ONE IS
6 ACUTE, AND THE OTHER IS MORE CHRONIC.

7 Q OKAY. WITH REGARD TO THE ONE THAT YOU WOULD
8 CHARACTERIZE AS ACUTE, WAS THAT THE ONE THAT YOU REVIEWED FROM
9 FEBRUARY 25TH OR FROM APRIL 9?

10 A THAT WAS FROM FEBRUARY 25.

11 Q AND WITH REGARD TO THE ONE THAT YOU CONSIDERED
12 TO BE CHRONIC, WHEN WAS THAT?

13 A THAT WAS THE APRIL 9TH RADIOGRAPHS OF DR. BOYER.

14 Q NOW, DR. ARTHUR, IN YOUR EXPERIENCE AND IN YOUR
15 OPINION, IS THERE ANY WAY THAT AN INJURY DEPICTED, SUCH AS THE
16 INJURY DEPICTED ON FEBRUARY 25, 2019, COULD'VE HEALED BY
17 MARCH 24TH OF 2019?

18 A ABSOLUTELY NOT.

19 Q AND WHAT DO YOU BASE THAT ON?

20 A 30 YEARS OF PRACTICE, EXPERIENCE AND ANOTHER
21 12 YEARS AS EQUINE MEDICAL DIRECTOR.

22 Q OKAY. IN YOUR OPINION, HOW LONG GENERALLY WOULD
23 IT TAKE FOR AN INJURY SUCH AS THE ONE DEPICTED ON FEBRUARY 25TH
24 X-RAY TO HEAL?

25 A I WOULD THINK -- FIRST OF ALL, THEY DON'T HEAL

1 WELL. THEY OFTENTIMES GET A FIBROUS UNION. THE SESAMOID BONE
2 IS ALWAYS UNDER TENSION. SO THERE IS A TENDENCY TO BE PULLED
3 APART. SO IT'S NOT LIKE A CANNON BONE FRACTURE WHERE YOU CAN
4 SCREW THEM BACK TOGETHER AND GET PRESSURE.

5 SO HEALING IN TERMS OF GETTING A STABLE FIBROUS
6 UNION, 90 TO 120 DAYS MINIMUM, AND IT WOULD PROBABLY BE SAFER
7 120 TO 180 DAYS, IF IT EVER HEALED AT ALL. SOMETIMES FIBROUS
8 UNIONS ARE NOTORIOUSLY UNSTABLE.

9 Q DO YOU HAVE AN OPINION AS TO WHETHER, IN YOUR
10 OPINION, IT WOULD BE ABUSE TO PERMIT A HORSE TO ENTER A WORKOUT
11 WITH A FRACTURE SUCH AS THIS WITHIN 30 DAYS OF DIAGNOSIS OF A
12 FRACTURE?

13 MR. LICHT: I'LL OBJECT. ABUSE IS NOT A TERM OF ART.
14 IF YOU WANT TO ASK: HAS HE VIOLATED ONE OF THE RULES OF
15 RACING? I WOULD ACCEPT THAT. BUT TO SAY "ABUSE" IS A VERY
16 GENERIC OVERBROAD TERM.

17 STEWARD BAKER: OKAY. BEFORE I RULE ON THAT OBJECTION,
18 1902.5 ANIMAL WELFARE DOES CONTAIN THE WORD ABUSE IN IT. DOES
19 THAT CHANGE YOUR OBJECTION AT ALL?

20 MR. LICHT: NO. I WOULD SAY IF THE QUESTION WOULD BE:
21 HAS THIS SECTION BEEN VIOLATED BY REASON OF ABUSE? I THINK
22 THAT WOULD BE ACCEPTABLE, BUT JUST THE GENERAL TERM OF ABUSE.

23 STEWARD BAKER: WITHOUT RULING ON THE OBJECTION,
24 MR. BRODNIK, WOULD YOU MIND REPHRASING YOUR QUESTION, PLEASE?

25 MR. BRODNIK: SURE.

1 BY MR. BRODNIK:

2 Q DR. ARTHUR, DO YOU HAVE AN OPINION AS TO WHETHER
3 OR NOT REQUIRING A HORSE TO ENTER A WORKOUT WITHIN 30 DAYS OF
4 DIAGNOSIS OF A FRACTURE SUCH AS THE ONE DEPICTED ON
5 FEBRUARY 25, 2019 WOULD BE A VIOLATION OF 1902.5, ANIMAL
6 WELFARE?

7 A YES, I DO. I THINK IT IS AN UNDUE RISK ON THE
8 HORSE AND THE RIDER AND IS A DANGER TO EVERYBODY INVOLVED.

9 Q OKAY. AND WHAT DO YOU BASE THAT ON?

10 A I BASE THAT ON 40 YEARS AS A VETERINARIAN AT THE
11 RACETRACK.

12 Q DR. ARTHUR, IF YOU WERE TOLD THAT -- WELL, LET
13 ME ASK YOU THIS. IN YOUR EXPERIENCE, AFTER SEEING A FRACTURE
14 SUCH AS THE ONE DEPICTED IN THE RADIOGRAPH OF FEBRUARY 25;
15 2019, WOULD YOU HAVE EXPECTED A FOLLOW-UP RADIOGRAPH TO BE
16 TAKEN PRIOR TO THE HORSE RETURNING TO WORK OUT?

17 MR. LICHT: AGAIN, CALLS FOR SPECULATION. THAT'S NOT
18 AN APPROPRIATE QUESTION.

19 STEWARD BAKER: OKAY. WE'LL NOTE THAT OBJECTION FOR
20 THE RECORD AND RULE ON IT LATER.

21 CAN YOU PROCEED, MR. BRODNIK?

22 OR CAN YOU ANSWER THE QUESTION, DR. ARTHUR?

23 THE WITNESS: YEAH. I WOULD NOT EXPECT THIS HORSE TO
24 CONTINUE TRAINING. TO ME, EITHER THE HORSE SHOULD'VE BEEN
25 OPERATED ON OR STOPPED ON. THE SESAMOID CONSTITUTES THE

1 MAJORITY OF THE FRACTURES WE SEE IN HORSE RACING. IN FACT, IN
2 THE RECENT SPATE OF INJURIES, 19 OUT OF 22 OF THE HORSES THAT
3 DIED HERE HAD SESAMOID FRACTURES. IT'S A VERY HIGH-RISK
4 FRACTURE. THE HORSES LOSE SUPPORT.

5 I CERTAINLY DON'T THINK A HORSE WITH A FRACTURE
6 LIKE THAT SHOULD BE TRAINING ANYWHERE, NEVERTHELESS AT SANTA
7 ANITA.

8 MR. BRODNIK: THANK YOU. I DON'T HAVE ANY FURTHER
9 QUESTIONS.

10 STEWARD BAKER: DR. ARTHUR, HOW DID YOU FIRST -- GIVE
11 US A TIMELINE OF YOUR INVOLVEMENT WITH WHAT WE'LL CALL THE "NEW
12 KARMA" MATTER.

13 THE WITNESS: I WAS CONTACTED BY DR. GRANDE WHO
14 NOTIFIED ME THAT "NEW KARMA" HAD BEEN ENTERED AT GOLDEN GATE
15 FIELDS. HE WAS ON A WATCH LIST HERE AT SANTA ANITA. THEY WERE
16 GOING TO GO EXAMINE HIM AND SAW THAT THE HORSE WAS ENTERED.
17 THERE WAS CONCERN ABOUT THE LEFT ANKLE. THE RIGHT ANKLE HAD A
18 CHRONIC SUSPENSORY DESMITIS. AND I CONTACTED DR. FRANKLIN, THE
19 OFFICIAL VETERINARIAN AT GOLDEN GATE FIELDS AND I TALKED TO
20 DR. SPORER AS WELL SUGGESTING THAT OR RECOMMENDING THAT THEY
21 REQUIRE THE HORSE TO BE RADIOGRAPHED BEFORE HE BE ALLOWED TO
22 RACE AT GOLDEN GATE FIELDS.

23 STEWARD BAKER: OKAY. CAN YOU EXPLAIN TO THE STEWARDS
24 WHAT A WATCH LIST IS, AND HOW LONG IT'S BEEN AROUND AT SANTA
25 ANITA?

1 THE WITNESS: WE'VE HAD WATCH LISTS FOR A WHILE. IT'S
2 JUST MUCH MORE EXTENSIVE NOW. WE HAVE VETERINARIANS OUT ON THE
3 TRACK WATCHING HORSES TRAIN. AND HOW THE HORSE GETS ON THE
4 WATCH LIST, THEY CAN GET ON IT FOR VARIOUS REASONS. THE WAY
5 THEY TRAVEL. YOU KNOW, OTHER REASONS THAT COME TO THE
6 ATTENTION OF THE TRACK OR OFFICIAL VETERINARIAN.

7 CERTAINLY, DR. GRANDE WAS CONCERNED ENOUGH TO
8 CONTACT ME ABOUT IT THAT THE HORSE WAS IN.

9 STEWARD BAKER: OKAY. SO HOW LONG -- THIS MAY HAVE
10 BEEN ANSWERED -- BUT HOW LONG HAD THIS HORSE BEEN ON A WATCH
11 LIST IN CALIFORNIA?

12 THE WITNESS: I DO NOT KNOW. ALL I WAS TOLD IS THAT
13 THE HORSE WAS ON THE WATCH LIST. THEY WERE GOING TO GO EXAMINE
14 THE HORSE AND SAW THAT THE HORSE WAS IN GOLDEN GATE FIELDS.

15 STEWARD BAKER: OKAY. JUST FOR THE RECORD, I'M LOOKING
16 AT THE LIFETIME PAST PERFORMANCES OF "NEW KARMA." IT SHOWS
17 JERRY HOLLENDORFER FOR TRAINING THIS HORSE IN JANUARY 2018 AND
18 DROPPED THE HORSE FROM \$32,000 IN CLAIMING TO \$8,000 IN
19 CLAIMING. DO YOU HAVE ANY RECORD OF THAT?

20 THE WITNESS: I DON'T HAVE ANY RECORD. THERE MAY BE A
21 RECORD AT -- WAS THAT AT GOLDEN GATE FIELDS RACE?

22 STEWARD BAKER: YES. THE JANUARY 7TH RACE, DR. ARTHUR,
23 WAS A SANTA ANITA RACE. THE FOLLOWING RACE ON FEBRUARY 11TH
24 WAS AT GOLDEN GATE FIELDS.

25 THE WITNESS: CAN I TAKE A LOOK AT THAT?

1 ARE YOU TALKING ABOUT A COUPLE YEARS AGO?

2 STEWARD BAKER: NO. I'M TALKING ABOUT A YEAR AND FOUR
3 MONTHS AGO. OR A YEAR AND FIVE MONTHS AGO.

4 THE WITNESS: YOU'RE TALKING ABOUT THE CLAIM HERE;
5 RIGHT?

6 STEWARD BAKER: AND THE REASON I'M BRINGING THAT UP,
7 WAS ANY VETERINARIANS -- DID THAT RAISE A RED FLAG BACK IN
8 JANUARY OR FEBRUARY OF 2018 THAT THERE MIGHT BE -- I'LL JUST
9 SPEAK OUT LOUD HERE.

10 IN MY EXPERIENCE, THAT'S A SIGNIFICANT DROP.
11 WAS THERE ANY DISCUSSION ABOUT THIS HORSE'S HEALTH BACK THEN?

12 THE WITNESS: THAT WAS AT GOLDEN GATE FIELDS; RIGHT?

13 STEWARD BAKER: YES.

14 THE WITNESS: OKAY. I COULDN'T ANSWER FOR THEM. THEY
15 WOULD HAVE TO ANSWER FOR THEMSELVES. I KNOW WE DO A MUCH MORE
16 EXTENSIVE WATCH LIST HERE ON THE SOUTHERN CALIFORNIA CIRCUIT
17 THAN THEY DO UP THERE. SO YOU HAVE TO TALK TO DR. FRANKLIN OR
18 DR. SPORER. IT MIGHT HAVE BEEN DR. ISABELLE AT THE TIME.

19 BUT MAJOR DROPS ARE ALWAYS NOTED. I WOULD BE
20 SPECULATING THAT I KNEW WHETHER THIS HORSE GOT SPECIAL
21 ATTENTION AT THAT TIME.

22 STEWARD BAKER: FAIR ENOUGH. THANK YOU, DR. ARTHUR.

23 I HAVE NO FURTHER QUESTIONS OF DR. ARTHUR.

24 MR. JAUREGUI?

25 STEWARD JAUREGUI: JUST ONE QUESTION. MAYBE TWO.

1 WHAT'S YOUR CONTACT WITH DR. GRANDE REGARDING THE WATCH LIST
2 WHEN THE HORSE WAS AT GOLDEN GATE? DID YOU SEND THE OFFICIAL
3 VETERINARIAN TO EXAMINE THE HORSE AND TEST THE HORSE UP THERE?

4 THE WITNESS: I TALKED TO THE OFFICIAL VETERINARIAN AND
5 TOLD HIM TO MAKE SURE THAT DR. SPORER WHO DOES THE EXAMINATIONS
6 THERE, OR IT MIGHT HAVE BEEN DR. CHRISTIAN. IT WASN'T CLEAR TO
7 ME UNTIL I TALKED TO DR. FRANKLIN.

8 MAKE SURE THAT THEY EXAMINE THE HORSE, AND THAT
9 WE WERE MORE CONCERNED WITH THE LEFT ANKLE THAN THE RIGHT ANKLE
10 WHICH HAD THE CHRONIC LESION ON IT. AND I EXPLAINED THAT TO
11 DR. SAPORE AS WELL. MY CONVERSATION WITH DR. SAPORE, SHE WENT
12 AND LOOKED AT THE HORSE. SAW THE SUSPENSORY LESION ON THE
13 RIGHT AND ACTUALLY HAD THE RIGHT RADIOGRAPH. AND THEN WE MADE
14 CLEAR AFTERWARDS WHEN THE HORSE WENT ON THE VET'S LIST THAT THE
15 HORSE WAS ON THE VET'S LIST ACCORDING TO 1866 -- I CAN'T
16 REMEMBER "B" OR "C" -- THAT THE HORSE WOULD NOT BE ALLOWED TO
17 TRAIN UNTIL WE SAW THE RADIOGRAPHS OF BOTH ANKLES.

18 STEWARD JAUREGUI: WAS THE HORSE TESTED AT ALL?

19 THE WITNESS: NO.

20 STEWARD JAUREGUI: NO. OKAY.

21 THE WITNESS: NOT TO MY KNOWLEDGE. I HAVEN'T SEEN ANY
22 RESULTS. IF IT WAS, THERE WAS NOTHING AMISS.

23 STEWARD JAUREGUI: OKAY.

24 STEWARD BAKER: MS. SAWYER.

25 STEWARD SAWYER: I JUST NEED AN EXPERT ANSWER. IF A

1 HORSE -- IF THE TERM FRACTURE AND THE TERM HAIRLINE FRACTURE,
2 IF SOMEBODY WANTED YOU TO DEFINE THE DIFFERENCE, HOW WOULD YOU
3 DO IT? WOULD YOU SAY THAT ONE IS MORE DANGEROUS THAN THE
4 OTHER, OR SHOULD THEY BOTH BE HANDED EQUALLY?

5 THE WITNESS: A FRACTURE IS A FRACTURE.

6 STEWARD SAWYER: RIGHT.

7 THE WITNESS: A HAIRLINE WOULD BE AN ADJUNCT FOR A
8 FRACTURE.

9 STEWARD SAWYER: OKAY.

10 THE WITNESS: SO WHAT IT IS, IT WOULD BE HOW THE
11 FRACTURE LOOKS. REMEMBER, A FRACTURE IS WHERE THERE'S A
12 DISRUPTION IN THE BONE; RIGHT? SO WHAT THAT MEANS IS THAT THE
13 STRENGTH BETWEEN THAT -- IT DOESN'T MATTER WHETHER IT'S THE
14 HAIRLINE, SEPARATED OR WHATEVER. THE STRENGTH OF THAT BONE IS
15 COMPROMISED.

16 STEWARD SAWYER: AND THEN FOLLOW UP. ON THE X-RAYS
17 FROM THE FIRST SET TO THE SECOND SET, WOULD YOU DEFINE THOSE AS
18 FRACTURES OR HAIRLINE FRACTURES?

19 THE WITNESS: BOTH OF THEM ARE FRACTURES. I DON'T
20 THINK EITHER ONE IS A HAIRLINE FRACTURE. ONE IS NOT DISPLACED
21 AS THE OTHER. YOU CAN ACTUALLY SEE DEMINERALIZATION STARTING
22 IN THE SECOND SET OF X-RAYS AS YOU WOULD HAVE EXPECTED FOR A
23 RELATIVELY ACUTE FRACTURE. BUT THERE'S CLEAR THAT THERE WAS A
24 CHANGE BETWEEN THE BONE ON THE FEBRUARY 25TH AND ON THE
25 RADIOGRAPHS FROM THE 9TH OF APRIL. AND SOME OF THAT IS SOME OF

1 THE FUZZINESS TO THAT FRACTURE LINE.

2 REMEMBER, THE WAY THAT FRACTURES HEAL
3 ORIGINALLY, THERE ARE BONE CELLS CALLED OSTEOCLASTS THAT
4 DEMINERALIZE ALONG THE FRACTURE LINE BEFORE THE OSTEOBLASTS
5 COME BACK IN AND START FILLING IN THAT BONE.

6 STEWARD SAWYER: AND THEN LET ME JUST HAVE YOU CONFIRM
7 IF THIS IS CORRECT. EVEN IF THAT FRACTURE HEALED, IT'S STILL
8 GOING TO BE A WEAKER SPOT IN THE BONE AND STILL CAPABLE OF
9 FRACTURING RATHER THAN A TOTALLY NON --

10 THE WITNESS: FOR A PERIOD OF TIME. I MEAN, THERE WILL
11 COME A TIME AND THERE CAN COME A TIME AND SOMETIMES SESS -- THE
12 PROBLEM WITH SESAMOID IS THEY DON'T HEAL WELL BECAUSE, AGAIN,
13 THEY'RE UNDER TENSION. THE PROCESS IS THAT BONE HEALS
14 ORIGINALLY WITH WOVEN BONE WHICH IS A VERY SPONGY SORT OF BONE.
15 IT'S NOT PARTICULARLY STRONG. AND AS THE BONE REMODELS OVER
16 TIME AND RESTRUCTURES, IT GETS INTO WHAT'S CALLED LAMELLAR BONE
17 WHICH IS STRONGER, AND THE TYPE OF BONE THAT RACE HORSES NEED.

18 STEWARD SAWYER: LET ME ASK YOU THIS, AND YOU MIGHT
19 HAVE TO LOOK AT THE X-RAY TO ANSWER. DR. WHARTON TESTIFIED
20 THAT THIS FRACTURE WAS IN THE AREA WHERE THE SUSPENSORY
21 ATTACHES.

22 THE WITNESS: THAT'S RIGHT.

23 STEWARD BAKER: THAT'S A MORE DANGEROUS AREA TO HAVE A
24 FRACTURE ON A SESAMOID.

25 THE WITNESS: RIGHT. THIS IS AN APICAL FRACTURE. IT'S

1 ACTUALLY A FAIRLY LARGE APICAL FRACTURE, BUT THERE WILL BE
2 CONSIDERABLE SUSPENSORY LIGAMENT ATTACHMENT TO THE BONE IN THIS
3 PARTICULAR AREA. IF YOU GO IN AND OPERATE -- AND I'VE OPERATED
4 ON A LOT OF THESE -- THE BIG JOB IS ACTUALLY SEPARATING THE
5 SUSPENSORY LIGAMENT FROM THE BONE FRAGMENT.

6 THIS IS -- FOR AN APICAL SESAMOID FRACTURE, THIS
7 IS A MODERATE, MODERATE LARGE SIZE.

8 STEWARD SAWYER: THAT'S ALL.

9 STEWARD BAKER: THANK YOU.

10 MR. LICHT?

11
12 CROSS-EXAMINATION

13
14 BY MR. LICHT:

15 Q DR. ARTHUR, HAVE YOU HAD A CHANCE TO LOOK AT THE
16 C.H.R.B. CONFIDENTIAL VET RECORDS ON "NEW KARMA"?

17 A THE ONLY -- I DID NOT. AFTER I GOT THE
18 RADIOGRAPHS FROM DR. BOYER, I CALLED MIKE PENDER, AND I ASKED
19 HIM IF THIS HORSE HAD BEEN RADIOGRAPHED. HE SAID HE WASN'T
20 SURE WHEN. AND I HAD DR. GRANDE EXAMINE THE CONFIDENTIALS AND
21 FOUND IT WAS X-RAYED ON THE 25TH, AND THAT'S WHEN I CALLED MIKE
22 BACK AND SAID: HEY, THIS HORSE WAS X-RAYED ON THE 25TH. CAN
23 YOU HAVE DR. BLUE SEND ME THE X-RAYS? AND HE AGREED TO DO
24 THAT.

25 Q BUT YOU NEVER TOOK THE OPPORTUNITY TO LOOK AT

1 ANY CONFIDENTIAL VET RECORDS FROM BEFORE FEBRUARY 25TH;
2 CORRECT?

3 A NO, I DIDN'T.

4 Q WOULDNT'T THAT HAVE BEEN IMPORTANT TO EVALUATE ON
5 THIS HORSE'S RACING CONDITION?

6 A I DON'T KNOW WHY THAT WOULD BE.

7 Q WHAT IF HE HAD THAT FRACTURE OR HAIRLINE
8 FRACTURE -- WHATEVER WE'RE GOING TO CALL IT -- FOR SOME TIME
9 BEFORE AND WAS RACING AND COMPETING WITH IT? DID THAT IMPACT
10 YOUR OPINION?

11 A NOT REALLY BECAUSE, OBVIOUSLY, THERE SHOULD'VE
12 BEEN -- THERE'S A REASON THE HORSE WOULD'VE BEEN RADIOGRAPHED
13 ON THE 25TH. IT'S PRESUMING THAT IT WASN'T DONE FOR NO REASON.
14 THERE WOULD BE SOME INDICATION FOR THAT. AND CLEARLY -- YOU
15 KNOW, IT WOULD BE VERY UNLIKELY TO HAVE A FRACTURE LIKE THIS
16 THAT HAD BEEN A HAIRLINE FRACTURE FOR A LONG PERIOD OF TIME.

17 IF YOU LOOK AT THIS BONE, THERE'S NO SECONDARY
18 JOINT DISEASE AROUND IT WHICH IS VERY TYPICAL WITH, FOR
19 EXAMPLE, A HAIRLINE FRACTURE THAT WOULD BE IN A YEARLING, FOR
20 EXAMPLE. BUT THE REAL ISSUE HERE IS THAT THE BONE HAS CHANGED
21 BETWEEN THE 25TH AND APRIL 9TH WHICH IS ABOUT A SIX-WEEK PERIOD
22 OF TIME. YOU CAN ACTUALLY SEE IT ON THE RADIOGRAPHS; THERE'S
23 DEMINERALIZATION ALONG THE FRACTURE LINE. SO THAT IS AN
24 ACTIVELY RESPONDING FRACTURE. SO WHATEVER HAPPENED ON THE
25 25TH -- BY THE WAY, THE CONFIDENTIALS DON'T ALWAYS HAVE THE

1 RADIOGRAPHS OR WHAT THE DIAGNOSIS IS.

2 SO, NO. I DON'T THINK IT WOULD'VE MADE ANY
3 DIFFERENCE TO ME.

4 Q YOU HAVEN'T HAD A CHANCE TO PERSONALLY EXAMINE
5 THE HORSE, HAVE YOU?

6 A I'VE NEVER LOOKED AT THE HORSE.

7 Q SO YOU'VE OBVIOUSLY NEVER JOGGED OR FLEXED HIM
8 OR ANYTHING. WOULD THAT IMPACT IT IF HE JOGGED SOUND FOR YOU?
9 WOULD THAT IMPACT YOUR EVALUATION OF THIS HORSE?

10 A NOT WITH THESE RADIOGRAPHS. IF I KNEW THAT THIS
11 HORSE HAD THESE RADIOGRAPHS, I WOULD KNOW HE HAD A STRUCTURAL
12 PROBLEM. IT'S VERY EASY TO MANAGE A HORSE EVEN WITH A FRACTURE
13 LIKE THIS TO MAKE IT LOOK GOOD. THAT'S PART OF THE PROBLEM WHY
14 WE'RE IN THIS SITUATION AT SANTA ANITA. IT'S VERY EASY TO MAKE
15 A HORSE LOOK GOOD, EITHER BY MEDICATION OR BY TRAINING
16 PATTERNS.

17 SO IT DOESN'T NEGATE THE FACT THAT THERE IS A
18 STRUCTURAL DEFECT THAT PUTS THIS HORSE AT ADDED RISK OF
19 CATASTROPHIC INJURY.

20 Q YOU TESTIFIED THAT YOU BELIEVE WORKING THE HORSE
21 IN FEBRUARY WAS ABUSE PER THE C.H.R.B. RULE; CORRECT?

22 A YES.

23 Q DO YOU BELIEVE THERE WAS ANY OTHER INSTANCE OF
24 ABUSE BY MR. PENDER?

25 A ENTERING THE HORSE AT GOLDEN GATE FIELDS AS

1 WELL. YES.

2 Q HOW IS ENTERING THE HORSE? CAN YOU EXPLAIN
3 THAT?

4 A HE ENTERS THE HORSE GUARANTEEING THAT THE HORSE
5 IS IN -- HE ENSURES THE CONDITION OF THE HORSE WHEN HE ENTERS
6 THAT HORSE.

7 Q WHEN HE ENTERS HIM OR WHEN HE RACES HIM?

8 A WELL, CERTAINLY YOU ENTER WITH THE INTENTION OF
9 RUNNING. THAT'S IN THE RULES; RIGHT?

10 Q I UNDERSTAND THAT, BUT THAT IN AND OF ITSELF IS
11 NOT A VIOLATION OF ANY RULE; IS IT?

12 A WELL, YOU'RE GETTING INTO LEGAL DEFINITION. AS
13 FAR AS I'M CONCERNED, IT'S ABUSE. BUT LEGALITY, I'LL LET YOU
14 GUYS ARGUE THAT POINT.

15 Q NOW, THE WATCH LIST. WHO'S THE KEEPER OF THIS
16 WATCH LIST?

17 A DR. GRANDE WOULD BE. I DON'T KNOW IF SANTA
18 ANITA TRACK VETERINARIAN HAS THEIR OWN WATCH LIST. THEY TRY TO
19 WORK TOGETHER. WE PRODUCE IT VIRTUALLY FOR EVERY RACE. WE
20 HAVE CERTAIN HORSES THAT WE KNOW WE GO BACK AND LOOK AT THAT
21 ARE A CONCERN. THERE ARE HORSES THAT, YOU KNOW, GIVE US AN
22 INDICATION THAT THERE'S A PROBLEM. SOMETIMES THERE MAY NOT BE
23 A PROBLEM, AND SOMETIMES THERE'S ISSUES LIKE WE HAVE HERE.

24 Q WHO'S THE "WE" THAT YOU'RE TALKING ABOUT?

25 C.H.R.B.?

1 A I'M TALKING ABOUT DR. GRANDE AND THE TRACK
2 VETERINARIAN WORK TOGETHER FOR THE WATCH LIST.

3 Q AND IS THAT WATCH LIST AVAILABLE TO TRAINERS TO
4 SEE FOR PUBLIC?

5 A NO, IT IS NOT.

6 Q SO THERE'S NO WAY THAT MR. PENDER COULD'VE KNOWN
7 THAT THIS HORSE WAS ON THE WATCH LIST; CORRECT?

8 A NO. EXCEPT THAT THE -- NO, HE WOULDN'T.

9 Q YOU'RE AWARE THAT "NEW KARMA" RACED ON
10 FEBRUARY 17TH OF '19; CORRECT?

11 A CORRECT.

12 Q DOESN'T A VETERINARIAN ON BEHALF OF THE STATE
13 LOOK AT EVERY HORSE WHEN THEY PULL UP IN A RACE TO DETERMINE IF
14 THEY'RE PULLING UP SOUND?

15 A IT ACTUALLY IS A WEAKNESS IN OUR SYSTEM IN
16 CALIFORNIA. WE'RE ONE OF THE FEW RACING MAJOR JURISDICTIONS
17 THAT ONLY HAS ONE TRACK VETERINARIAN. KIND OF DEPENDS ON WHERE
18 THE TRACK VETERINARIAN PULLS UP AND WHETHER HE HAS OTHER
19 DUTIES. MOST TRACKS, FOR EXAMPLE, MYRA IN KENTUCKY HAS TWO
20 TRACK VETERINARIANS. SO A HORSE CERTAINLY COULD PULL UP, WALK
21 OFF THE RACETRACK AND NOT BE OBSERVED BY A TRACK VETERINARIAN
22 EXCEPT JUST IN PASSING.

23 Q WELL, HE WAS NOT PLACED ON THE VET'S LIST AFTER
24 THAT.

25 A NO, HE WAS NOT.

1 Q SO IT'S CLEAR THAT EITHER THE TRACK VET FOUND
2 HIM TO BE PULLING UP SOUND, OR HE DIDN'T SEE HIM AT ALL;
3 CORRECT?

4 A THAT'S CORRECT.

5 Q AND IF HE'S ON THIS WATCH LIST, WOULDN'T THAT BE
6 A PRIORITY TO LOOK AT HIM?

7 A I DON'T BELIEVE HE GOT ON THE WATCH LIST UNTIL
8 AFTER THAT RACE. THEY'RE NOT ON THE WATCH LIST FOR EVERY --
9 HORSES COME ON AND THEY GO ON AND THEY COME OFF. YOU'D HAVE
10 TO ASK DR. GRANDE WHEN HE WENT ON THE WATCH LIST.

11 Q SO YOU DON'T EVEN KNOW IF HE'S EVER ON THE WATCH
12 LIST, THEN; RIGHT?

13 A YOU'RE RIGHT. IT'S HEARSAY THAT DR. GRANDE TOLD
14 ME AND CALLED ME AND SAID HE WAS ON A WATCH LIST.

15 Q CLEARLY, THE CONDITION, EVEN TO A LAYMAN LIKE
16 MYSELF, EXACERBATED FROM FEBRUARY TO APRIL; CORRECT? IN THE
17 X-RAY?

18 A YES.

19 Q AND IF THERE HAD BEEN NO X-RAY AND THE HORSE
20 JOGGED SOUND, HOW WOULD A TRAINER KNOW IT WAS WORSE UNTIL HE
21 SAW THAT SECOND X-RAY?

22 A THAT IS A FAIR QUESTION, AND IT'S ONE OF THE
23 REASONS THAT YOU X-RAY HORSES TO FIND OUT HIDDEN ISSUES. AS WE
24 TALKED MANY, MANY TIMES, MOST FATAL INJURIES HAVE PREEXISTING
25 PATHOLOGY. SOME OF WHICH, LIKE THIS, IS BEWILDERING WHY YOU

1 DON'T UNDERSTAND IT. BUT I'VE CERTAINLY SEEN SESAMOIDS THAT --
2 EVEN AS LARGE AS THIS -- THAT UNDER CERTAIN CONDITIONS, IF YOU
3 DON'T WALK THEM, YOU PUT THEM ON MEDICATION FOR A WHILE, LET
4 THEM COOL DOWN OR GET SOME OF THE INFLAMMATION OUT OF THEM WILL
5 ACTUALLY JOG PRETTY DARN GOOD. THAT DOESN'T MEAN THEY'RE NOT
6 STRUCTURALLY DEFICIENT.

7 Q BUT BEING STRUCTURALLY DEFICIENT IS NOT THE
8 CRITERIA FOR WHETHER OR NOT IT SHOULD BE ABLE TO RACE; IS IT?
9 IT'S WHETHER HE'S RACING SOUND; CORRECT?

10 A NO. IF YOU'RE STRUCTURALLY DEFICIENT, YOU ARE
11 NOT RACING SOUND. IT JUST MAKES IT DIFFICULT FOR US TO PICK IT
12 UP. I MEAN, THAT'S PART OF OUR CHALLENGE IS TO -- YOU KNOW, WE
13 DON'T HAVE X-RAY EYES WHEN WE DO THESE CLINICAL EXAMINATIONS.
14 IT'S ONE OF THE REASONS THAT SANTA ANITA HAS BACKED OFF ON THE
15 NONSTEROIDAL ANTIINFLAMMATORY USE, BOTH IN RACING AND TRAINING
16 AND REDUCED THE CORTICOSTEROIDS IS SO THAT WE CAN BETTER
17 IDENTIFY THE CLINICAL CONDITION OF THESE HORSES. IT'S WHY
18 SANTA ANITA HAS SPENT HALF A MILLION DOLLARS ON A P.E.T. SCAN
19 HERE AT SANTA ANITA SO WE CAN IDENTIFY THESE PRIOR TO THEM
20 BREAKING DOWN ON THE RACETRACK.

21 BUT IN THIS INSTANCE, YOU KNOW, THERE'S
22 CERTAINLY DUE WARNING HERE THAT THE HORSE HAD A FRACTURE, AND
23 HE HAD A STRUCTURAL FACTOR.

24 Q BUT IT'S NOT YOUR TESTIMONY THAT A HORSE HAS
25 NEVER RACED SUCCESSFULLY WITH A FRACTURE LIKE ON THE FEBRUARY

1 X-RAY; IS IT?

2 A I WOULD CONSIDER ANYBODY THAT WOULD RACE A HORSE
3 WITH THAT FRACTURE IS NEGLIGENT AND ABUSIVE TO HORSES. THAT IS
4 MY PROFESSIONAL OPINION. I STAND BY THAT.

5 I'M NOT GOING TO SAY IT'S NEVER HAPPENED BEFORE.
6 BUT IT'S LIKE SOMEBODY DRINKING TOO MUCH AT A BAR. YOU'LL GET
7 HOME 19 TIMES OUT OF 20, BUT THAT DOESN'T MEAN YOU DID THE
8 RIGHT THING.

9 Q I'LL REPRESENT TO YOU THAT DR. WHARTON TESTIFIED
10 THAT NOT ONLY DID SHE NEVER INJECT THAT HORSE'S ANKLE FOR
11 MR. PENDER NOR DID SHE KNOW OF ANY INJECTIONS FOR THAT ANKLE.
12 WOULD THAT IMPACT YOUR TESTIMONY AT ALL?

13 A IT WOULD MAKE ME FEEL BETTER THAT SOMEBODY DID
14 THAT. THAT WOULD'VE BEEN AN AGGRAVATING FACTOR IN MY MIND IF
15 THOSE WOULD'VE BEEN INJECTED. I'M NOT SAYING IT'S MITIGATING
16 THAT HE DIDN'T, BUT I'M GLAD TO HEAR THAT IT WAS NOT INJECTED.

17 Q AND THE PREPARATION -- AGAIN, I'M ASKING YOU FOR
18 YOUR TESTIMONY. YOU DIDN'T FEEL IT WAS WARRANTED TO REVIEW THE
19 CONFIDENTIALS ON THIS HORSE AT ALL TO SEE WHAT INJECTIONS AND
20 WHAT MEDICATIONS WERE GIVEN TO THE HORSE?

21 A NO. BECAUSE IT'S A STRUCTURAL DEFECT THAT WAS
22 CLEARLY KNOWN ABOUT ON FEBRUARY 25. WHEN I GOT THESE X-RAYS
23 FROM DR. BLUE, I CALLED HER -- IN FACT, DR. GRANDE AND I WERE
24 TOGETHER -- CALLED UP DR. BLUE AND DR. WHARTON AND SPECIFICALLY
25 ASKED: DID YOU TELL MIKE PENDER THAT THIS HORSE HAD A FRACTURE

1 BECAUSE I COULDN'T BELIEVE HE WOULD WORK THE HORSE AND RACE THE
2 HORSE WITH THIS FRACTURE. AND THEY SAID AFFIRMATIVELY THAT HE
3 WAS INFORMED THE HORSE HAD A FRACTURE.

4 Q WHEN THEY SAY "THEY," I DON'T THINK DR. BLUE WAS
5 INVOLVED. IT WOULD BE DR. WHARTON.

6 A WELL, THEY WERE TOGETHER ON THE PHONE AND THEY
7 GOT BOTH OF THEM AFFIRMED AND MAYBE DR. BLUE WAS RELYING ON
8 DR. WHARTON'S ASSURANCE THAT SHE HAD INFORMED MIKE THAT THE
9 FRACTURE WAS THERE.

10 Q AND WHEN YOU WERE A PRACTICING VET, WERE YOU
11 EVER CALLED IN TO GIVE A SECOND OPINION ON A HORSE OR WAS ONE
12 OF YOUR OPINIONS EVER TAKEN TO ANOTHER VET TO EVALUATE THE
13 SECOND OPINION?

14 A YEAH. THAT'S PRETTY COMMON.

15 Q SO IF ANOTHER VET WERE TO HAVE GIVEN MR. PENDER
16 AN EVALUATION THAT THE HORSE WAS RACING SOUND, WOULD THAT
17 IMPACT YOUR TESTIMONY HERE TODAY?

18 A IT WOULDN'T IMPACT MY TESTIMONY, BUT IT WOULD
19 MAKE ME QUESTION THE PROFESSIONAL ETHICS AND CAPABILITY OF
20 WHOEVER WOULD GIVE THAT RECOMMENDATION.

21 Q EVEN THOUGH YOU HAVEN'T TOUCHED THE HORSE,
22 LOOKED AT THE HORSE OR ANYTHING ELSE?

23 A I DON'T NEED TO BECAUSE THIS IS A STRUCTURAL
24 DEFECT THAT YOU CAN ACTUALLY SEE. IF YOU LOOK AT THE
25 RADIOGRAPH RIGHT THERE ON THE TABLE HERE. THIS IS THE BEST ONE

1 RIGHT HERE (INDICATING).

2 MR. PENDER: THAT'S 4/9.

3 THE WITNESS: WELL, IT DOESN'T MATTER. IT'S THE SAME
4 THING. WHEN YOU LOOK AT THIS FRACTURE RIGHT HERE, THE
5 SUSPENSORY ATTACHES TO THIS, THIS SUPPORTS THE FETLOCK. AND
6 WHEN THE FETLOCK GOES, AS I SAID, 19 OUT OF 22 HORSE THAT DIED
7 HERE AT SANTA ANITA THIS YEAR DIED BECAUSE OF RUPTURE OR
8 FAILURE OF THE SUSPENSORY APPARATUS WHICH GOES FROM THE
9 PROXIMAL SUSPENSORY DOWN TO WHERE IT ATTACHES BELOW THE
10 SESAMOIDS ARE THE WEAK LINK IN BETWEEN.

11 SO EVERYBODY KNOWS THE SESAMOID. IF YOU DON'T
12 KNOW THE SESAMOIDS ARE THE WEAK LINK IN RACEHORSES, THEN I
13 DON'T KNOW WHAT TO -- I DON'T KNOW WHAT TO SAY EITHER TO THE
14 VETERINARIAN OR A TRAINER.

15 Q I DON'T THINK ANYBODY HAS SAID THAT. I MEAN,
16 EVERYBODY KNOWS THAT. EVEN ME.

17 A OKAY. WELL, YOU WERE CHAIRMAN OF THE HORSE
18 RACING BOARD FOR SEVERAL YEARS.

19 Q WOULD YOU STILL DEEM IT ABUSE IF A PERSON SUCH
20 AS MR. PENDER RELIED ON A LICENSED VET WITH 40 YEARS'
21 EXPERIENCE IN THE FIELD TO MAKE A DECISION? I MEAN, THAT'S
22 SEEKING OUT AN EXPERT OPINION DIFFERENT FROM HIS ORIGINAL
23 OPINION. BUT THAT'S COMMON IN ALL FIELDS, INCLUDING MY OWN.
24 YOU'D STILL SAY THAT'S ABUSE?

25 A I DO THINK WORKING AND RACING A HORSE IS WHAT

1 WOULD BE ABUSE NO MATTER WHO RECOMMENDED THAT THE HORSE WAS
2 SAFE TO WORK. IT'S HARD FOR ME TO BELIEVE ANY COMPETENT
3 VETERINARIAN WOULD SAY: GO AHEAD AND WORK THIS HORSE BASED ON
4 THESE RADIOGRAPHS.

5 Q OKAY. BUT IF IT DID HAPPEN AND IT'S
6 HYPOTHETICAL, HOW COULD YOU DEEM THAT BEING ABUSE WHEN A
7 TRAINER IS RELYING ON A LICENSED VET FOR HIS OPINION?

8 A I'M STILL COMFORTABLE CALLING IT ABUSE. I DON'T
9 THINK SHOPPING AROUND TO GET AN OPINION THAT FITS WHAT YOU WANT
10 TO HEAR NECESSARILY ABSOLVES YOU OF ABUSE.

11 MR. LICHT: OKAY. NO FURTHER QUESTIONS.

12 STEWARD BAKER: MR. BRODNIK, DO YOU HAVE ANY CROSS?

13 MR. BRODNIK: NO. THANK YOU.

14 STEWARD BAKER: UNLESS ANYBODY HAS ANYTHING ELSE.

15 DR. ARTHUR, THANK YOU VERY MUCH.

16 MR. BRODNIK: WE DON'T HAVE ANY FURTHER WITNESSES TO
17 CALL.

18 STEWARD BAKER: THANK YOU.

19
20 (RECESS.)

21
22 STEWARD BAKER: WE'RE BACK ON THE RECORD IN THE
23 MICHAEL PENDER MATTER, CASE 19SA0143.

24 MR. LICHT, DO YOU HAVE SOME WITNESSES YOU'D LIKE
25 TO PRESENT?

1 MR. LICHT: YES. WE'LL START WITH CALLING MICHAEL
2 PENDER.

3 STEWARD BAKER: MR. PENDER HAS BEEN SWORN IN.

4 OKAY. GO AHEAD, MR. LICHT.

5
6 MICHAEL PENDER,
7 PRODUCED AS A WITNESS BY AND ON BEHALF OF HIMSELF AND HAVING
8 BEEN PREVIOUSLY FIRST DULY SWORN BY THE HEARING REPORTER, WAS
9 EXAMINED AND TESTIFIED AS FOLLOWS:

10
11 DIRECT EXAMINATION

12
13 BY MR. LICHT:

14 Q COULD YOU STATE YOUR FULL NAME, PLEASE.

15 A MICHAEL VAN PENDER.

16 Q AND DO YOU CURRENTLY HOLD ANY LICENSES FROM THE
17 CALIFORNIA HORSE RACING BOARD?

18 A YES. I CURRENTLY HAVE A TRAINER'S LICENSE AND
19 AN OWNER'S LICENSE AND A -- NAME LICENSE.

20 THE REPORTER: AND A WHAT LICENSE?

21 THE WITNESS: STABLE NAME LICENSE.

22 BY MR. LICHT:

23 Q AND HOW LONG HAVE YOU BEEN LICENSED AS A TRAINER
24 IN CALIFORNIA?

25 A 2006. 13 YEARS.

1 Q AND DURING THAT TIME, HAVE YOU ACTED AS A
2 TRAINER FOR ALL 13 OF THOSE YEARS CONSECUTIVELY?

3 A YES.

4 Q AND SOME TIME DURING THAT CAREER, DID YOU COME
5 IN CONTACT WITH A HORSE CALLED "NEW KARMA"?

6 A YES.

7 Q AND HOW DID YOU COME IN CONTACT WITH "NEW
8 KARMA"?

9 A I NOTICED HE WAS AN OLD TIMER DOWN IN DEL MAR.
10 HE HAD LIKE 40 LIFETIME STARTS AND CONTACTED SOME OWNERS AND
11 SAID THERE'S A HORSE HERE THAT I THINK COULD HAVE A NICE CAREER
12 GOING SHORT ON THE GRASS. HE SHOWED ME SOME THINGS IN HIS
13 RECENT TURF RACE TO SUGGEST HE ALWAYS WANTED TO BE A TURF
14 SPRINTER. AND THEY BOUGHT INTO THE LOGIC AND INVESTED AND HAD
15 A HECK OF A TIME GETTING RACES TO FILL AFTER WE CLAIMED HIM,
16 BUT WE FINALLY GOT THAT RACE TO GO 5/8THS ON THE GRASS HERE AT
17 SANTA ANITA AND HIS SECOND LIFETIME START FOR ME.

18 Q AND HOW DID HE PERFORM THAT DAY?

19 A HE RAN SECOND. HE HAD A LITTLE TROUBLE.

20 Q AND AFTER THAT RACE, DID YOU SEE ANY NOTICEABLE
21 DECLINE IN HIS CONDITION?

22 A NOTHING OUT OF THE ORDINARY.

23 Q AND HOW DID YOU TAKE CARE OF "NEW KARMA" AFTER
24 THAT RACE?

25 A SIMPLE HANDS-ON OLD SCHOOL MAINTENANCE. YOU

1 KNOW, BEEN TELLING MY GUYS NO MORE MEDICATIONS. WE'RE A FIRM
2 SUPPORTER IN THE HAY TO WATER ALLIANCE, AND WE'RE GOING TO
3 FOLLOW -- WE'RE GOING TO FOLLOW EVERYTHING WE CAN HERE, SO
4 THERE WILL BE NO CORTIZONE INJECTIONS, ET CETERA, EVEN THOUGH
5 I'M SURE HE'S HAD MULTIPLE IN THE PAST. WE'RE JUST GOING TO GO
6 RUBBING, ICE. OLD SCHOOL.

7 Q AND IS THAT, IN FACT, WHAT YOU DID DO?

8 A YES.

9 Q DID YOU EVER CAUSE HIM TO BE INJECTED IN EITHER
10 OF HIS FRONT ANKLES?

11 A NO.

12 Q AND AT SOME POINT DR. WHARTON CAME IN AND
13 X-RAYED "NEW KARMA." CAN YOU TALK ABOUT WHAT LED TO THAT?

14 A YOU KNOW, I'M A FIRM BELIEVER IN THE NEW
15 PROTOCOLS AND TRYING TO WORK WITH EVERYBODY, AND WE'VE HAD
16 WHAT'S CALLED "ALL SHOWS." MEANING A STATE VET COMES IN AND
17 SAYS, LET'S LOOK AT THEM ALL. SO WE HAVE TO TAKE ALL THE
18 BANDAGES, ET CETERA, OFF THEIR LEGS. WE BRING THEM OUT, DO AN
19 ALL SHOW, AND THEY TAKE VERY FASTIDIOUS NOTES WHICH I SUPPORT
20 THEM ON, AND WE'RE KIND OF WORKING TOGETHER AS A TEAM.

21 I TURNED OUT IMMEDIATELY ONE FILLY. I CAN'T
22 REMEMBER HER NAME. "PERFECTLY SOLID." SHE HAD SOMETHING FISHY
23 GOING ON. I TURNED OUT ANOTHER FILLY.

24 AND DR. WHARTON WAS COMING IN ONCE EVERY THREE
25 DAYS: WHO SHOULD I LOOK AT? WHO DO WE NEED TO LOOK AT HERE?

1 AND I MEAN, WE'RE GOING FAST AND FURIOUS LOOKING AT HORSES LEFT
2 AND RIGHT MAKING SURE THAT WE'RE ON TOP OF IT. WE DON'T WANT
3 TO BE NUMBER 24. SO THIS HORSE WAS ON -- IT WAS HIS TIME TO BE
4 CHECKED.

5 Q AND AT THAT POINT, SHE TOOK AN X-RAY; CORRECT?

6 A YES.

7 Q AND WAS THAT HER OWN DECISION OR YOUR DECISION?

8 A THAT WAS HER DECISION.

9 Q AND YOU CONCURRED WITH IT?

10 A UH-HUH. YES.

11 Q AND WHAT DID THAT X-RAY SHOW YOU?

12 A I SAW A HAIRLINE FRACTURE. I SAW THAT IT WAS
13 HIGH ON THE SESAMOID. I'VE SEEN HUNDREDS OF THESE.

14 Q AND DR. WHARTON GAVE YOU SOME ADVICE AT THAT
15 POINT?

16 A TO THIS DAY, I CANNOT REMEMBER EXACTLY WHAT SHE
17 TOLD ME TO DO.

18 Q DID YOU ASK ANOTHER VETERINARIAN TO TAKE A LOOK
19 AT THOSE X-RAYS AND EXAMINE THE HORSE FOR YOU?

20 A YES.

21 Q AND WHO WAS THAT?

22 A THAT WAS DR. HERBERT WARREN.

23 Q AND DO YOU REMEMBER WHAT DR. WARREN TOLD YOU?

24 A YES.

25 Q WHAT WAS THAT?

1 A SAME THING. THE HAIRLINE STRESS FRACTURE IN THE
2 UPPER -- NOW AGAIN, I'M NOT AN EXPERT IN THIS. BUT HE SAID
3 IT'S AN UPPER SESAMOID. IT'S NOT IN THE LOWER SESAMOID WHERE
4 IT ATTACHES TO THE --

5 Q SUSPENSORY?

6 A SUSPENSORY LIGAMENTS. SO IT'S IN A GOOD PLACE.
7 IT LOOKS OLD.

8 Q AND YOU HEARD DR. ARTHUR'S TESTIMONY. DO YOU
9 BELIEVE THAT HE CONCURRED THAT THE HIGH FRACTURE WAS LESS
10 LIKELY TO BE A PROBLEM THAN A LOW FRACTURE?

11 A HE SAID IT IN SO MANY WORDS, THAT THE SUSPENSORY
12 LIGAMENT ATTACHES AT THE BOTTOM.

13 Q BUT THAT'S YOUR BELIEF AS A LICENSED TRAINER;
14 CORRECT?

15 A YEAH. THE HIGH STRESS FRACTURES ARE WAY LESS
16 RISKY THAN THE LOW.

17 Q AND WHEN YOU ENTERED THE HORSE IN THE CLAIMING
18 RACE, DID YOU HAVE ANY REASON TO BELIEVE THAT THE HORSE MIGHT
19 GET CLAIMED?

20 A I ACTUALLY TOLD MY OWNERS I HOPED HE DOESN'T GET
21 CLAIMED.

22 Q AND IF HE WERE IN FACT LAME AFTER THE RACE, THE
23 CLAIM WOULD'VE BEEN VOIDED; CORRECT?

24 A YES.

25 Q SO WAS THERE ANY INCENTIVE FOR YOU TO TRY TO RUN

1 A HORSE THAT WAS GOING TO PULL UP LAME?

2 A NO.

3 Q DID DR. WARREN OR ANY OTHER VET AT YOUR
4 DIRECTION INJECT EITHER ANKLE OF THIS HORSE?

5 A WE'VE NEVER GONE INTO EITHER ONE OF THE ANKLES
6 WITH CORTIZONE. NO.

7 Q OR WITH ANY OTHER SUBSTANCE?

8 A NO. NOTHING.

9 Q DID YOU REGULARLY -- DURING THE PERIOD OF
10 FEBRUARY 19TH TO APRIL 19TH, DID YOU REGULARLY JOG THE HORSE ON
11 THE RODE AND PALPATE OR FLEX HIS ANKLES?

12 A YES.

13 Q APPROXIMATELY HOW OFTEN WOULD YOU HAVE DONE IT
14 TO "NEW KARMA"?

15 A JUST LIKE ANY OTHER OLD HORSE. HE WAS GOING OUT
16 AND JOGGING AND GALLOPING EVERY DAY.

17 Q NO. WHAT I'M SAYING, FOR YOU, AT YOUR BARN, DID
18 YOU EVER JOG HIM WITHOUT A RIDER TO SEE HIS CONDITION OR TO
19 FLEX HIS ANKLES?

20 A YES.

21 Q WHAT DID YOU FIND?

22 A THAT HE DID NOT PALPATE SORE AND HE JOGGED FINE.
23 HE'S ONE OF THOSE HORSES THAT RESPONDS VERY WELL TO
24 MAINTENANCE.

25 Q SO YOU DON'T BELIEVE -- OR YOU'RE NOT CERTAIN

1 WHETHER DR. WHARTON TOLD YOU NOT TO RACE THE HORSE OR NOT;
2 CORRECT?

3 A THAT'S CORRECT.

4 Q BUT EVEN IF SHE HAD, WOULD THAT HAVE STOPPED YOU
5 FROM GETTING A SECOND OPINION FROM DR. WARREN?

6 A IT WOULD NOT HAVE STOPPED ME.

7 Q AND DR. ARTHUR KIND OF DISPARAGINGLY USED THE
8 TERM "SHOPPING FOR AN OPINION." DID YOU HAVE ANY OTHER VETS
9 LOOK AT THE HORSE?

10 A NO. IT WAS DR. HERBERT WARREN. MELINDA NEVER
11 CAME BY AND LOOKED AT IT.

12 Q SO YOU WEREN'T SHOPPING. YOU DIDN'T ASK ANY
13 OTHER THIRD PARTY TO ASK TO LOOK AT THE HORSE, DID YOU?

14 A I REALLY ONLY HAVE TWO VETS. I'VE GOT
15 DR. WHARTON AND DR. WARREN.

16 Q AND IS YOUR BARN ADJACENT TO THE BARN OF A
17 TRAINER NAMED GENARO VALLEJO?

18 A YES.

19 Q AND GENARO VALLEJO WAS THE PREVIOUS TRAINER OF
20 THIS HORSE; CORRECT?

21 A CORRECT.

22 Q DID YOU EVER HAVE OCCASION TO DISCUSS THE
23 CONDITION OF THIS HORSE WITH GENARO?

24 A YES. MYSELF AND MY ASSISTANT.

25 Q AND WHAT WAS THE RESULT OF THOSE CONVERSATIONS?

1 A BASICALLY HE SAYS: I HEARD FROM YOUR ASSISTANT
2 THERE'S SOMETHING GOING ON WITH THIS HORSE. THEY'RE
3 INVESTIGATING HIM. AND THIS HORSE OUT OF EVERY RACE I RAN HIM
4 CAME BACK DEAD LAME. AND HE'S HAD AN ISSUE ON THAT LEFT FRONT
5 FOREVER. IF YOU WANT TO SELL HIM, LET ME KNOW.

6 MR. BRODNIK: I'D OBJECT TO HEARSAY TO THE STATEMENT OF
7 MR. VALLEJO.

8 STEWARD BAKER: YEAH. I'LL SUSTAIN THAT OBJECTION.
9 HE'LL BE A WITNESS LATER.

10 MR. BRODNIK: THAT'S FINE. IF HE'S GOING TO BE A
11 WITNESS. I UNDERSTAND.

12 BY MR. LICHT:

13 Q DID YOU HAVE ANY IDEA WHAT THE HIGH-RISK LIST
14 WAS THAT DR. ARTHUR WAS TALKING ABOUT?

15 A NOT UNTIL AFTER THEY SCRATCHED MY HORSE.

16 Q NOW, THERE'S A TRANSPARENCY RULE AT SANTA ANITA;
17 CORRECT?

18 A YES.

19 Q AND THAT RULE IS A HOUSE RULE; CORRECT?

20 A YES.

21 Q IT'S NOT A HORSE RACING BOARD RULE?

22 A CORRECT.

23 Q AND IT'S NOT A CALIFORNIA STATE LAW; CORRECT?

24 A CORRECT.

25 Q DID YOU EVER NOTICE ANY SWELLING IN EITHER OF

1 THE FRONT ANKLES OF "NEW KARMA"?

2 A AGAIN, HE'S A 43 LIFETIME START HORSE. THERE
3 WAS MINIMAL, MINIMAL SWELLING COMPARATIVELY TO OTHER HORSES
4 THAT I'VE DEALT WITH AT HIS STAGE IN HIS CAREER. SO THE ANSWER
5 IS VERY LITTLE, IF NONE AT ALL.

6 Q AND BASED ON YOUR EXPERTISE, THE HORSE WAS
7 RACING SOUND DURING THE ENTIRE PERIOD FROM FEBRUARY TO APRIL OF
8 '19?

9 A 100 PERCENT.

10 Q IS THERE ANY POSSIBLE MOTIVATION FOR YOU TO RUN
11 A HORSE THAT WASN'T SOUND DURING THAT PERIOD? RUNNING THIS
12 HORSE DURING THAT PERIOD?

13 A NO. ABSOLUTELY NOT.

14 Q DID YOU VIEW THE HORSE WHEN HE WORKED THE 47 AND
15 CHANGE WORK?

16 A YES.

17 Q AND WHAT WAS YOUR OPINION OF HOW HE TRAVELED?

18 A PERFECT SWITCH LEADS RIGHT ON CUE. GALLOPED OUT
19 GOOD AND CAME BACK LIKE A BRAND NEW BICYCLE.

20 Q YOU'VE HEARD THE ALLEGATION FROM THE C.H.R.B.,
21 PARTICULARLY DR. ARTHUR, THAT YOU ABUSED THE HORSE BY WORKING
22 THE HORSE. DO YOU BELIEVE THAT YOU ABUSED THE HORSE?

23 A THAT'S WHY I HIRED YOU BECAUSE THAT TERM -- YOU
24 KNOW, I GO TO SLEEP EVERY NIGHT GOING: HOW COULD THAT EVEN BE
25 PUT ON MY SHOULDER?

1 STEWARD BAKER: CAN YOU ANSWER "YES" OR "NO"?

2 THE WITNESS: NO. I FORGET THE QUESTION. CAN YOU ASK
3 ME AGAIN?

4 MR. LICHT: MICHELLE, CAN YOU PLEASE READ IT?

5

6 (RECORD READ.)

7

8 THE WITNESS: NO. I DID NOT ABUSE THE HORSE.

9 BY MR. LICHT:

10 Q WHEN WAS THE FIRST TIME YOU LEARNED THAT THE
11 HORSE RACING BOARD WAS INVESTIGATING YOU FOR A POSSIBLE
12 VIOLATION?

13 A IT WAS AFTER THEY SCRATCHED THE HORSE. ABOUT A
14 WEEK LATER, MIKE MET ME ON THE BRIDGE HEADING FROM CLOCKER'S
15 CORNER.

16 Q YOU'RE TALKING ABOUT THE INVESTIGATOR THAT'S
17 HERE TODAY?

18 A YEAH.

19 Q AND WHAT DID HE TELL YOU?

20 A HE SAYS: IS IT TRUE THAT YOU WORKED THIS HORSE
21 WITH A BROKEN LEG? I SAID, NO.

22 Q AND DID THE INVESTIGATION EVER PROCEED TO
23 QUESTIONING YOU ABOUT THE CONDITION OF THE HORSE EITHER BEFORE
24 OR AFTER THE WORK?

25 A CAN YOU REPEAT THE QUESTION, ROGER?

1 Q DID THE INVESTIGATION EVER -- OR DID THE
2 INVESTIGATION CONTAIN ANY QUESTIONING BY MR. ALFORD REGARDING
3 THE HORSE'S CONDITION BEFORE OR AFTER THE WORK?

4 A CAN YOU REPEAT IT ONE MORE TIME?

5 Q DID THE INVESTIGATION EVER HAVE ANY QUESTIONING
6 OF YOU REGARDING "NEW KARMA'S" CONDITION BEFORE OR AFTER THE
7 RACE?

8 A NO. THIS WAS THE FIRST TIME I EVER HEARD OF
9 ANYTHING BEING A PROBLEM.

10 Q DID MR. ALFORD EVER ASK YOU WHAT THE CONDITION
11 OF THE HORSE WAS PRIOR TO THE WORKOUT?

12 A NO.

13 Q DID HE EVER ASK YOU HOW THE HORSE WAS AFTER THE
14 WORKOUT?

15 A NO.

16 Q TO YOUR KNOWLEDGE, DID HE ASK ANYBODY, ANY THIRD
17 PARTIES, ABOUT THE CONDITION OF THE HORSE BEFORE OR AFTER THE
18 WORKOUT?

19 A NO.

20 Q DID YOU BELIEVE THAT THE FRACTURE SHOWN IN THE
21 FEBRUARY RADIOGRAPHS WOULD LIKELY CAUSE THE HORSE TO BREAK
22 DOWN?

23 A NO.

24 Q AT ONE POINT, SOMEONE TOLD YOU THAT THE HORSE
25 DIDN'T ACTUALLY WORK ON MARCH 25TH; ISN'T THAT CORRECT?

1 A YES. THAT WAS MR. ALFORD.

2 Q AND WHAT EXACTLY DID HE SAY WITH RESPECT TO
3 THAT?

4 A HE SAYS: IS IT POSSIBLE THAT THE HORSE DIDN'T
5 WORK THAT PARTICULAR DAY? AND I SAID, NO, IT'S NOT POSSIBLE.

6 MR. LICHT: I HAVE NO FURTHER QUESTIONS.

7 STEWARD BAKER: THANK YOU.

8 MR. PENDER, HOW MUCH DOES IT COST TO SHIP A
9 HORSE TO RACE AT GOLDEN GATE FIELDS?

10 THE WITNESS: \$900 ROUND TRIP.

11 STEWARD BAKER: \$900 ROUND TRIP?

12 THE WITNESS: YES.

13 STEWARD BAKER: I DIDN'T KNOW IT WAS THAT MUCH. YOU
14 MENTIONED EARLIER -- CORRECT ME IF I'M WRONG -- THAT YOU
15 CLAIMED THIS HORSE BECAUSE OF ITS TURF-SPRINTING POTENTIAL. IS
16 THAT CORRECT?

17 THE WITNESS: HE Routed ON THE TURF ONCE FOR MR. MEAH.

18 THE REPORTER: I'M SORRY. WHO?

19 THE WITNESS: MR. MEAH, M-E-A-H.

20 STEWARD BAKER: IS THAT CORRECT, MR. PENDER?

21 THE WITNESS: YES. AND HE CAUGHT MY EYE. HE SEEMED
22 LIKE A HORSE THAT ENJOYED SPRINTING, AND I THOUGHT GOING LONG
23 WAS TOO MUCH, BUT HE DID HANDLE THE TURF, SO I SAID LET'S TRY
24 HIM SPRINTING ON THE GRASS. NONE OF THESE RACES WERE GOING AT
25 THE TIME. AND THEN THEY SAID THE TIRE MARKS WERE ONLY GOING TO

1 GO DOWN THE HILL. HE PROBABLY WANTS 5/8'S RATHER THAN 6 AND A
2 HALF. BUT IT WAS LIFE AND DEATH TO GET ONE OF THOSE RACES TO
3 GO.

4 STEWARD BAKER: SO WHAT SURFACE WAS THE GOLDEN GATE
5 FIELDS RACE ON? WHAT TYPE OF SURFACE?

6 THE WITNESS: IT WAS SYNTHETIC.

7 STEWARD BAKER: OKAY. SO YOU DID NOT ENTER HIM ON THE
8 TURF AT GOLDEN GATE FIELDS; IS THAT CORRECT?

9 THE WITNESS: YES, I DID.

10 NO. NO. THE TURF COURSE WAS CLOSED AT THAT
11 TIME. IT WAS CLOSED. THEY ONLY REOPENED THE TURF COURSE AT
12 GOLDEN GATE JUST RECENTLY. BUT DURING THE WINTER, THEY CLOSE
13 IT.

14 STEWARD BAKER: SO I GUESS MY QUESTION IS WHY WAS THE
15 HORSE SHIPPED TO GOLDEN GATE FIELDS? THEY HAVE 12,500 SPRINT
16 OPPORTUNITIES HERE AT SANTA ANITA; CORRECT?

17 THE WITNESS: IF THEY RODE 12/5'S ON THE TURF HERE, HE
18 WOULD'VE BEEN RUNNING HERE.

19 STEWARD BAKER: BUT YOU SHIPPED HIM TO GOLDEN GATE
20 FIELDS WHILE THE TURF COURSE WAS CLOSED AND RAN HIM IN THE 12/5
21 RACE; IS THAT CORRECT?

22 THE WITNESS: YEAH. IF THAT TAPETA PLAYED MORE LIKE
23 TURF, BUT I DEFINITELY DIDN'T WANT TO PUT HIM BACK ON DIRT.

24 STEWARD BAKER: SO IT WAS THE ALLURE, FOR LACK OF A
25 BETTER WORD, OF THE SYNTHETIC TRACK AT GOLDEN GATE FIELDS IS

1 WHY YOU SHIPPED HIM THERE?

2 THE WITNESS: I THOUGHT IT SIMULATED TURF MORE CLOSELY.

3 STEWARD BAKER: AND I BELIEVE IN YOUR TESTIMONY YOU
4 MENTIONED EARLIER YOU DID NOT WANT TO LOSE OR I.E., HAVE THE
5 HORSE CLAIMED FROM YOU. IS THAT CORRECT?

6 THE WITNESS: THAT'S CORRECT.

7 STEWARD BAKER: SO WITH THAT SAID, WHAT WERE YOUR PLANS
8 AFTER THE GOLDEN GATE FIELDS SIXTH RACE? WHAT WERE YOUR PLANS
9 GOING TO BE WITH THE HORSE? LEAVE IT AT GOLDEN GATE OR BRING
10 HIM BACK TO SANTA ANITA?

11 THE WITNESS: YEAH. I WANTED TO SEE HOW THE HORSE
12 WOULD RUN. YOU KNOW, RETURNING TO HIS OLD STOMPING GROUNDS ON
13 THE SYNTHETIC UP THERE AND SEE HOW THE ENTRY BOX, YOU KNOW, AND
14 THE RACES WERE FILLING DOWN HERE AT SANTA ANITA. THEY JUST
15 COULDN'T GET TURF RACES TO GO GOING 5/8TH'S DOWN HERE.

16 STEWARD BAKER: WELL, WHAT'S THE CHEAPEST CATEGORY OF
17 CLAIMING THEY RUN ON THE TURF HERE AT SANTA ANITA?

18 THE WITNESS: 20. THAT'S THE ABSOLUTE BOTTOM. UP
19 NORTH, IT'S 62.5. \$6,250.

20 STEWARD BAKER: WHEN THE TURF COURSE IS OPEN?

21 THE WITNESS: WHEN IT'S OPEN. YEAH.

22 STEWARD BAKER: OKAY. I HAVE NOTHING FURTHER.

23 MR. JAUREGUI, DO YOU HAVE ANYTHING?

24 STEWARD JAUREGUI: YEAH. WHY DID YOU HAVE DR. WARREN
25 EXAMINE THE HORSE?

1 THE WITNESS: DR. WARREN HAS BEEN HELPING MY AT THE
2 BARN WITH A LOT OF DIFFERENT HORSES. AND I SAID: HEY, YOU
3 KNOW, THERE'S A HORSE IN QUESTION HERE FROM DR. WHARTON --
4 WHARTON VS. WARREN -- AND WHAT DO YOU THINK ABOUT THIS? HE
5 SAID: WELL, BRING HIM OUT. LET'S TAKE A LOOK AT HIM.

6 AND WE BROUGHT HIM OUT. JOGGED HIM. HE JOGGED
7 GOOD. FLEXES GOOD. I SAID: CHECK OUT THIS X-RAY. HE LOOKED
8 IT, AND HE SAW THE LINE AND SAID: OH, HAIRLINE STRESS
9 FRACTURE.

10 I SAID: I GOT TO FIND OUT IF THIS THING'S OLD
11 OR NOT. I GOT TO SEE HOW LONG HE'S HAD IT. AND HE SAYS:
12 YEAH. YOU MIGHT WANT TO DO THAT. AND, YOU KNOW, THAT'S PRETTY
13 MUCH HOW IT CAME UP.

14 MR. BRODNIK: I'M GOING TO RAISE AN OBJECTION TO
15 DR. WARREN'S TESTIMONY. I UNDERSTAND HE'S GOING TO TESTIFY,
16 BUT JUST UNTIL HE DOES.

17 STEWARD BAKER: OKAY. WE'LL NOTE THAT FOR THE RECORD.
18 THANK YOU.

19 GO AHEAD, MR. JAUREGUI.

20 STEWARD JAUREGUI: WAS THIS THE FIRST TIME MR. WARREN
21 EXAMINED THE HORSE?

22 THE WITNESS: YES.

23 STEWARD JAUREGUI: AND DID YOU ASK HIM IF IT'S OKAY TO
24 WORK THE HORSE?

25 THE WITNESS: I SAID -- AT THAT TIME, I HADN'T GONE AND

1 TALKED TO ANOTHER TRAINER AND DONE ANY OTHER, YOU KNOW,
2 RESEARCH ON THE HORSE AS TO ITS PAST, SO IT WAS NEVER BROUGHT
3 UP.

4 STEWARD JAUREGUI: OKAY. I HAVE NO FURTHER.

5 STEWARD BAKER: MS. SAWYER?

6 STEWARD SAWYER: FOLLOWING UP ON THE DR. WARREN'S
7 QUESTIONS. DOES HE DO LIKE 50 PERCENT OF YOUR WORK? DOES HE
8 COME IN AND DOES HE EXAMINE EVERY HORSE THAT MELINDA BLUE'S
9 PRACTICE EXAMINES TO GET A SECOND OPINION?

10 IS HE THERE ONCE A WEEK? IS HE THERE ONLY WHEN
11 YOU CALL HIM AND YOU NEED ANOTHER --

12 THE WITNESS: LIKE A SECOND OPINION?

13 STEWARD SAWYER: YEAH. A SECOND OPINION.

14 THE WITNESS: YEAH. HE'S LIKE A FATHER FIGURE TO ME,
15 YOU KNOW? AND HE'S BEEN ON THE TRACK FOREVER.

16 STEWARD SAWYER: BUT DO YOU HAVE HIM LOOK AT EVERY
17 HORSE TO GET A SECOND OPINION AFTER IT'S ALREADY BEEN EXAMINED
18 BY THE MELINDA BLUE PRACTICING GROUP?

19 THE WITNESS: JUST WHEN I ASK HIM.

20 STEWARD SAWYER: JUST TO GET VERIFICATION OF THE
21 TIMELINE JUST SO I'M CORRECT, AND I YOU WANT YOU TO VERIFY IT.
22 THE HORSE WORKED ON 2/17. AFTER THAT, YOUR ASSISTANT -- NOT
23 SURE EXACTLY WHAT DAY -- BUT HE SAID THE HORSE WAS SORE. HE
24 HAD DR. WHARTON COME IN ON 2/25. THAT'S WHEN SHE RECOMMENDED
25 THAT THE HORSE BE X-RAYED BECAUSE IT WAS SORE.

1 IS THAT CORRECT? IS THAT A CORRECT TIMELINE?

2 THE WITNESS: YES, I THINK SO. THE TIMELINE IS
3 CORRECT.

4 STEWARD SAWYER: AND IN YOUR BEST MEDICAL OPINION,
5 HAIRLINE FRACTURES AREN'T THAT BIG A DEAL THAT YOU CAN RACE --
6 YOU CAN WORK AND CAN RACE ON HAIRLINE FRACTURES?

7 THE WITNESS: YOU KNOW, AS A TRAINER, I'VE SEEN A LOT
8 OF THEM.

9 STEWARD SAWYER: I KNOW, BUT YOU'RE MEDICAL. I MEAN,
10 YOU'RE NOT -- YOU'RE A TRAINER.

11 THE WITNESS: RIGHT.

12 STEWARD SAWYER: AND THAT'S WHY I THINK -- CORRECT ME
13 IF I'M WRONG -- WE HIRE VETERINARIANS WHO ARE DOCTORS TO DO THE
14 MEDICAL FIELD ON OUR ANIMALS. NOT THE CONDITIONING, BUT THE
15 MEDICAL.

16 IS THAT A FAIR STATEMENT?

17 THE WITNESS: YES. COMBINED WITH THE X-RAY.

18 STEWARD SAWYER: RIGHT.

19 THE WITNESS: AND DR. WARREN'S SECOND OPINION AND THE
20 PAST HISTORY OF THIS HORSE AND THE WAY HE'S MOVING AND
21 GALLOPING AND WORKING.

22 STEWARD SAWYER: OBVIOUSLY YOU HAD NO QUALMS.

23 THE WITNESS: NO QUALMS.

24 STEWARD SAWYER: OF ONE VET SAYING SURGERY OR TURN OUT.
25 SURGERY OR RETIRE, I THINK, WERE HER EXACT WORDS AND

1 DR. WARREN, WHICH WE'LL HEAR FROM SAYING THAT -- TELL ME WHAT
2 HE SAID. "IT'S NOT THAT BIG A DEAL"? IT'S OKAY TO RUN THE
3 HORSE?

4 DO YOU REMEMBER KIND OF PRECISELY WHEN HE LOOKED
5 AT THE X-RAY? YES, THERE'S A FRACTURE, BUT?

6 THE WITNESS: I DON'T KNOW EXACTLY WHAT HE SAID.

7 STEWARD SAWYER: OKAY.

8 THE WITNESS: BUT IT WASN'T IN LINE WITH WHAT
9 DR. WHARTON SAID.

10 STEWARD SAWYER: APPLES AND ORANGES.

11 THE WITNESS: RIGHT.

12 STEWARD SAWYER: MIGHT HAVE GOTTEN A THIRD OPINION TO
13 SEE IF WE CAN GET SOME BANANAS IN THERE SOMEWHERE.

14 THE WITNESS: YEAH.

15 STEWARD SAWYER: OKAY. I DON'T HAVE ANYTHING ELSE.

16 STEWARD BAKER: MR. BRODNIK?

17
18 CROSS-EXAMINATION

19
20 BY MR. BRODNIK:

21 Q DR. WARREN JUST LOOKED AT "NEW KARMA" THAT ONE
22 TIME; IS THAT RIGHT?

23 A THAT PARTICULAR DAY. YES.

24 Q OKAY. BETWEEN --

25 A I THINK I PULLED OUT ANOTHER FILLY FORM AS WELL.

1 MAYBE.

2 Q WITH REGARD TO "NEW KARMA" BETWEEN THE DATES OF
3 FEBRUARY 25TH AND MARCH 24TH, DO YOU RECALL HOW MANY TIMES
4 DR. WARREN LOOKED AT "NEW KARMA"?

5 A JUST THAT ONCE.

6 MR. BRODNIK: THANK YOU. NO FURTHER QUESTIONS.

7 MR. LICHT: I JUST WANT TO GO OVER THE TIMELINE.
8 DOCUMENTS SPEAK FOR THEMSELVES. DID YOU SAY THAT THE RACE WAS
9 FEBRUARY 17TH. THE WORKOUT WAS MARCH 24TH, AND THE X-RAYS WERE
10 FEBRUARY 25TH?

11 STEWARD SAWYER: NO. I SAID FEBRUARY 17TH, THE HORSE
12 RAN WHICH IS ON HIS PP'S.

13 MR. LICHT: RIGHT.

14 STEWARD SAWYER: ON FEBRUARY 25TH OR THEREABOUT, THE
15 ASSISTANT TRAINER GOT DR. WHARTON -- THIS IS ACCORDING TO HER
16 TESTIMONY -- SAID THE HORSE IS SORE. WOULD YOU TAKE A LOOK AT
17 IT?

18 MR. LICHT: OKAY.

19 STEWARD SAWYER: SHE SAID SHE X-RAYED THE HORSE THAT
20 DAY.

21 MR. LICHT: AND THEN THE WORK WAS A MONTH LATER.

22 STEWARD SAWYER: YES.

23 MR. LICHT: I JUST WANT TO MAKE SURE.

24 STEWARD JAUREGUI: YEAH.

25 MR. LICHT: OKAY. NO FURTHER QUESTIONS.

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STEWARD BAKER: OKAY. THANK YOU.

DO YOU HAVE ANOTHER WITNESS?

MR. LICHT: YES. INVESTIGATOR ALFORD.

STEWARD BAKER: CAN YOU SWEAR IN MR. ALFORD?

MR. LICHT: HE'S BEEN SWORN.

STEWARD BAKER: NO.

MICHAEL ALFORD,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE RESPONDENT AND
HAVING BEEN FIRST DULY SWORN BY THE HEARING REPORTER, WAS
EXAMINED AND TESTIFIED AS FOLLOWS:

STEWARD BAKER: GO AHEAD, MR. LICHT.

DIRECT EXAMINATION

BY MR. LICHT:

Q ARE YOU CURRENTLY EMPLOYED BY THE CALIFORNIA
HORSE RACING BOARD?

A YES, I AM.

Q IN WHAT POSITION?

A INVESTIGATOR.

Q IN WHAT PART OF THE STATE?

A IN NORTHERN CALIFORNIA, GOLDEN GATE FIELD AND
ALL OVER THE PLACE WHEN THE FAIRS START.

1 Q AND HOW LONG HAVE YOU BEEN AT THAT POSITION?

2 A IT'S BEEN A LITTLE OVER A YEAR.

3 Q AND PRIOR TO THAT, WERE YOU IN LAW ENFORCEMENT?

4 A YES, SIR.

5 Q WHAT POSITION?

6 A I WAS A DETECTIVE. I WAS A HOMICIDE CRIME SCENE
7 INVESTIGATOR. I WAS A PATROL OFFICER. I WAS A PATROL TRAINING
8 OFFICER.

9 I WORKED FOR THREE DIFFERENT DEPARTMENTS. I WAS
10 A FIREFIGHTER FOR THE STATE OF CALIFORNIA AT ONE POINT FOR
11 ABOUT FOUR YEARS.

12 Q WHEN YOU WERE A DETECTIVE, WHERE WERE YOU A
13 DETECTIVE?

14 A SAN JOSE POLICE DEPARTMENT.

15 Q AND WHEN YOU WERE A HOMICIDE INVESTIGATOR, WHERE
16 WERE YOU ASSIGNED?

17 A SUNNYVALE POLICE DEPARTMENT.

18 Q SO I WOULD ASSUME IT'S SAFE TO SAY YOU'VE HAD
19 EXTENSIVE TRAINING IN INVESTIGATION AND REPORTING; CORRECT?

20 A YES.

21 Q HOW LONG WOULD YOU SAY YOU SPENT ON THE MICHAEL
22 PENDER INVESTIGATION?

23 A TOTAL?

24 Q YES.

25 A A COUPLE HOURS.

1 Q AND YOU'RE MAKING SOME VERY SERIOUS CHARGES;
2 CORRECT?

3 A CORRECT.

4 Q AND THOSE CHARGES WERE DECIDED BY YOU; CORRECT?

5 A BASED ON THE EVIDENCE, YES.

6 Q WELL, AS AN INVESTIGATOR, ISN'T INVESTIGATION
7 101 TO SPEAK TO THE TARGET AS EITHER THE LAST OR CLOSE TO THE
8 END TO FIND OUT WHAT HIS STORY IS?

9 A NOT NECESSARILY.

10 Q MAYBE NOT NECESSARILY, BUT ISN'T THAT FREQUENTLY
11 DONE IN POLICE INVESTIGATIONS?

12 A I DON'T KNOW WHAT'S FREQUENTLY DONE. IT'S NOT
13 FREQUENTLY DONE BY ME. MY TYPICAL INVESTIGATION IS WHAT IS
14 PRESENTED BEFORE ME AT THE TIME.

15 Q SO YOU DIDN'T FEEL IT WAS ALL IMPORTANT TO HEAR
16 WHAT MR. PENDER HAD TO SAY ABOUT THE CONDITION OF THIS HORSE?

17 A I ASKED MR. PENDER ABOUT THE CONDITION OF THIS
18 HORSE WHEN I WENT AND TALKED TO HIM.

19 Q WHAT DID YOU ASK HIM?

20 A I ASKED HIM IF HE RAN THE HORSE AFTER A VET TOLD
21 HIM THAT THE LEG HAD A BREAK IN IT.

22 Q BUT DID YOU ASK HIM WHAT THE CONDITION WAS IN
23 FEBRUARY OF THIS HORSE?

24 A IN MY MIND, THAT WAS IRRELEVANT.

25 Q DID YOU THINK IT WAS IMPORTANT TO TAKE A LOOK AT

1 THE CONFIDENTIAL VET RECORDS ON THIS HORSE TO SEE WHAT
2 TREATMENTS HE'D RECEIVED?

3 A I THOUGHT I DID PICK THOSE UP.

4 Q WELL, THAT LEADS TO ANOTHER QUESTION. EVERY
5 PERSON THAT YOU TALKED TO AND EVERY PIECE OF EVIDENCE THAT YOU
6 OBTAINED IS CONTAINED IN THIS REPORT?

7 A YES. IT'S IN THE CASE FILE THAT I HAVE RIGHT
8 HERE.

9 Q NO. I ASKED YOU IS IT IN THIS REPORT?

10 A AS FAR AS?

11 Q WELL, I DON'T KNOW. DID YOU PUT IN THAT YOU
12 REVIEWED THE VET CONFIDENTIALS IN THIS?

13 A I DON'T BELIEVE I DID. NO.

14 Q WHY NOT?

15 A PROBABLY BECAUSE I DIDN'T REVIEW THEM. I TALKED
16 TO MR. PENDER. I TALKED TO THE VETS.

17 Q TO THE VETS? DID YOU TALK TO DR. WARREN?

18 A I TALKED TO DR. WHARTON. DR. WARREN'S NAME
19 NEVER CAME UP. MR. PENDER DID NOT TELL ME THAT HE HAD
20 DR. WARREN RE-EXAMINE THE HORSE. IT'S MR. PENDER'S EXACT
21 STATEMENT TO ME WAS THAT THE HORSE LOOKED GOOD TO HIM, SO HE
22 RAN IT, AND HE THOUGHT IT WAS AN OLD FRACTURE.

23 Q I DON'T BELIEVE HE SAID HE RAN IT. YOU MEAN HE
24 WORKED IT.

25 A HE WORKED IT. I'M SORRY. HE WORKED IT. YES.

1 Q SO AS AN INVESTIGATOR, YOU DIDN'T FEEL IT WAS
2 IMPORTANT TO MAKE ANY INQUIRY INTO ANY OTHER VETS THAT MAY HAVE
3 EXAMINED THE HORSE OR THE CONDITION OF THE HORSE?

4 A AS STATED, I TALKED TO DR. WHARTON, AND THEN I
5 TALKED TO THE DOCTOR FRANKLIN IN NORTHERN CALIFORNIA AND
6 SARA -- DR. SPORER WHO ACTUALLY EXAMINED THE HORSE IN NORTHERN
7 CALIFORNIA.

8 Q DO YOU KNOW WHO DR. BOYER IS?

9 A YES.

10 Q DID YOU ASK IF DR. BOYER WAS INVOLVED IN THE
11 TREATMENT OF THIS HORSE?

12 A I WAS NOT TOLD HE WAS INVOLVED IN THE TREATMENT
13 UNTIL AFTER THE FACT AND AFTER THE REPORT WAS ALREADY
14 SUBMITTED.

15 Q WELL, YOU COULD'VE AMENDED YOUR REPORT; COULDN'T
16 YOU?

17 A POSSIBLY.

18 Q YOU DIDN'T FEEL THAT WAS IMPORTANT?

19 A NO. HE CAME TO THE SAME CONCLUSION THAT
20 EVERYBODY ELSE. THAT THE HORSE HAD A BREAK IN HIS LEG.

21 MR. LICHT: I DON'T BELIEVE THAT'S TRUE AND THAT'S
22 OBVIOUSLY HEARSAY AND MOVE THAT THAT BE STRICKEN.

23 STEWARD BAKER: WE'LL NOTE THAT OBJECTION FOR THE
24 RECORD. THANK YOU.

25 ///

1 BY MR. LICHT:

2 Q SO DID YOU DO ANYTHING -- WOULD YOU CALL THIS A
3 CURSORY INVESTIGATION THAT YOU MADE HERE?

4 A WHAT DO YOU MEAN BY "CURSORY"?

5 Q LIMITED.

6 A YEAH. LIMITED BECAUSE MY TIME WAS LIMITED. I
7 WAS STATIONED DOWN HERE FOR ONE WEEK. I WAS GIVEN THIS CASE TO
8 DO IN THE TIME PERIOD OF A WEEK.

9 Q YOU'VE BEEN INVOLVED IN I'M SURE MURDER TRIALS
10 AND VERY SERIOUS CRIMES.

11 A YES.

12 Q AND YOU FEEL THAT IT'S JUSTIFIED TO BRING A
13 CLAIM AGAINST A MAN THAT'S GOING TO AFFECT HIS LIVELIHOOD WITH
14 A FEW-HOUR INVESTIGATION?

15 A WHEN THE RULES ARE VIOLATED BY WHAT I HAVE
16 BEFORE ME, THAT'S WHEN I BRING THE CHARGES.

17 Q BUT SOMETIMES AS AN INVESTIGATOR, RULES APPEAR
18 TO BE VIOLATED, BUT WHEN YOU SPEAK TO OTHER PEOPLE AND SECURE
19 OR OBTAIN OTHER EVIDENCE, IT COULD CHANGE YOUR MIND; CORRECT?

20 MR. BRODNIK: I'LL OBJECT. THAT'S ARGUMENTATIVE.

21 STEWARD BAKER: WE'LL RULE ON THAT LATER.

22 GO AHEAD, MR. LICHT.

23 THE WITNESS: NO. IT'S NOT GOING TO CHANGE MY MIND.

24 WHEN A VETERINARIAN TELLS ME THAT THERE'S AN ISSUE WITH THE
25 HORSE THAT CAN CAUSE A PROBLEM AND I ASK THAT PERSON: YOU HAVE

1 THAT INFORMATION AND YOU WORK THE HORSE ANYWAY AND THE PERSON
2 SAID YES, THAT'S AN ADMISSION OF GUILT.

3 BY MR. LICHT:

4 Q SO THE CONFIDENTIAL VET RECORDS WERE NOT OF ANY
5 INTEREST TO YOU?

6 A AT THAT POINT, NO.

7 Q AT ANY POINT?

8 A PROBABLY NOT.

9 Q AND WHEN YOU LEARNED THAT DR. BOYER EVALUATED
10 THE HORSE, YOU DIDN'T FEEL THAT IT WAS IMPORTANT TO TALK TO HIM
11 AND POSSIBLY SUPPLEMENT YOUR REPORT?

12 A NO.

13 Q HOW DID YOU SELECT THE RULE VIOLATIONS THAT YOU
14 BROUGHT HERE? DID ANYBODY ASSIST YOU WITH THAT?

15 A NO. I JUST GOT THE RULE BOOK OUT AND WENT
16 THROUGH IT.

17 WELL, I TAKE THAT BACK. DR. ARTHUR MENTIONED
18 THE 1902.5. THE 1887 IS A COMMON -- WHENEVER THERE'S ANY KIND
19 OF AN ISSUE WITH AN ANIMAL, THE 1887 IS A COMMON CHARGE BECAUSE
20 THE TRAINER IS RESPONSIBLE FOR THE CONDITION OF THE HORSE.

21 Q SO AS A SKILLED INVESTIGATOR, IF YOU HAD MORE
22 TIME, I WOULD ASSUME YOU WOULD'VE DONE A MORE COPIOUS
23 INVESTIGATION; IS THAT CORRECT?

24 A I DOUBT IT. I HAD AN ADMISSION.

25 Q AN ADMISSION BEING?

1 A BEING THAT MR. PENDER SAID HE WORKED THE HORSE
2 AFTER THE VET TOLD HIM THAT THE HORSE SHOULD EITHER BE OPERATED
3 ON OR PUT OUT TO PASTURE.

4 Q AND WHAT IF YOU WOULD'VE LEARNED THAT A SECOND
5 VET SAID THAT IT WAS OKAY TO WORK THE HORSE?

6 A WHAT IF THE SKY FALLS? I DON'T KNOW. I DIDN'T
7 HAVE THAT INFORMATION PROVIDED TO ME. I WAS NOT TOLD; I HAD A
8 SECOND OPINION, AND HE SAID IT WAS OKAY. I WAS TOLD THAT THE
9 FRACTURE LOOKED TO BE OLD. I DIDN'T FEEL THERE WAS A PROBLEM
10 BECAUSE THE HORSE RESPONDED PROPERLY, SO I WORKED HIM.

11 THAT'S WHAT I WAS TOLD. NOBODY MENTIONED A
12 SECOND VET. NOBODY MENTIONED A SECOND OPINION. AND CURIOUSLY
13 ENOUGH, DURING THAT SAME INTERVIEW, HE TOLD ME THAT THE HORSE
14 HAD NOW BEEN SCHEDULED FOR SURGERY.

15 Q BUT INVESTIGATOR ALFORD, ISN'T IT YOUR JOB TO
16 TRY TO TURN OVER EVERY STONE TO FIND OUT WHAT THE TRUTH IS
17 HERE?

18 A THIS IS NOT A HOMICIDE INVESTIGATION.

19 MR. BRODNIK: I WOULD OBJECT. THAT'S ARGUMENTATIVE AS
20 WELL.

21 STEWARD BAKER: YEAH. I'LL SUSTAIN THAT.

22 MR. LICHT, CAN YOU JUST ASK -- CAN YOU REPHRASE
23 THAT QUESTION?

24 MR. LICHT: YEAH, SURE.

25 ///
26

1 BY MR. LICHT:

2 Q WHAT IS YOUR JOB AS AN INVESTIGATOR IN A CASE
3 LIKE THIS?

4 A GATHER THE FACTS AND PRESENT THEM.

5 Q ALL THE FACTS OR JUST SOME OF THE FACTS?

6 A THE FACTS NEEDED TO PROVE THE INFRACTION.

7 Q TO PROVE THE INFRACTION. SO IT'S AN ADVERSARIAL
8 INVESTIGATION, OR IS IT TO BRING FORTH THE TRUTH?

9 MR. BRODNIK: OBJECTION. RELEVANCE. SPECULATION.
10 ARGUMENTATIVE.

11 STEWARD BAKER: REPEAT THE QUESTION AGAIN.

12

13 BY MR. LICHT:

14 Q IS IT YOUR JOB TO UNCOVER ENOUGH FACTS TO BRING
15 FORWARD A CHARGE, OR IS YOUR JOB TO EVALUATE ALL OF THE FACTS
16 AND MAKE AN EDUCATED DETERMINATION OF WHETHER THERE WAS A
17 VIOLATION?

18 A IT'S TO GATHER THE FACTS AND MAKE AN INTELLIGENT
19 DETERMINATION AS TO WHETHER THERE SHOULD BE CHARGES BROUGHT.

20 STEWARD BAKER: I BELIEVE HE'S ANSWERED THE QUESTION.

21 MR. LICHT: OKAY.

22 BY MR. LICHT:

23 Q IS THERE ANYTHING IN THAT FOLDER THERE THAT'S
24 NOT IN YOUR REPORT?

25 A I'M NOT SURE. PROBABLY LIKE THE WORKOUT

1 SCHEDULES ARE NOT IN THERE. I DIDN'T WRITE THAT IN MY REPORT
2 BECAUSE I HAVE A COPY OF IT. THE ENTRY INTO THE RACE FORM, THE
3 PROGRAM SHOWING THAT THE HORSE WAS ENTERED INTO THE RACE.
4 THAT'S IN THE FOLDER, BUT IT WAS NOT WRITTEN IN MY REPORT, BUT
5 I HAVE IT. BUT I DO HAVE IT IN THE FILE.

6 Q IS THERE ANYBODY THAT YOU TALKED TO ABOUT THIS
7 INVESTIGATION THAT'S NOT MENTIONED IN THIS REPORT?

8 A I DON'T BELIEVE SO.

9 Q DID YOU TALK TO DR. MELINDA BLUE?

10 A NO. I DON'T EVEN KNOW WHO THAT IS.

11 Q AND COULD YOU JUST GO OVER THE FULL EXTENT OF
12 YOUR CONVERSATION WITH MR. PENDER AND WHEN IT WAS? YOU CAN
13 REFER TO YOUR NOTES.

14 A THANK YOU.

15 ON 4/11/2019 AT 8:33 IN THE MORNING, I CONTACTED
16 MR. PENDER. HE WAS AT -- I GUESS YOU CALL IT THE BRIDGE OUT IN
17 FRONT OF THE GRANDSTANDS THERE WATCHING SOME HORSES WORK. I
18 ASKED HIM ABOUT THE HORSE "NEW KARMA" AND IF HE, IN FACT,
19 WORKED THAT HORSE ON 3/24. HE SAID THAT HE DID. I ASKED HIM
20 IF EVEN THOUGH THE VETERINARIAN TOLD HIM THAT THERE WAS A
21 FRACTURE IN THE LEG -- I THINK I CALLED IT A BROKEN LEG. HE
22 SAID THAT HE FELT THAT IT WAS AN OLD FRACTURE, AND HE FELT THAT
23 THE BREAK WAS NOT A NEW INJURY AND WAS -- FROM WHAT HE OBSERVED
24 ON THE X-RAY, PARTIALLY HEALED.

25 HE SAID THAT SINCE THE HORSE SHOWED NO SIGNS OF

1 LAMENESS AND WORKED FINE THAT HE SENT THE HORSE UP TO GOLDEN
2 GATE FIELD. AND THEN WHEN HE WAS CONTACTED BY GOLDEN GATE
3 FIELD OFFICIALS ABOUT THE X-RAYS AND THE INJURY AND THAT THEY
4 SCRATCHED -- HE TOLD THEM TO GO AHEAD AND SCRATCH THE HORSE.
5 THEN HE ALSO TOLD ME THAT THE HORSE HAD BEEN SCHEDULED FOR
6 SURGERY EITHER ON SATURDAY THE 13TH OR SUNDAY THE 14TH OF APRIL
7 TO CORRECT THE ISSUE.

8 Q AND DID YOU DISCUSS YOUR FINDINGS WITH
9 INVESTIGATOR MIYAZAKI?

10 A HE WAS STANDING RIGHT THERE.

11 Q NO. BUT I MEAN, YOUR GENERAL FINDINGS THAT YOU
12 HAVE IN YOUR COMPLAINT HERE.

13 A HE READ THE REPORT.

14 Q I SAID DID YOU DISCUSS THEM WITH HIM?

15 A I DON'T BELIEVE SO. I GAVE HIM THE REPORT.
16 HE'S THE SUPERVISOR DOWN HERE.

17 Q AND DID YOU DISCUSS IT WITH DR. RICK ARTHUR?

18 A YES, I DID.

19 Q WHAT DID YOU SAY TO DR. ARTHUR?

20 A I TOLD HIM WHAT'S IN THE REPORT. I LET HIM READ
21 THE REPORT. I GAVE IT TO HIM.

22 Q AFTER IT WAS FILED OR BEFORE IT WAS FILED?

23 A BEFORE IT WAS FILED, I GAVE IT TO HIM.

24 Q DID HE MAKE ANY SUGGESTIONS ABOUT CHANGING IT?

25 A NOT TO MY KNOWLEDGE. I DIDN'T CHANGE ANYTHING.

1 YES, HE DID. I SPELLED DR. WHARTON'S NAME
2 WRONG.

3 MR. LICHT: NO FURTHER QUESTIONS.

4 MR. BRODNIK: NO QUESTIONS.

5 STEWARD BAKER: I HAVE A COUPLE QUESTIONS. WHAT WAS
6 THE DAY THAT THIS HORSE WAS IN THE RACE AT GOLDEN GATE FIELDS,
7 MR. ALFORD?

8 THE WITNESS: I'LL HAVE TO LOOK. THAT WOULD'VE BEEN --

9 STEWARD BAKER: TAKE YOUR TIME.

10
11 (PAUSE IN THE PROCEEDINGS.)

12
13 THE WITNESS: I CAN'T EVEN FIND IT NOW ON HERE.

14 MR. LICHT: IF IT'S ALL RIGHT WITH COUNSEL, WE CAN JUST
15 STIPULATE TO THE DATE THAT THE PROGRAM IS.

16 IS THAT ALL RIGHT WITH YOU?

17 MR. BRODNIK: THAT'S FINE.

18 STEWARD BAKER: HANG ON, MR. ALFORD.

19 STEWARD SAWYER: APRIL 6.

20 STEWARD BAKER: APRIL 6, 2019.

21 SO MR. ALFORD, APRIL 6, 2019, IT APPEARS THAT
22 THIS HORSE WAS ENTERED IN THE RACE. DO YOU KNOW WHAT TIME OF
23 DAY THIS HORSE WAS SCRATCHED ON THIS DAY?

24 THE WITNESS: IT HAD TO BE IN THE MORNING BEFORE THE
25 RACE.

1 STEWARD BAKER: ON THE MORNING OF. DO YOU KNOW WHO
2 RECOMMENDED THAT THE HORSE BE SCRATCHED?

3 THE WITNESS: YES. DR. SARA SPORER.

4 STEWARD BAKER: AND IS SHE THE EXAMINING VETERINARIAN
5 AT GOLDEN GATE FIELDS IN THE MORNING?

6 THE WITNESS: YES, SHE IS.

7 STEWARD BAKER: DID YOU INTERVIEW DR. SPORE FOR THIS
8 CASE?

9 THE WITNESS: I DID NOT INTERVIEW HER IN DEPTH. I
10 SPOKE WITH DR. FRANKLIN WHO RELAYED HER INFORMATION TO ME. I
11 TALKED TO HER BRIEFLY ABOUT IT.

12 STEWARD BAKER: WHAT DID SHE SHARE WITH YOU?

13 THE WITNESS: SHE FELT THAT THE HORSE WAS UNSOUND AND
14 NEEDED TO BE SCRATCHED, IS WHAT SHE TOLD ME.

15 STEWARD BAKER: DR. FRANKLIN, IS HE THE STATE
16 VETERINARIAN AT GOLDEN GATE FIELDS --

17 THE WITNESS: YES, HE IS.

18 STEWARD BAKER: -- FOR THE C.H.R.B.?

19 THE WITNESS: YES.

20 STEWARD BAKER: OKAY. CAN YOU SHARE WITH US YOUR
21 CONVERSATION WITH DR. FRANKLIN ABOUT THIS HORSE?

22 THE WITNESS: YES. DR. FRANKLIN SAID THAT HE RECEIVED
23 A TELEPHONE CALL FROM DR. GRANDE AT SANTA ANITA ALERTING HIM TO
24 THE FACT THAT THE HORSE HAD BEEN ENTERED, AND THAT THERE WAS A
25 MEDICAL ISSUE. THEN HE ALSO HAD A CONVERSATION WITH DR. ARTHUR

1 ABOUT THE SAME HORSE, AND DR. ARTHUR INSTRUCTED HIM TO HAVE THE
2 HORSE EXAMINED. AND ALSO, DR. GRANDE REQUESTED THAT THE HORSE
3 BE EXAMINED AND EVALUATED INCLUDING X-RAYS AND ULTRASOUND PRIOR
4 TO ALLOWING IT TO RUN IN THE RACE.

5 MR. LICHT: AGAIN, THAT'S ALL HEARSAY. IF IT'S OFFERED
6 FOR THE TRUTH OF WHAT HE'S STATING, THEN I'D HAVE TO OBJECT AND
7 HAVE IT STRICKEN FROM THE RECORD. IF IT'S JUST SOME KIND OF
8 SUPERFLUOUS --

9 STEWARD BAKER: DID YOU READ THAT VERBATIM FROM YOUR
10 I.R.?

11 THE WITNESS: YEAH. NOT VERBATIM. I KIND OF
12 CAPSULIZED IT.

13 STEWARD BAKER: DO YOU HAVE AN ISSUE WITH THAT?

14 MR. LICHT: YES. DR. GRANDE CAN TESTIFY. DR. SPORER
15 CAN TESTIFY. WE NEED TO HAVE THE OPPORTUNITY TO CROSS-EXAMINE
16 THEM FOR THE RECORD.

17 STEWARD BAKER: OKAY. WE'LL NOTE THAT FOR THE RECORD.

18 WHILE I'M THINKING OF IT, THIS COMPLAINT PACKET
19 AND THESE PAST PERFORMANCES, NEITHER ONE HAS BEEN MARKED YET AS
20 AN EXHIBIT.

21 AND WITH THAT BEING SAID, MR. ALFORD, WOULD YOU
22 WISH TO MARK THE 20-PAGE COMPLAINT PACKET AS AN EXHIBIT FOR
23 THIS HEARING?

24 MR. ALFORD: IT'S UP TO --

25 STEWARD BAKER: MR. BRODNIK, DO YOU WISH TO ENTER THE

1 COMPLAINT AS AN EXHIBIT FOR THE HEARING? IT HAS NOT BEEN DONE
2 SO AS WE SPEAK.

3 MR. BRODNIK: SURE.

4 STEWARD BAKER: WITH THAT, WE'LL MARK IT.

5 MR. LICHT: NO OBJECTIONS.

6 STEWARD BAKER: WOULD YOU LIKE TO MARK IT C.H.R.B. 4?

7 MR. BRODNIK: YES, PLEASE.

8 MR. LICHT: I'LL STIPULATE THAT THE OTHER THREE ARE
9 ADMITTED INTO EVIDENCE AS WELL.

10 STEWARD BAKER: THANK YOU, COUNSEL. WE APPRECIATE
11 THAT.

12 THE 20-PAGE COMPLAINT PACKET, CASE NUMBER
13 19SA0143, WE'LL MARK C.H.R.B. DOCUMENT 4.

14
15 (STATE'S EXHIBIT 4 WAS MARKED
16 FOR IDENTIFICATION BY THE STEWARDS.)

17
18 STEWARD BAKER: AND THE THREE FEBRUARY 25TH X-RAYS OF
19 "NEW KARMA" ARE C.H.R.B. DOCUMENTS 1, 2 AND 3. AND WITHOUT
20 OBJECTION, WE'LL MOVE THOSE INTO EVIDENCE FOR THE HEARING.

21 YOU FINE WITH THAT, COUNSEL?

22 MR. LICHT: YES.

23
24 (STATE'S EXHIBITS 1 THROUGH 4 WERE
25 RECEIVED IN EVIDENCE BY THE STEWARDS.)

1 STEWARD BAKER: OKAY. THANK YOU VERY MUCH.

2 MR. ALFORD, IS DR. BOYD A PRIVATE VETERINARIAN
3 AT GOLDEN GATE FIELDS?

4 THE WITNESS: YES. HE'S PRIVATE.

5 STEWARD BAKER: WHAT WAS HIS INVOLVEMENT WITH THIS
6 CASE?

7 THE WITNESS: MY UNDERSTANDING IS THAT AFTER DR. SPORER
8 EXAMINED THE HORSE, SHE ONLY LOOKED AT THE RIGHT ANKLE, AND
9 THEN DR. FRANKLIN CONTACTED HER AND ASKED HER TO DO THE LEFT
10 ANKLE ALSO. SO SHE CONTACTED -- THIS IS WHAT I WAS TOLD. I
11 DIDN'T DOCUMENT IT. THIS IS HEARSAY.

12 MR. LICHT: THIS IS LIKE TRIPLE HEARSAY. I MEAN, THESE
13 PEOPLE ARE ALL CAPABLE OF TESTIFYING. IF YOU WANT THEIR
14 TESTIMONY, BRING THEM INTO THE RECORD.

15 STEWARD BAKER: OKAY. I'LL SUSTAIN THAT.

16 TRIPLE HEARSAY IS ALL IT IS?

17 MR. LICHT: FOR NOW.

18 STEWARD BAKER: OKAY. I'M NOT DOING TOO GOOD
19 QUESTIONING THIS WITNESS, SO I'LL REFER TO MY COLLEAGUE,
20 MR. JAUREGUI.

21 STEWARD JAUREGUI: NO QUESTIONS.

22 STEWARD BAKER: MS. SAWYER, DO YOU HAVE ANY QUESTIONS?

23 STEWARD SAWYER: NO QUESTIONS.

24 STEWARD BAKER: OKAY. THANK YOU VERY MUCH, MR. ALFORD.

25 MR. LICHT, DO WE HAVE ANOTHER WITNESS?

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MR. LICHT: WE HAVE TO MAKE A PHONE CALL ARRANGEMENT.

(PAUSE IN THE PROCEEDINGS.)

STEWARD BAKER: DR. WARREN, THIS IS THE STEWARD'S OFFICE AT SANTA ANITA.

(PAUSE IN THE PROCEEDINGS.)

STEWARD BAKER: WE'RE IN A FORMAL HEARING HERE. THERE'S THREE STEWARDS, A COURT REPORTER, TWO LAWYERS, A TRAINER MICHAEL PENDER, AND THE PRESIDENT OF THE STRONACH IS HERE AS AN OBSERVER, MR. MICHAEL ROGERS. IF IT'S OKAY WITH YOU, WE'RE GOING TO HAVE THE COURT REPORTER SWEAR YOU IN OVER THE TELEPHONE AND ASK YOU SOME QUESTIONS. OKAY, DR. WARREN?

MR. WARREN: SOUNDS FINE.

STEWARD BAKER: THANK YOU, SIR.

HERBERT WARREN,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE RESPONDENT AND HAVING BEEN FIRST DULY SWORN BY THE HEARING REPORTER, WAS EXAMINED AND TESTIFIED VIA TELEPHONICALLY AS FOLLOWS:

THE REPORTER: WOULD YOU STATE YOUR FIRST AND LAST NAME FOR THE RECORD.

1 THE WITNESS: HERBERT WARREN, H-E-R-B-E-R-T,
2 W-A-R-R-E-N.

3 STEWARD BAKER: GO AHEAD, MR. LICHT.
4

5 DIRECT EXAMINATION
6

7 BY MR. LICHT:

8 Q HELLO, DR. WARREN. IT'S ROGER LICHT.

9 A YEAH, ROGER.

10 Q DR. WARREN, ARE YOU CURRENTLY LICENSED BY THE
11 HORSE RACING BOARD?

12 A I AM.

13 Q AND WHAT CAPACITY DO YOU HOLD A LICENSE?

14 A I'M A VETERINARIAN.

15 Q AND DO YOU ALSO HOLD A CURRENT AND VALID
16 VETERINARIAN LICENSE FROM THE STATE OF CALIFORNIA VETERINARY
17 BOARD?

18 A YES.

19 Q AND HOW LONG APPROXIMATELY HAVE YOU HELD BOTH OF
20 THOSE LICENSES?

21 A SINCE 1961.

22 Q AND DURING THAT PERIOD, HAVE YOU RENDERED
23 VETERINARY SERVICES ON THE SOUTHERN CALIFORNIA HORSE RACING
24 CIRCUIT DURING THAT ENTIRE PERIOD?

25 A YES, SIR.

1 Q AND DURING THAT PERIOD, DID YOU COME TO FIND A
2 HORSE NAMED "NEW KARMA" IN MIKE PENDER'S BARN IN FEBRUARY TO
3 APRIL OF 2019?

4 A YEAH, FEBRUARY OF 2019. RIGHT.

5 Q AND HOW DID YOU FIRST LEARN OF "NEW KARMA" BEING
6 IN THE BARN THERE?

7 A WE HAD BEEN GIVING HIM A STIMULANT, BUT MIKE
8 WANTED ME TO GIVE HIM A SECOND OPINION ON THE HORSE'S ANKLE.

9 Q SPECIFICALLY, ARE YOU TALKING ABOUT THE LEFT
10 SESAMOID?

11 A PARDON?

12 Q SPECIFICALLY, ARE YOU SPEAKING OF THE LEFT
13 SESAMOID ON THE HORSE?

14 A REPEAT THAT AGAIN.

15 Q I SAY, SPECIFICALLY, ARE YOU SPEAKING OF THE
16 LEFT SESAMOID OF THAT HORSE?

17 A IT WAS THE LEFT ANKLE. RIGHT.

18 Q AND WHEN DID YOU FIRST TAKE A LOOK AT "NEW
19 KARMA"? WAS IT IN MARCH OF 2019?

20 A I THINK IT WAS FEBRUARY -- BEST OF MY KNOWLEDGE
21 AROUND FEBRUARY 25, 27. SOMEWHERE AROUND IN THERE. THAT WAS
22 THE ONLY TIME I LOOKED AT THE LEG.

23 Q DID YOU ACTUALLY LOOK AT THE HORSE, THE ACTUAL
24 HORSE OR JUST AT RADIOGRAPHS OR BOTH?

25 A NO. I LOOKED AT THE HORSE MANUALLY AND THE

1 RADIOGRAPH AT THE SAME TIME.

2 Q AND WHEN YOU SAY YOU LOOKED AT THE HORSE, WHAT
3 DID YOU DO? DID YOU PULL HIM OUT OF HIS STALL AND FLEX HIM?
4 WHAT DID YOU DO?

5 A YEAH. WE JOGGED THE HORSE, FLEXED THE -- FIRST
6 WE EXAMINED THE HORSE. HE HAD AN INFUSION IN THE JOINT. I
7 PALPATED IT. FLEXED IT. PALPATED IT. COULDN'T GET ANY --
8 ELICIT ANY PAIN.

9 HE JOGGED FINE. MIKE ASKED ABOUT INJECTING IT.
10 AND I SAID: WELL, BASED ON THE X-RAYS, I WOULD LIKE TO SEE IT
11 COOL OUT FIRST. THE HORSE, I GUESS, HAD A HISTORY OF THIS
12 BEING A LONG-TERM, LONG-STANDING PROBLEM.

13 AND I SAID, I WOULD JUST LET IT COOL OUT AND SEE
14 WHERE YOU'RE AT, AND THEN GO FROM THERE AND SEE HOW HE
15 RESPONDS.

16 Q DID YOU THEN TAKE A LOOK AT THE RADIOGRAPHS?

17 A I LOOKED AT THE RADIOGRAPHS, YES. SAME TIME.

18 Q DID YOU TAKE THOSE RADIOGRAPHS?

19 A NO.

20 Q WERE RADIOGRAPHS TAKEN?

21 A NO. I DIDN'T -- THERE WAS NOT A COMPLETE SET OF
22 RADIOGRAPHS. THERE WAS ONLY ONE RADIOGRAPH. ONE PLATE AS I
23 RECALL.

24 Q TO YOUR KNOWLEDGE, WAS THAT TAKEN BY
25 DR. WHARTON?

1 A I HAVE NO CLUE WHO TOOK IT.

2 Q WHAT DID YOU SEE WHEN YOU REVIEWED THAT X-RAY?

3 A HE HAD A -- LOOKED LIKE AN INCOMPLETE STRESS
4 FRACTURE OF THE SESAMOID. IT LOOKED LIKE IT WAS OLD AND IT HAD
5 BEEN HEALING, AND THAT WAS ONE REASON I PALPATED IT. I WANTED
6 TO TRY AND SEE IF WE COULD ELICIT ANY PAIN OUT OF IT, WHICH WE
7 COULDN'T. THE SESAMOID ELICITED NO PAIN, AND THE SUSPENSORY
8 ALSO HAD NO PAIN INVOLVED AT ALL.

9 Q AND WAS IT THE UPPER PART OF THE SESAMOID?

10 A THAT WAS THE APICAL PART OF THE SESAMOID. THE
11 TOP -- PROBABLY THE TOP 15 OR 20 PERCENT OF THE SESAMOID.

12 Q AND BASED UPON MY AMATEUR KNOWLEDGE, WHEN A
13 FRACTURE IS IN THE UPPER PART OF THE SESAMOID, IT'S AWAY FROM
14 THE SUSPENSORY AND LESS LIKELY TO CAUSE A PROBLEM. AM I
15 CORRECT?

16 A WELL, THE SUSPENSORY SURROUNDS THE SESAMOID, BUT
17 IT'S LESS OF A PROBLEM THAN A BASILAR SESAMOID FRACTURE. IN
18 OTHER WORDS, THE FRACTURE AT THE BASE IS A LOT MORE SEVERE, AND
19 IT HAS MORE CHANCE OF HAVING JOINT INSTABILITY.

20 Q AND IN YOUR 44-PLUS YEARS IN THE INDUSTRY, HAVE
21 YOU SEEN SIMILAR FRACTURES BEFORE?

22 A OH, YES.

23 Q AND HAVE YOU SEEN HORSES RACE SUCCESSFULLY AND
24 WITHOUT CATASTROPHE WITH SIMILAR FRACTURES?

25 A I CAN SAY PROBABLY, YES. IN TODAY'S CLIMATE, WE

1 PROBABLY TAKE MORE CAUTION THAN WE DID IN THE OLD DAYS. BUT
2 I'VE SEEN HORSES THAT HAD A PROBLEM, A CHRONIC PROBLEM, BUT
3 WILL PROTECT THEMSELVES, AND THEY WON'T BE SO APT TO HAVE A
4 CATASTROPHIC BREAKDOWN, POSSIBLY.

5 I'VE HAD MANY HORSES THAT HAD NO PROBLEMS AT ALL
6 EVER AND HAVE A CATASTROPHIC BREAKDOWN. SO THAT'S ONE THING
7 THAT IS VERY, VERY HARD TO PREDICT.

8 Q BUT AS A LICENSED VET, YOU HAVE A NOT ONLY A
9 LEGAL DUTY BUT A MORAL DUTY TO MAKE SURE, TO THE BEST OF YOUR
10 ABILITY, THAT HORSES ARE NOT ABUSED; CORRECT?

11 A ABSOLUTELY.

12 Q AND IN THIS CASE, I ASSUME YOU TOOK THAT TO
13 HEART WHEN YOU ADVISED MR. PENDER; CORRECT?

14 A YEAH, RIGHT. IF THE HORSE IS SOUND, THAT'S THE
15 MAIN -- I HAVEN'T REALLY RUN THE TRUE PARAMETERS. I LOOKED AT
16 HIM. IF YOU HAVE TRAUMA IN THE JOINT, YOU HAVE HEAT IN THE
17 JOINT, AND YOU HAVE SOUNDNESS IN THE ANIMAL. AND IF YOU HAVE
18 THOSE THREE THINGS, THEN -- IF YOU HAVE AN UNSOUNDNESS WITH
19 THOSE OTHER TWO ITEMS, THEN YOU'RE GOING TO PROBABLY TURN THE
20 HORSE OUT.

21 IF THE HORSE IS SOUND, I GENERALLY BACK OFF OF
22 THEM. LET THEM COOL OFF AND SEE WHAT HAPPENS, AND THEN START
23 THE TRAINING PROCEDURE BACK GRADUALLY, AND THEN GO FROM THERE.
24 IF THEY STAY SOUND, I'VE HAD A LOT OF THEM TRAINED THAT WAY FOR
25 A LONG TIME.

1 Q SO AFTER YOUR EXAMINATION, DID YOU ADVISE
2 MR. PENDER NOT TO RACE THE HORSE?

3 A NO. I TOLD HIM -- HE ASKED ME ABOUT INJECTING
4 THE JOINT BECAUSE IT HAD INFUSION OF THE JOINT, AND I TOLD HIM
5 THAT BASED ON THE X-RAYS, I WOULDN'T INJECT IT AT THAT TIME. I
6 DIDN'T WANT TO DO ANYTHING THAT WOULD MASK ANY PAIN OR FURTHER
7 DEGRADATION OF THAT BONE.

8 I TOLD HIM TO COOL HIM OUT. GIVE IT SOME TIME
9 TO COOL HIM OUT, AND THEN START BACK SLOWLY AND SEE WHERE HIS
10 LEG IS. IF HE STAYS SOUND, THEN I WOULD GRADUALLY INCREASE HIS
11 TRAINING AND SEE HOW HE STOOD. AND THAT'S BASICALLY HOW WE
12 LEFT IT.

13 Q AND AGAIN, BASED UPON MY KNOWLEDGE OF THE
14 INDUSTRY, YOU MAKE YOUR MONEY BY INJECTING HORSES OR A BULK OF
15 YOUR MONEY; CORRECT?

16 A GO THROUGH THAT ONE MORE TIME.

17 Q YOU MAKE MONEY BY INJECTING HORSES. NOT BY
18 GIVING ADVICE; CORRECT?

19 A I THINK I GIVE MORE ADVICE THAN I DO INJECTIONS
20 TO TELL YOU THE TRUTH.

21 Q NO. WHAT I'M SAYING IS YOU HAD NO FINANCIAL
22 INCENTIVE TO NOT HAVE HIM INJECTED. THAT WOULD'VE BEEN TO YOUR
23 BENEFIT; CORRECT?

24 A WELL, NOT UNDER A FINANCIAL STANDPOINT. BUT I'M
25 LOOKING AT THE HORSE. IF THAT HORSE HAD AN INJECTION IN THE

1 JOINT AND HE'S GOING TO BE SOUND, AND THEN HE'S GOING TO BE
2 ABLE TO DO THINGS THAT MAYBE I WOULDN'T WANT HIM TO DO, AND I'M
3 NOT GOING TO BE ABLE TO TELL HOW HE'S GOING TO RESPOND TO
4 TRAINING SO THAT'S WHY WE DO IT THAT WAY.

5 Q THAT'S MY POINT, DOCTOR, THAT YOU WERE LOOKING
6 AFTER THE WELFARE OF THE HORSE.

7 A ABSOLUTELY. THAT'S THE NAME OF THE GAME. IF
8 THERE AREN'T ANY HORSES, WE'RE ALL OUT OF BUSINESS.

9 Q YOU'VE PROBABLY BEEN TOLD OR MAYBE ACTUALLY SEEN
10 THE COMPLAINT THAT ALLEGES THAT MR. PENDER VIOLATED A RULE
11 AGAINST ABUSE OF A HORSE BY WORKING THE HORSE. DO YOU FEEL IT
12 WAS ABUSIVE TO WORK THIS HORSE AT THAT POINT IN TIME?

13 A AS LONG AS HE'S SOUND AND THE LEG IS NORMAL AS
14 FAR AS THE INFUSION GOES, I DON'T SEE A REASON NOT TO WORK HIM
15 AND SEE HOW HE COMES OUT OF THE WORK. IF HE COMES OUT OF THE
16 WORK SOUND WITH MINIMAL OR NO MEDICATION, THAT TELLS ME THAT
17 THAT BONE IS STILL INTACT.

18 Q SO JUST TO GO THROUGH THE TIME FRAME, YOUR
19 EXAMINATION WAS SHORTLY BEFORE THE WORKOUT. SO AT THAT POINT,
20 WOULD YOU HAVE ADVISED HIM THAT IT WAS ABUSIVE TO WORK THE
21 HORSE AT THAT POINT?

22 A I DON'T KNOW WHAT THE DATE -- ROGER, I DON'T
23 KNOW WHEN THE WORK CAME FROM THE TIME I LOOKED AT HIM. IF THE
24 HORSE IS SOUND, I THINK HE'S WELL WITHIN HIS REASON TO GO AHEAD
25 WITH HIM. GO SLOW AND SEE HOW HE COMES OUT OF THE WORK, AND IF

1 HE COMES OUT SOUND, THEN GO TO THE NEXT STEP. THAT'S KIND OF
2 THE PROCEDURE I WOULD USE.

3 Q AND AT THE TIME YOU LOOKED AT HIM, HE WAS SOUND;
4 CORRECT?

5 A YES. HE WAS SOUND THE DAY I SAW HIM.

6 MR. LICHT: I HAVE NO FURTHER QUESTIONS.

7 THANK YOU, DOCTOR.

8 STEWARD BAKER: I DON'T THINK I HAVE ANY QUESTIONS OF
9 DR. WARREN.

10 MR. JAUREGUI, DO YOU HAVE ANY QUESTIONS OF
11 DR. WARREN?

12 STEWARD JAUREGUI: YEAH, I DO.

13 DR. WARREN, JUST CURIOUS, FROM YOUR PROFESSIONAL
14 OPINION, AFTER EXAMINING THE HORSE, YOU APPROVED HIM -- YOU
15 APPROVED TO WORK HIM?

16 THE WITNESS: I'M SORRY. I DIDN'T HEAR ALL THAT. HOLD
17 ON.

18 STEWARD JAUREGUI: DOCTOR, WITH YOUR PROFESSIONAL
19 OPINION, WOULD YOU HAVE APPROVED THAT HORSE TO WORK HIM?

20 THE WITNESS: IF I WAS THE REGULAR VET THERE -- I
21 DIDN'T SEE HIM THE DAY BEFORE HE WORKED. IF HE WAS SOUND THE
22 DAY BEFORE HE WORKED, I PROBABLY WOULD LET HIM GO.

23 THE REPORTER: I CANNOT HEAR HIM. HE'S FADING.

24 STEWARD SAWYER: DR. WARREN, YOU GOT TO TAKE YOURSELF
25 OFF SPEAKER. WE CANNOT HEAR YOU.

1 THE WITNESS: SORRY ABOUT THAT. I SAID IF I WAS THE
2 REGULAR VET, I WOULD BE LOOKING AT THAT HORSE THE DAY BEFORE HE
3 WORKED AND IF EVERYTHING WAS NORMAL, THE JOINT HAD NO INFUSION,
4 THERE WAS NO HEAT, THE PALPATION WAS NORMAL AND HE JOGGED
5 SOUND, I WOULD PROBABLY GO AHEAD AND WORK HIM. I WOULD WORK
6 HIM. YOU KNOW, YOU GOT TO FIND OUT WHERE YOU'RE AT. AND IF HE
7 COMES OUT OF THAT WORK FINE, THEN YOU GO TO THE NEXT STEP.

8 STEWARD JAUREGUI: ANOTHER QUESTION IS, AFTER YOU
9 LOOKED AT THE X-RAYS THAT MR. PENDER SHOWED YOU, WOULD YOU, IN
10 YOUR OPINION, BELIEVE THIS TYPE OF FRACTURE WOULD BE CONSIDERED
11 A RISK TO WORK HIM?

12 THE WITNESS: WITH X-RAYS -- ARE WE TALKING ABOUT THE
13 X-RAYS I ORIGINALLY SAW?

14 STEWARD JAUREGUI: YES.

15 THE WITNESS: THE ORIGINAL X-RAYS I SAW LOOKED LIKE AN
16 INCOMPLETE STRESS FRACTURE OF THE SESAMOID WHICH I HAD
17 UNDERSTOOD FROM THE HISTORY OF -- WHAT WAS RELAYED TO ME THAT
18 HE HAD THAT FOR QUITE A WHILE, SO I WAS NOT CONCERNED ABOUT IT
19 AFTER I PALPATED HIM.

20 STEWARD JAUREGUI: OKAY. AND SO YOU WOULDN'T THINK IT
21 WAS A RISK?

22 THE WITNESS: OH, HE'S DEFINITELY A RISK. EVERY HORSE
23 IS A RISK. BUT HE IS DEFINITELY A RISK. THERE'S NO DOUBT
24 ABOUT THAT.

25 STEWARD JAUREGUI: OKAY. AND YOU ALSO STATED TO

1 MR. PENDER TO START BACK SLOWLY. GIVE ME YOUR OPINION WHAT YOU
2 MEANT BY "START BACK SLOWLY."

3 THE WITNESS: WELL, TO COOL OUT, YOU START HIM BACK
4 TRAINING. GIVE HIM A WEEK OF GALLOPS PROBABLY AND GET HIM INTO
5 SOME KIND OF WORKING SITUATION. WHEN YOU FELT THAT HE WAS
6 READY TO WORK, GO AHEAD AND WORK HIM AS LONG AS HE'S STAYING
7 SOUND. THAT'S THE WHOLE SECRET.

8 IN MY OPINION IS THE SOUNDNESS OF THE ANIMAL, IF
9 HE STAYS SOUND AND HE DOESN'T SHOW ANY OUTWARD SIGNS OF
10 PROBLEMS WITH THE LIMB ITSELF, THEN I WOULD GO AHEAD AND
11 PROGRESS SLOWLY AND -- WHEN I SAY "SLOWLY," OVER A PERIOD OF A
12 REGULAR ROUTINE OF TRAINING. I'M NOT A TRAINER, BUT I WOULD
13 ROUTINELY INCREASE THE TRAINING. FEED HIM, DO A LITTLE
14 TRAINING AS FAST AS HE CAN STAND IT.

15 HE'S GOING TO TELL YOU IF HE'S -- IF HE HAS A
16 PROBLEM OF SOMETHING COMING LOOSE, IF YOU'RE GOING TO GALLOP
17 HIM, HE'S GOING TO SHOW YOU SOME PROBLEMS, AND THE ANKLE WILL
18 START GETTING INFUSION AGAIN AND THEN JUST BACK OFF OF HIM.

19 STEWARD JAUREGUI: OKAY.

20 THE WITNESS: I HOPE THAT ANSWERS YOUR QUESTION.

21 STEWARD JAUREGUI: IT DOES. THANK YOU, DOCTOR.

22 STEWARD BAKER: MS. SAWYER.

23 STEWARD SAWYER: DR. WARREN, TWICE YOU TESTIFIED THAT
24 WHEN YOU EXAMINED THE HORSE, THERE WAS SOME HEAT AND SWELLING,
25 AND THAT'S WHY YOU ADVISED HIM TO COOL IT OUT?

1 THE WITNESS: RIGHT. UH-HUH.

2 STEWARD SAWYER: AND DID HE INFORM YOU -- WERE YOU
3 INFORMED THAT THE REASON THE X-RAY WAS TAKEN IS BECAUSE THE
4 HORSE WAS DEFINITELY SORE?

5 THE WITNESS: NO. I WAS NEVER GIVEN THAT -- NEVER TOLD
6 THAT.

7 STEWARD SAWYER: AND ANOTHER, WERE YOU EVER TOLD THAT
8 THIS WAS THE ONLY SET OF X-RAYS THAT MR. PENDER HAD EVER TAKEN
9 OF THIS HORSE? THERE WAS NO RADIOGRAPHIC PROOF THAT THIS WAS
10 AN OLD FRACTURE?

11 THE WITNESS: NO. I ONLY RECEIVED THE ONE X-RAY, AND I
12 WAS TOLD THAT HISTORY OF THE HORSE. I DIDN'T SEE ANY PREVIOUS
13 X-RAYS. NO.

14 STEWARD SAWYER: AND YOU DID SAY WITH THE CLIMATE WE'RE
15 IN TODAY AND WE HAVE TO BE MORE CAUTIOUS WITH OUR ANIMALS AND
16 THEIR SOUNDNESS, YOU WOULD STILL ADVISE MR. PENDER IF THIS
17 HORSE HAD A PARTIAL FRACTURE TO GO AHEAD AND RACE IT?

18 THE WITNESS: THAT'S A TOUCHY QUESTION. THE WHOLE
19 PREMISE IS BASED ON SOUNDNESS. SOUNDNESS AND NORMALITY OF THE
20 LIMB. IF IT'S NORMAL, IT'S HARD TO SAY, JUDGE, WHETHER THAT
21 HORSE IS GOING TO BREAK DOWN OR NOT BECAUSE I'VE SEEN LIMBS
22 THAT ARE COMPLETELY NORMAL BREAK DOWN VERY DRASTICALLY AS WELL.

23 STEWARD SAWYER: CORRECT. LET ME JUST ASK YOU THIS ONE
24 LAST QUESTION. IS IT SAFER TO RACE A HORSE WITH A PARTIAL
25 FRACTURE OR IS IT SAFER TO RACE A HORSE WITH NO FRACTURE?

1 THE WITNESS: YES. ABSOLUTELY. IF THERE'S NO
2 FRACTURE, THAT'S THE BEST WAY TO GO.

3 STEWARD SAWYER: ALL RIGHT. THANK YOU VERY MUCH,
4 DOCTOR, FOR YOUR TIME. DON'T GO ANYWHERE.

5 STEWARD BAKER: MR. BRODNIK?

6 MR. BRODNIK: YES. THANK YOU.

7
8 CROSS-EXAMINATION

9
10 BY MR. BRODNIK:

11 Q DR. WARREN?

12 A YES.

13 Q HI. MY NAME IS ROBERT BRODNIK. I WORK FOR THE
14 CALIFORNIA HORSE RACING BOARD. I JUST HAVE A FEW QUESTIONS.
15 OKAY?

16 A GO AHEAD.

17 Q WHEN DID YOU LOOK AT "NEW KARMA"? WHAT DAY?

18 A I THINK IT WAS ABOUT FEBRUARY 27TH OR 28TH. IT
19 WAS ON A THURSDAY.

20 Q OKAY. AND WHEN YOU LOOKED AT "NEW KARMA," YOU
21 REVIEWED ONE X-RAY; IS THAT RIGHT?

22 A I VIEWED ONE X-RAY. RIGHT.

23 Q AND WHY DID YOU BELIEVE THAT WAS AN OLD
24 FRACTURE?

25 A WELL, YOU COULD SEE AN OLD LINE IN IT, BUT AT

1 THE EDGE OF THE FRACTURE IT LOOKS LIKE THERE WAS A LOT OF
2 HEALING GOING ON, AND THERE WAS JUST ONE LITTLE SPOT IN THE
3 MIDDLE OF THE BONE THAT HAD A LINE IN IT.

4 Q OKAY. AND YOU THEN ALSO PERFORMED A PHYSICAL
5 EXAMINATION OF "NEW KARMA" ON THAT DAY?

6 A YES, SIR.

7 Q OKAY. AND BASED ON YOUR REVIEW OF ONE X-RAY AND
8 YOUR PHYSICAL EXAMINATION -- HOW LONG DID THAT EXAMINATION
9 TAKE?

10 A PROBABLY 20 MINUTES OR SO.

11 Q SO BASED ON YOUR REVIEW OF THE ONE X-RAY AND
12 YOUR 20-MINUTE EXAMINATION, WHAT WAS YOUR RECOMMENDATION TO
13 MR. PENDER?

14 A COOL OFF THE LEG AND GET THE SWELLING OUT OF THE
15 JOINT WHICH IS GOING TO TAKE A COUPLE WEEKS OR WEEK AND A HALF
16 OR SO, PROBABLY, AND THEN START BACK WITH TRAINING AND SEE HOW
17 HE STANDS TRAINING.

18 Q YOU WOULD AGREE, DR. WARREN, THAT IT WOULD'VE
19 BEEN BEST TO TAKE ANOTHER FOLLOW UP X-RAY TO SEE THE IMAGING OF
20 THE LEG; RIGHT?

21 A OH, ABSOLUTELY.

22 Q WOULD YOU HAVE DONE THAT HAD YOU BEEN ASKED TO
23 COME AND GIVE A FOLLOW-UP EXAMINATION OF THE HORSE PRIOR TO IT
24 RETURNING TO TRAINING?

25 A I WOULD'VE, BUT I WAS NOT THE CONSULTING

1 VETERINARIAN. I'M NOT THE ATTENDING VETERINARIAN THERE. THAT
2 PROBABLY WOULD'VE BEEN THE JOB FOR THE VET TO DO, I IMAGINE. I
3 WAS JUST GIVING A SECOND OPINION ON HOW TO HANDLE THE JOINT.

4 Q BUT YOU GAVE AN OPINION NONETHELESS; CORRECT?

5 A RIGHT.

6 Q AND YOUR OPINION WAS TO COOL OFF AND SEE HOW THE
7 HORSE RESPONDS BEFORE RETURNING TO RACING; RIGHT?

8 A RIGHT ON.

9 Q RIGHT. AND YOU WOULD'VE -- DID YOU ALSO SUGGEST
10 TO MR. PENDER THAT HE SHOULD HAVE THE HORSE LOOKED AT BY A
11 VETERINARIAN BEFORE HAVING IT RETURN TO TRAINING?

12 A I DON'T REMEMBER IF I DID OR NOT. I ASSUMED
13 THAT WAS THE GENERAL OPERATING PROCEDURE IN EVERY BARN,
14 HOWEVER.

15 Q OKAY. WOULD IT SURPRISE YOU TO LEARN THAT THE
16 HORSE WAS NOT RE-RADIOGRAPHED PRIOR TO TRAINING?

17 A YES, IT PROBABLY WOULD.

18 Q WHY?

19 A WELL, I MEAN, IT'S ALWAYS GOOD TO, YOU KNOW,
20 FOLLOW UP. THAT X-RAY, I DON'T KNOW WHEN THE X-RAY WAS TAKEN
21 THAT I LOOKED AT, BUT PROBABLY IN TWO WEEKS OR THREE WEEKS
22 AFTER THAT WOULD'VE BEEN PROBABLY TAKEN ANOTHER PICTURE TO SEE
23 WHAT WAS HAPPENING.

24 Q OKAY. HOW LONG IN YOUR OPINION DO FRACTURES
25 TAKE TO HEAL?

1 A OH, DEPENDS ON THE FRACTURE AND THE AGE OF THE
2 HORSE.

3 Q ARE YOU FAMILIAR WITH HOW OLD "NEW KARMA" IS?

4 A I DON'T KNOW THE EXACT DATE. I THINK PROBABLY
5 FIVE OR SIX, MAYBE.

6 Q WERE YOU FAMILIAR WITH HOW OLD HE WAS WHEN YOU
7 GAVE YOUR SECOND OPINION TO MR. PENDER?

8 A NO.

9 Q WOULD THAT HAVE BEEN IMPORTANT INFORMATION TO
10 KNOW BEFORE GIVING YOUR OPINION?

11 A NOT REALLY.

12 Q WHY NOT?

13 A WHAT I WAS SEEING WAS -- CLINICALLY WAS PROBABLY
14 MORE IMPORTANT THAN THE AGE OF THE HORSE.

15 Q OKAY. IS IT FAIR TO SAY THAT FRACTURES TAKE
16 LONGER THAN 30 DAYS TO HEAL?

17 A ABSOLUTELY.

18 Q OKAY. IN YOUR OPINION AND IN YOUR EXPERIENCE,
19 IS IT MORE TYPICAL TO SEE FRACTURES HEAL WITHIN 90 TO 120 DAYS
20 OR LONGER?

21 A OH, I'VE SEEN FRACTURES, YES, TAKE THAT LONG.
22 YES.

23 Q OKAY. WOULD YOU HAVE ADVISED TO TRAIN THIS
24 HORSE IN A TIMED WORKOUT WITHIN 30 DAYS OF YOUR EXAMINATION
25 WITHOUT A FURTHER RADIOGRAPH?

1 A THE PROBLEM IS, I DON'T KNOW WHEN THE FRACTURE
2 OCCURRED. THAT'S THE PROBLEM. AS LONG THE HORSE IS -- LIKE I
3 SAID BEFORE -- AS LONG AS THE HORSE IS GOING SOUND AND HAS NO
4 ABNORMALITIES OF THE JOINT, I WOULD PROBABLY GO AHEAD AND TRAIN
5 HIM AND SEE HOW HE PROGRESSES.

6 Q YOU AGREE, DOCTOR, THAT A FRACTURE IS A
7 STRUCTURAL ISSUE; RIGHT?

8 A ABSOLUTELY.

9 Q OKAY. AND THERE ARE VARIOUS THINGS THAT ONE CAN
10 DO TO MASK STRUCTURAL DAMAGE; CORRECT?

11 A ABSOLUTELY.

12 Q LIKE MEDICATION WOULD BE ONE; RIGHT?

13 A ABSOLUTELY. UH-HUH.

14 Q ABNORMAL OR DELAYED TRAINING REGIMEN OR NOT A
15 FREQUENT TRAINING REGIMEN COULD BE ANOTHER; RIGHT?

16 A AS FAR AS OBVIOUS PAIN OR HEALING THE TISSUE,
17 THAT'S A DIFFERENT THING.

18 Q OKAY. SO SUFFICE TO SAY THEN THAT THE ONLY REAL
19 WAY TO KNOW IF A FRACTURE IS HEALED IS TO RE-X-RAY THE LEG;
20 CORRECT?

21 A OH, OF COURSE.

22 MR. BRODNIK: OKAY. NO FURTHER QUESTIONS?

23 STEWARD BAKER: ANYTHING FURTHER, MR. LICHT?

24 MR. LICHT: NO. THANK YOU, DR. WARREN.

25 STEWARD BAKER: THANK YOU, DR. WARREN.

1 STEWARD SAWYER: WE'RE GOING TO HANG UP ON YOU NOW.

2 MR. LICHT: I NEED A FIVE-MINUTE BREAK.

3 STEWARD BAKER: WE'LL TAKE A FIVE-MINUTE RECESS.

4

5 (RECESS.)

6

7 STEWARD BAKER: WE'RE BACK ON THE RECORD IN THE MICHAEL
8 PENDER MATTER, CASE 19SA043.

9 MR. LICHT, DO YOU HAVE ANY FURTHER WITNESSES?

10 MR. LICHT: DID YOU CHECK THE AVAILABILITY OF GENARO?
11 DO YOU WANT TO GIVE HIM A TRY?

12 STEWARD BAKER: YOUR SPEAKER ON YOUR CELL PHONE MIGHT
13 WORK.

14

15 (PAUSE IN THE PROCEEDINGS.)

16

17 STEWARD BAKER: HI, GENARO. THERE'S THREE STEWARDS
18 HERE. THE COURT REPORTER, MICHAEL PENDER, HIS LAWYER ROGER
19 LICHT AND THEN THE C.H.R.B. HAS A LAWYER AND THEN AN
20 INVESTIGATOR AND THE PRESIDENT OF STRONACH GROUP, MICHAEL
21 ROGERS. HE'S AN OBSERVER HERE AT THIS HEARING. SO THANK YOU
22 FOR PARTICIPATING.

23 AND MS. DERIEG, THE COURT REPORTER, IS GOING TO
24 SWEAR YOU IN OVER THE TELEPHONE.

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GENARO VALLEJO,

PRODUCED AS A WITNESS BY AND ON BEHALF OF THE RESPONDENT AND
HAVING BEEN FIRST DULY SWORN BY THE HEARING REPORTER, WAS
EXAMINED AND TESTIFIED VIA TELEPHONICALLY AS FOLLOWS:

THE REPORTER: WOULD YOU STATE AND SPELL YOUR NAME FOR
THE RECORD, PLEASE.

THE WITNESS: GENARO VALLEJO.

THE REPORTER: CAN YOU SPELL IT, PLEASE.

THE WITNESS: G-E-N-A-R-O, V-A-L-L-E-J-O.

STEWART BAKER: GO AHEAD, MR. LICHT.

DIRECT EXAMINATION

BY MR. LICHT:

Q GOOD AFTERNOON, MR. VALLEJO. I'M THE ATTORNEY
FOR MICHAEL PENDER.

A HOW ARE YOU, SIR?

Q GOOD. THANK YOU. I'VE CALLED YOU AS A WITNESS
BECAUSE I'VE LEARNED THAT YOU TRAINED THE HORSE CALLED "NEW
KARMA" FROM MAY OF 2018 TO SEPTEMBER OF 2018. IS THAT CORRECT?

A YES, SIR.

Q DO YOU HAVE A MEMORY OF THE CONDITION AND THE
PERFORMANCE OF THAT HORSE DURING THAT PERIOD?

A WELL, YOU KNOW, WE CLAIM HIM UP IN GOLDEN GATE

1 AND WHEN HE CAME DOWN, YOU KNOW, SEEMS LIKE THE HORSE GOT
2 HIMSELF, YOU KNOW, LIKE THE INSIDE OF HIS ANKLES. SO I WAS
3 KIND OF PROTECT HIM. PUT LIKE EXTRA WRAPS ON HIM. I KIND OF
4 CLEANED HIS SHOES OFF --

5 THE REPORTER: I CAN'T HEAR HIM. I'M SORRY.

6 STEWARD BAKER: CAN YOU TALK SLOWER AND LOUDER. THE
7 COURT REPORTER IS TRYING TO -- SHE NEEDS TO HEAR EVERY WORD YOU
8 SAY. SO A LITTLE LOUDER, A LITTLE SLOWER.

9 THE WITNESS: YEAH. WELL, WE CLAIM THE HORSE IN GOLDEN
10 GATE AND WHEN HE CAME DOWN, HE CAME DOWN AND I CHECKED HIM, AND
11 HE GOT A LITTLE BIT OF PRESSURE IN THE ANKLES. FEELS LIKE THE
12 KNEE INSIDE OF THE ANKLES. SO I KIND OF PUT EXTRA WRAPS ON
13 HIM. I PUT NEW SHOES ON HIM, TRIED TO TAKE THE PRESSURE OFF
14 THE NAILS OF THE WALL OF HIS FEET.

15 AND ONE DAY, I -- KNOW YOU, PROBABLY LIKE HIS
16 SECOND WORK THAT I WORKED HIM DOWN HERE. HE CAME BACK WITH A
17 LITTLE MORE PRESSURE IN THE ANKLES. SO WE RUN HIM ONCE OR
18 TWICE AND, YOU KNOW, THEN ONE DAY, YOU KNOW, HE CAME BACK WITH,
19 YOU KNOW, A LOT MORE PRESSURE. SO WE X-RAY HIM, AND HE HAVE A
20 LITTLE PIECE OF TIP IN THE BACK OF THE ANKLE, BUT I THINK THAT
21 WAS OLD.

22 AND SINCE, I MEAN, I JUST KIND OF WORKED LIKE
23 ALL DAY LONG WITH HIM. YOU KNOW, I WAS WITH HIM LIKE, YOU
24 KNOW, TWO, THREE TIMES A DAY AND TRIED TO TAKE CARE OF HIM.
25 YOU KNOW, KEEP HIM HAPPY AND SHARP. TRY TO GET THE PRESSURE,

1 YOU KNOW, AND KIND OF TAKE THE PRESSURE OFF HIS LEG. AND, YOU
2 KNOW, HE WAS RIDING GOOD FOR US.

3 BY MR. LICHT:

4 Q WAS THE HORSE EVER ON THE VET'S LIST WHILE YOU
5 TRAINED HIM?

6 A NO.

7 Q AND WOULD YOU SAY THAT HE WAS RACING SOUND
8 DURING THE WHOLE PERIOD THAT YOU HAD HIM?

9 A I NEVER -- LIKE I SAID WHEN I SAID THAT, I WAS
10 WORKING ON HIM, YOU KNOW, HARDER, YOU KNOW, KIND OF COOL THE
11 LEGS AND MASSAGING HIM AND, YOU KNOW, MASSAGING HIM. YOU KNOW,
12 HE NEVER GOT LIKE SORE. HE WAS KIND OF LIKE -- HE WAS GETTING
13 A LITTLE HEATED IN HIS ANKLES, BUT, YOU KNOW, HE NEVER GOT SORE
14 OR LAME.

15 Q WHO WAS YOUR VET DURING THAT PERIOD?

16 A MELINDA BLUE.

17 Q WAS IT DR. BLUE AND DR. WHARTON OR
18 EXCLUSIVELY DR. --

19 A MELINDA BLUE.

20 Q JUST MELINDA BLUE.

21 AND SHE X-RAYED THE FRONT ANKLES FOR YOU; RIGHT?

22 A YEAH.

23 Q AND DID SHE GIVE YOU ANY ADVICE REGARDING THE
24 CONDITION OF THOSE ANKLES?

25 STEWARD SAWYER: GENARO? DID WE LOSE HIM? GENARO, ARE

1 YOU THERE?

2

3 (PAUSE IN THE PROCEEDINGS.)

4

5 STEWARD SAWYER: GENARO, WE LOST YOU. MR. LICHT IS
6 GOING TO REPEAT THE QUESTION.

7 BY MR. LICHT:

8 Q YOU TESTIFIED THAT DR. BLUE X-RAYED THE HORSE'S
9 ANKLE. DID SHE GIVE YOU ANY ADVICE AFTER SHE TOOK THOSE
10 X-RAYS?

11 A NO. YOU KNOW, SHE TOLD ME THAT THE HORSE, YOU
12 KNOW, MAYBE LIKE A PIECE OF CHIP IN THERE, BUT THAT WAS AN OLD
13 ONE. SO WE DIDN'T DO ANY -- I MEAN, SHE DIDN'T SAY MUCH ABOUT
14 IT. SHE SAID AS LONG AS HE'S OKAY. I MEAN, DON'T WORRY ABOUT
15 IT. YOU KNOW, THAT'S BEEN THERE FOR A LONG TIME. SO --

16 Q AND DO YOU REMEMBER WHAT YOU CLAIMED THE HORSE
17 FOR?

18 A I THINK -- I BELIEVE THAT WAS \$8000.

19 Q YEAH, I THINK THAT'S CORRECT.

20 AND DO YOU REMEMBER WHAT YOU LOST HIM FOR?

21 A 16.

22 Q I WOULD ASSUME THAT'S EVIDENCE THAT YOU LIKED
23 THE CONDITION OF THE HORSE SO YOU KEPT RAISING HIM IN CLASS;
24 CORRECT?

25 A WELL, WE RUN HIM IN THE GRASS AND GO LONG AND

1 THAT WAS A CONDITION RACE. THAT WAS A BIG PURSE, TOO. SO,
2 YEAH. SO --

3 Q I THINK YOU ARE STABLED FAIRLY CLOSE TO MICHAEL
4 PENDER; IS THAT CORRECT?

5 A YES, SIR.

6 Q DID YOU EVER HAVE A CHANCE TO OBSERVE "NEW
7 KARMA" TRAINING WHEN HE WAS IN PENDER'S BARN?

8 A WELL, YOU KNOW, I SAW HIM ONE TIME. I SEEN HIM
9 ONE DAY WHEN HE WAS WALKING BACK WHEN HE WORKED. BUT, YOU
10 KNOW, I DIDN'T PAY MUCH ATTENTION BECAUSE I DON'T LIKE TO KIND
11 OF LOOK ON THE HORSES THAT I LOST BECAUSE THAT WAY YOU DON'T
12 THINK THAT I'M GOING TO, YOU KNOW, CLAIM IT BACK OR THEY FEEL
13 LIKE, YOU KNOW, I'M CHECKING ON THE HORSES.

14 SO, YEAH, I JUST SAW HIM WALK BY AND THAT WAS
15 IT. BUT I DIDN'T THINK HE WAS OFF. HE WAS WALKING BACK, LIKE,
16 YOU KNOW, LOOKS GOOD TO ME.

17 Q IS IT SAFE TO SAY THAT WHILE HE WAS UNDER YOUR
18 TRAINING, HE WAS LIKE A LOT OF OLD HORSES THAT GOT A LITTLE
19 PUFFY IN THE ANKLES AFTER A RACE, A LITTLE STIFFNESS AND THEN
20 WITH THE PROPER TRAINING WAS WORKED OUT OF HIM?

21 A YES.

22 MR. LICHT: OKAY. NO MORE QUESTIONS.

23 THANK YOU VERY MUCH, MR. VALLEJO.

24 THE WITNESS: YOU'RE WELCOME.

25 MR. LICHT: WAIT. I THINK SOME OTHER PEOPLE MAY HAVE

1 QUESTIONS FOR YOU.

2 STEWARD BAKER: I DON'T HAVE ANY QUESTIONS OF
3 MR. VALLEJO.

4 MR. JAUREGUI, DO YOU HAVE ANY QUESTIONS OF
5 MR. VALLEJO?

6 STEWARD JAUREGUI: NO. NO QUESTIONS.

7 STEWARD BAKER: MS. SAWYER, DO YOU HAVE ANY QUESTIONS
8 OF MR. VALLEJO?

9 STEWARD SAWYER: NO QUESTIONS.

10 STEWARD BAKER: MR. BRODNIK, DO YOU HAVE ANY QUESTIONS
11 OF MR. VALLEJO?

12
13 CROSS-EXAMINATION

14
15 BY MR. BRODNIK:

16 Q MR. VALLEJO, WHEN DID MELINDA BLUE X-RAY "NEW
17 KARMA"?

18 A I CANNOT REMEMBER THE EXACT DAY, BUT, YOU KNOW,
19 SHE'S GOT, YOU KNOW, SOME -- I'M PRETTY SURE WHEN THE X-RAY WAS
20 DONE.

21 Q OKAY. AND ARE YOU HERE AT --

22 A SHE'S NOT THE REGULAR DOC.

23 Q WELL, DO YOU RECALL IF IT WAS EARLY IN THE TIME
24 THAT YOU HAD HIM OR LATE IN THE TIME YOU HAD HIM?

25 A LIKE IN THE MIDDLE. YOU KNOW, LIKE I SAID, I

1 WAS ABLE TO RUN HIM PROBABLY LIKE THREE OR FOUR TIMES.

2 Q OKAY. AND WHICH LEG WAS IT?

3 A NO. WE X-RAYED BOTH OF THEM JUST IN CASE. IN
4 THE RIGHT ONE, THERE WAS A MARK IN THERE, YOU KNOW, LIKE THE
5 BACK. WE X-RAYED BOTH OF THEM. SO WE WANTED TO MAKE SURE, YOU
6 KNOW -- BECAUSE IF WE X-RAY ONE, WE DON'T KNOW WHAT'S IN THE
7 OTHER ONE. SO WE JUST X-RAYED BOTH OF THEM.

8 Q OKAY. ARE YOU TALKING ABOUT THE RIGHT LEG?

9 A LIKE I SAID, WE X-RAYED BOTH LEGS.

10 Q WHAT ARE YOU TALKING ABOUT WITH REGARD TO THE
11 OLD INJURY? ON THE RIGHT LEG OR THE LEFT LEG?

12 A NO. I JUST WANT TO MAKE SURE HE'S OKAY BECAUSE,
13 YOU KNOW, HE'S CARRYING LIKE A LITTLE MORE PRESSURE THAN THE
14 RIGHT ONE. SOMETIMES WHEN THEY FEEL SOMETHING IN THE LEFT ONE,
15 I MEAN, THEY JUST CARRY ALL THE WEIGHT ON THE OTHER LEG. SO WE
16 JUST WANT TO MAKE SURE HE WAS OKAY.

17 LIKE I SAID, THERE WAS NO, LIKE, WE DIDN'T SEE
18 MUCH PROBLEMS IN HIS LEG TO SAY LIKE THE HORSE WAS -- THE HORSE
19 NEVER GOT TO WHERE -- HE WASN'T LAME.

20 Q SO ARE YOU TALKING ABOUT THE RIGHT LEG OR THE
21 LEFT LEG, MR. VALLEJO?

22 A WE X-RAYED -- LIKE I SAID, WE X-RAYED BOTH OF
23 THEM.

24 STEWARD BAKER: MR. VALLEJO --

25 THE WITNESS: WE WANTED TO MAKE SURE.

1 STEWARD BAKER: NO. NO. NO. GENARO.

2 THE WITNESS: YES.

3 STEWARD BAKER: THE (IN SPANISH) IS GOING TO ASK THE
4 QUESTION AGAIN, BUT LISTEN TO HIS WORDS CAREFULLY.

5 THE WITNESS: OKAY.

6 STEWARD BAKER: THANK YOU.

7 BY MR. BRODNIK:

8 Q OKAY. MR. VALLEJO, YOU SAID THAT YOU HAD
9 DR. BLUE LOOK AT "NEW KARMA." RIGHT?

10 A UH-HUH.

11 Q OKAY. AND SHE TOLD YOU ABOUT AN INJURY IN ONE
12 OF THE LEGS; RIGHT?

13 A SHE DIDN'T SAY IT WAS AN INJURY. IT WAS
14 SOMETHING LIKE, YOU KNOW -- LIKE THERE WAS NO CRACK OR
15 ANYTHING. THAT WAS IN THE LEFT ONE. SO AFTER THAT, WE X-RAYED
16 THE RIGHT ONE.

17 Q SO THERE WAS NO CRACK IN THE LEFT ONE?

18 A THERE WAS NO CRACK WHEN WE X-RAYED HIM.

19 Q OKAY. AND THEN THERE WAS SOMETHING IN THE
20 RIGHT?

21 A NO, THERE WAS NOTHING. WE JUST WANT TO MAKE
22 SURE WE'RE SAFE AND MAKE SURE WE'RE -- WE WANTED TO MAKE SURE
23 THERE WAS NOTHING IN THE OTHER ONE TOO.

24 Q MR. VALLEJO, ARE YOU REALLY SURE -- DO YOU HAVE
25 A CLEAR RECOLLECTION OF WHAT DR. BLUE EVEN TOLD YOU?

1 A WELL, I TALKED TO DR. BLUE BECAUSE SHE GOT
2 EVERYTHING ON RECORD.

3 Q OKAY. YOU'RE TALKING ABOUT JULYISH OF 2018;
4 RIGHT?

5 A YEAH.

6 Q OKAY. DO YOU RECALL WHAT DR. BLUE TOLD YOU IN
7 JULY OF 2018?

8 A NOT REALLY. LIKE I SAID, I MEAN, WE WENT
9 THROUGH -- YOU KNOW, WE WENT THROUGH THE HORSE. WE CHECKED
10 HIM. EVERY TIME LIKE WE'RE GOING TO RUN A HORSE, WE CHECK.
11 THAT HORSE THAT I WORKED HIM, AND THAT'S WHEN I THOUGHT HE WAS
12 CARRYING A LITTLE MORE PRESSURE, AND THAT WAS IT.

13 MR. BRODNIK: I DON'T HAVE ANY FURTHER QUESTIONS.

14 STEWARD BAKER: MR. LICHT, ARE YOU FINE? NOTHING
15 FURTHER?

16 MR. LICHT: NO. THANK YOU.

17 STEWARD BAKER: GENARO, THANK YOU VERY MUCH FOR
18 PARTICIPATING.

19 THE WITNESS: THANK YOU, SIR. HAVE A GREAT DAY.

20 STEWARD BAKER: YOU, TOO.

21 MR. LICHT: CAN YOU GIVE US A TWO-MINUTE BREAK TO
22 CONFER HERE? WE'LL SEE WHERE WE'RE AT.

23 STEWARD BAKER: YES, SIR.

24

25 (PAUSE IN THE PROCEEDINGS.)

1 STEWARD BAKER: WE'RE BACK ON THE RECORD IN THE MIKE
2 PENDER MATTER. COUNSEL FOR MR. PENDER ROGER LICHT HAS
3 INDICATED THAT THEY HAVE COMPLETED THEIR PRESENTATION OF
4 WITNESSES.

5 BEFORE WE GET CLOSING STATEMENTS, I'D LIKE TO
6 ASK THE C.H.R.B.'S COUNSEL, MR. BRODNIK, ABOUT -- WITHOUT
7 OBJECTION ABOUT C.H.R.B. RULE 1887. TRAINER OR OWNER TO ENSURE
8 CONDITION OF HORSE. AND I WAS WONDERING, 1902.5 TO ME IS CLEAR
9 AND EASY TO UNDERSTAND THE LANGUAGE IN THAT RULE. IS THERE A
10 SPECIFIC --

11 AND ALSO, MR. ALFORD, YOU CAN JUMP IN HERE.

12 IS THERE A SPECIFIC PORTION OF 1887 THAT
13 MR. PENDER HAS ALLEGEDLY VIOLATED, SUCH AS "A," "B," OR "C"?

14 MR. BRODNIK: IT WOULD BE "A."

15 STEWARD BAKER: IT WOULD BE "A." AND CAN YOU EXPOUND
16 ON WHY THE BOARD THINKS HE VIOLATED 1887(A)?

17 MR. BRODNIK: SURE. WELL, I THINK THAT'S --

18 STEWARD BAKER: I KNOW YOU'RE GOING TO CLOSE.

19 MR. BRODNIK: YEAH.

20 STEWARD BAKER: CAN YOU ADDRESS THAT IN YOUR CLOSING?

21 MR. BRODNIK: I SURE CAN. SURE.

22 STEWARD BAKER: THANK YOU.

23 SO WITH THAT, MR. LICHT, WHY DON'T YOU GO
24 AHEAD -- FIRST OF ALL, LET ME ASK YOU. I DON'T HAVE ANY
25 DOCUMENTS. WE'VE HAD SOME WITNESSES HERE, BUT I DON'T HAVE ANY

1 DOCUMENTS THAT YOU'VE ENTERED FOR THE RECORD. WOULD YOU LIKE
2 TO ENTER SOME DOCUMENTS?

3 MR. LICHT: NO, YOUR HONOR.

4 STEWARD BAKER: OKAY. THANK YOU. SO, WITH THAT, WHY
5 DON'T YOU GIVE US YOUR CLOSING.

6 MR. LICHT: I THINK THE CLOSING STARTS WITH THE STATE.

7 STEWARD BAKER: CORRECT.

8 MR. BRODNIK, CAN YOU GO AHEAD AND GIVE US YOUR
9 CLOSING ARGUMENT, PLEASE?

10 MR. BRODNIK: YES. THANK YOU. IF I CAN HAVE JUST TWO
11 SECONDS HERE.

12 STEWARD BAKER: WHILE YOU'RE LOOKING FOR THAT, JUST FOR
13 THE RECORD, WE HAVE FOUR DOCUMENTS ENTERED BY THE C.H.R.B. IN
14 FACT, I'D LIKE TO BRING IT UP TO BOTH LAWYERS.

15 DOES ANYBODY WANT TO ENTER THE PAST PERFORMANCES
16 FOR "NEW KARMA"? WE'VE BEEN LOOKING AT THEM FROM THIS HEARING.
17 WOULD ANYBODY LIKE TO ENTER THOSE AS AN EXHIBIT?

18 MR. LICHT: I'LL MOVE WE ENTER THEM.

19 MR. BRODNIK: WE'LL STIPULATE TO THAT.

20 STEWARD BAKER: OKAY. THANK YOU. SO THAT WILL BE
21 DEFENDANT'S EXHIBIT A. AND WHAT THAT IS ARE THE LIFETIME PAST
22 PERFORMANCES OF THE HORSE "NEW KARMA" PROVIDED BY EQUIBASE. SO
23 THAT WILL BE DEFENDANT'S EXHIBIT A AND -- OR RESPONDENT'S
24 EXHIBIT A, AND WE'LL MOVE THAT INTO EVIDENCE. THEY'LL BE
25 CALLED "NEW KARMA" LIFETIME P.P.S, IF YOU WILL.

1 (RESPONDENT'S EXHIBIT A WAS MARKED
2 FOR IDENTIFICATION BY THE STEWARDS AND
3 RECEIVED IN EVIDENCE.)
4

5 STEWARD BAKER: GO AHEAD, MR. BRODNIK, WITH YOUR CLOSE.
6

7 CLOSING STATEMENT
8

9 MR. BRODNIK: THANK YOU, YOUR HONOR. THANK YOU,
10 COUNSEL. 1902.5 OF THE CALIFORNIA HORSE RACING BOARD RULES AND
11 REGULATIONS STATE THAT NO PERSON SHALL ALONE OR IN CONCERT
12 PERMIT OR CAUSE ANY ANIMAL UNDER HIS CONTROL OR CARE TO SUFFER
13 ANY FORM OF CRUELTY, MISTREATMENT, NEGLIGENCE OR ABUSE. AND
14 THE EVIDENCE THAT YOU HEARD TODAY QUITE DEFINITELY WAS THAT
15 MR. PENDER WAS MADE AWARE OF THE FRACTURE OF THE SESAMOID JOINT
16 FRONT LEFT LEG OF "NEW KARMA" ON FEBRUARY 25, 2019. HE WAS
17 TOLD BY HIS VETERINARIAN AT THE TIME HEATHER WHARTON THE HORSE
18 SHOULD EITHER BE RETIRED OR HAVE SURGERY.

19 AFTER BEING TOLD THIS INFORMATION, HE STILL
20 CHOSE TO RUN THE HORSE 30 DAYS LATER IN A TIMED WORKOUT WHERE
21 IT RAN FASTER THAN IT HAD RUN IN THE LAST SIX MONTHS. HE THEN
22 MOVED THE HORSE TO GOLDEN GATE FIELDS AND ENTERED INTO A RACE,
23 AND SUBSEQUENT X-RAYS CONTINUED TO SHOW THAT THAT FRACTURE HAD
24 NOT HEALED AND, IN FACT, REMAINED WITHIN THE FRONT LEFT
25 SESAMOID OF THAT HORSE'S FRONT LEG.

1 WHEN YOU HAVE INFORMATION AND YOU ARE THE
2 TRAINER OF RECORD FOR A HORSE, YOU ARE THE SOLE PERSON WHO HAS
3 THE DUTY TO CARE FOR THAT HORSE TO ENSURE THAT THAT HORSE'S
4 HEALTH AND SAFETY ARE PROTECTED. WITHOUT A DOUBT, THE EVIDENCE
5 THAT YOU HEARD TODAY WAS THAT MR. PENDER KNEW THAT THIS HORSE
6 IN FEBRUARY OF THIS YEAR HAD A FRACTURE TO A VERY RISKY JOINT
7 AND STILL CHOSE TO WORK THAT HORSE OUT, AND THAT IN AND OF
8 ITSELF IS ANIMAL ABUSE. TO KNOW THAT INFORMATION AND TO NOT
9 CHOSE, THE ONLY WAY -- EVEN THEIR OWN VETERINARIANS STATED --
10 THE ONLY WAY TO DEFINITELY KNOW THAT THAT FRACTURE HAD HEALED
11 AND EVERYONE AGREES THAT A FRACTURE TAKES LONGER THAN 30 DAYS
12 TO HEAL, IS TO X-RAY THAT BONE. AND NO ONE RE-X-RAYED THAT
13 BONE.

14 AND MR. PENDER DID NOT RE-X-RAY THAT LEG DESPITE
15 KNOWING THAT IT HAD A FRACTURE. WHETHER THIS FRACTURE EXISTED
16 BEFORE OR NOT, ON FEBRUARY 25TH OF THIS YEAR, HE WAS TOLD
17 DEFINITELY, THIS HORSE HAS A FRACTURE. IT'S SERIOUS ENOUGH
18 THAT HIS OWN VETERINARIAN TOLD HIM: RETIRE THIS HORSE OR HAVE
19 IT HAVE SURGERY. INSTEAD HE WAITED 30 DAYS AND THEN HE PUT IT
20 IN A TRAINING RACE -- OR EXCUSE ME. HE PUT IT IN A WORKOUT AND
21 THEN HE ENTERED IT TO BE RACED.

22 THAT NEGLIGENCE, THAT FLIP OF A COIN AS
23 DR. ARTHUR SAID IS CLEARLY ANIMAL ABUSE. YOU CAN GET IN A CAR
24 DRUNK AND MAYBE YOU MAKE IT HOME, JUST LIKE MAYBE THIS HORSE
25 DIDN'T BREAK DOWN WHEN IT RACED, BUT THE FACTS OF THE MATTER

1 ARE THAT THIS IS A SERIOUS ISSUE, AND HE HAD KNOWLEDGE OF IT,
2 AND HE CHOSE TO DO NOTHING ABOUT IT. HE COULD'VE HAD THIS
3 HORSE RE-X-RAYED BEFORE HE CHOSE TO WORK IT OUT AND HE DIDN'T,
4 AND THAT'S WHY WE'RE HERE TODAY BECAUSE OF HIS ACTIONS AND HIS
5 DECISIONS.

6 HE'S BEEN A TRAINER FOR 13 YEARS. HE'S SEEN A
7 LOT OF THESE INJURIES. HE SAW THIS INJURY, AND HE CHOSE TO DO
8 NOTHING ABOUT IT, AND THAT'S WHY WE'RE HERE.

9 1902.5 IS A TYPE OF CRIME WHERE YOU, A SOLE
10 PERSON, CAN BE CULPABLE FOR DOING IT. YOU DON'T HAVE TO BE THE
11 TRAINER. BUT IN THIS CASE, "NEW KARMA" WAS MR. PENDER'S
12 RESPONSIBILITY. HE WAS THE TRAINER. HE WAS THE ONE WHO PUT IT
13 IN THE WORKOUT. HE WAS THE ONE WHO ENTERED IT INTO THE RACE.

14 FOR THOSE REASONS, 1902.5 HE HAS VIOLATED. AND
15 THE THEORY OF THE CASE, I THINK AT THIS POINT, IS PROVEN SIMPLY
16 BY HIS ACTIONS WITH REGARD TO THE WORKOUT. 1887 DEALS WITH THE
17 TRAINER'S LIABILITY WITH REGARD TO HORSES ENTERED INTO A RACE.
18 MR. PENDER ENTERED THIS HORSE INTO A RACE AT GOLDEN GATE
19 FIELDS, AND THE HORSE STILL HAD A FRACTURE, AND IT WAS
20 SCRATCHED TWO DAYS BEFORE IT RACED BECAUSE THAT FRACTURE WAS
21 KNOWN AND MADE AWARE TO MR. PENDER, AND HE SAID TO SCRATCH IT.

22 SO 1887 WITH REGARD TO HIS ACTIONS FOR THE RACE
23 IS WHAT MAKES HIM CULPABLE FOR THAT ASPECT OF IT. BUT I THINK
24 THAT REALLY, TRULY, THE ISSUE HERE, THE ISSUE THAT WE SEE THE
25 MOST PROBLEMS WITH ARE THAT WITHIN 30 DAYS OF BEING INFORMED OF

1 THIS INFORMATION ON FEBRUARY 25, MR. PENDER PUT THAT HORSE INTO
2 TRAINING IN A WORKOUT AND RAN THAT HORSE, YOU KNOW, STILL
3 KNOWING THAT IT HAD A SERIOUS FRACTURE, AND THE RESULTS OF THAT
4 FRACTURE COULD'VE BEEN CATASTROPHIC. AND FOR THOSE REASONS, I
5 THINK HE'S IN VIOLATION OF 1902.5, AND I ASK THAT YOU FIND HIM
6 IN VIOLATION OF SUCH.

7 STEWARD BAKER: THANK YOU.

8 MR. LICHT.

9
10 CLOSING STATEMENT

11
12 MR. LICHT: WHAT WE HAVE HERE IS A CASE WHERE THE
13 C.H.R.B. DID A CURSORY EXAMINATION. BY THE TESTIMONY OF
14 MR. ALFORD, IT WAS TWO HOURS. HE DIDN'T INQUIRE OF ANY OF THE
15 PRIOR TRAINERS WHETHER THERE WERE ANY VETS. HE DIDN'T LOOK AT
16 THE VET RECORDS THAT THE C.H.R.B. HAS UNDER CONFIDENTIALITY.
17 HAD HE DONE THE PROPER EXAMINATION, WE WOULDN'T BE SITTING HERE
18 TODAY. WE WOULD NOT BE SITTING HERE TODAY.

19 DR. WARREN IS A RESPECTED VETERINARIAN. IT
20 CANNOT BE ABUSE TO RELY ON HIS OPINION. COULD IT BE DEEMED NOT
21 THE MOST PRUDENT THING TO DO? YES. BUT ABUSE? THAT'S A
22 STRONG WORD. THAT'S A DEVASTATING WORD TO SOMEBODY'S CAREER
23 AND TO BRING FORWARD AN ACTION BASED ON TWO HOURS OF AN
24 INVESTIGATION, TALKING TO VIRTUALLY NOBODY, A BUNCH OF HEARSAY
25 STATEMENTS IN THE C.H.R.B. REPORT, TO ME, IS OUTRAGEOUS. I

1 MEAN, THIS IS JUST NOT DUE PROCESS.

2 AND THERE WAS NO RUSH. I MEAN, THIS HAPPENED
3 TWO MONTHS BEFORE THE CHARGES WERE FILED. IF IT HAPPENED THREE
4 MONTHS AFTER THE CHARGES WERE FILED, IT WOULDN'T HAVE CHANGED
5 ANYTHING. IT WASN'T LIKE ANYTHING WAS GOING TO HAPPEN.

6 DR. WARREN SAID THE HORSE WAS FINE TO TRAIN
7 PROVIDED THAT MIKE FOLLOW CERTAIN PARAMETERS, AND HE DID. MIKE
8 PENDER. THE HORSE ALWAYS JOGGED SOUND. THERE'S NOT ONE PIECE
9 OF EVIDENCE DUE TO PALPATION, FLEX OR JOGGING THAT HE WAS NOT
10 SOUND.

11 DR. WHARTON HAD A RECOMMENDATION. SHE'S
12 ENTITLED TO HER RECOMMENDATION. THAT DOESN'T MAKE IT THE RULE
13 OF GOD. THAT'S HER OPINION. MAYBE SHE'S OVERLY CAUTIOUS. BUT
14 SHE'S ENTITLED TO DO THAT.

15 FOR THE RECORD, MR. PENDER IS NOT THE TRAINER OF
16 ANY OF THE HORSES THAT PERISHED HERE AT SANTA ANITA. DOESN'T
17 MEAN THAT HE COULDN'T HAVE BROKEN A RULE SUBSEQUENT TO THAT,
18 BUT THAT'S CERTAINLY EVIDENCE OF HIS CHARACTER AND OF HIS MORAL
19 FIBER.

20 DR. WARREN SAID: I MAKE NO MONEY IF I DON'T
21 INJECT THE HORSE. I DON'T THINK HE SHOULD INJECT THE HORSE.

22 THE HORSE WENT UP NORTH. THERE'S NO INCENTIVE
23 TO HAVE SENT THE HORSE UP NORTH UNLESS YOU WANTED TO TRY TO
24 WIN.

25 AS YOU GUYS FOUND OUT, YOU STEWARDS, \$900 TO

1 SHIP THERE. IF THE HORSE WAS LAME AFTER THE RACE, IT'S NOT
2 LIKE THE OLD DAYS WHERE YOU CAN DROP A HORSE AND GET THEM
3 CLAIMED AND GET SOME MONEY. THAT WOULDN'T HAVE HAPPENED.

4 THE HORSE WAS NEVER ON A VET'S LIST. THE HORSE
5 BREEZED. NOBODY SAID ANYTHING AND NO OFFICIAL SAID ANYTHING
6 AFTER HE BREEZED THAT HE DIDN'T PULL UP PROPERLY. AFTER HIS
7 LAST RACE, HE WASN'T ON THE VET'S LIST.

8 DR. ARTHUR TESTIFIED THAT MEANS EITHER HE WAS
9 SOUND, OR THE VET DIDN'T SEE HIM. EITHER WAY, THAT MEANS THE
10 HORSE WAS FINE. I MEAN, IF HE WAS ON THIS MAGICAL DOUBLE
11 SECRET PROBATION LIST, THEN SOMEBODY SHOULD'VE REALLY TAKEN THE
12 TIME TO LOOK AT HIM MORE THAN THE OTHER HORSES IN THE RACE. I
13 MEAN, TO ME, THAT IN AND OF ITSELF IS A PROBLEM. TO PUNISH
14 MR. PENDER FOR THE C.H.R.B.'S FAILURE TO PERFORM THEIR ACTS IN
15 A PROFESSIONAL MANNER IS NOT FAIR EITHER.

16 AGAIN, THERE WAS NO CONCERN WAS DR. WARREN'S
17 TESTIMONY. HE DID SAY THAT OF COURSE THERE'S A RISK. BUT HE
18 SAID THERE'S RISK WITH ANY HORSE THAT GOES OUT TO A RACE. THIS
19 WAS AN OLD FRACTURE. ALL EVIDENCE IS THAT IT WAS AN OLD
20 FRACTURE. IT WAS A MINOR FRACTURE. IT WAS AT THE UPPER PART
21 OF THE SESAMOID WHICH IS LESS LIKELY TO CAUSE A PROBLEM.

22 THERE'S NOT AN ABSOLUTE -- THIS ISN'T ABSOLUTE
23 RESPONSIBILITY OF A HORSE NOT BREAKING DOWN. A CHARGE LIKE
24 THIS ONE OF INTENTIONALLY CAUSING HARM TO A HORSE IS VERY, VERY
25 SERIOUS. IT'S NOT BASED UPON A NEGLIGENCE OR NOT DOING THE

1 ABSOLUTE ULTIMATE, WHAT'S BEST FOR THE HORSE. IT'S BASED UPON
2 A PRUDENT DECISION BASED UPON THE ADVICE OF YOUR EXPERTS.

3 THERE WAS NO SHOPPING FOR EXPERTS. THERE WAS
4 ONE SECOND OPINION TAKEN. I THINK EVERYBODY WOULD RECOGNIZE
5 THAT IN ANY FIELD A SECOND OPINION IS APPROPRIATE.

6 TO SAY THAT IT'S ABUSE IS JUST A REACH BEYOND
7 ALL ASPECTS OF THE LAW. THAT REQUIRES INTENT. AND THERE COULD
8 BE NO INTENT BECAUSE THERE WAS NO RAINBOW AT THE END OF IT TO
9 HAVE THAT INTENT.

10 I DON'T KNOW WHAT THIS SECRET LIST IS, BUT
11 MR. PENDER NEVER KNEW ABOUT IT. NONE OF THE WITNESSES SEEMED
12 TO EVEN REALLY KNOW WHAT IT WAS EXCEPT THAT IT EXISTED. TO ME,
13 THAT'S OUTRAGEOUS IN AND OF ITSELF.

14 IF THERE IS A HIGH-RISK LIST, WHY ISN'T IT
15 PUBLIC? WHY ISN'T IT OUT THERE SO THAT EVERYBODY CAN SEE IT?
16 WHAT IF SOMEBODY WOULD'VE CLAIMED THIS HORSE WHEN HE WAS ON THE
17 HIGH-RISK LIST? I MEAN, THAT'S OUTRAGEOUS.

18 AS FAR AS RUNNING THE HORSE, HE NEVER RAN THE
19 HORSE. THE HORSE WAS SHIPPED UP THERE. IT WAS SCRATCHED.
20 MR. PENDER AT A LARGE EXPENSE BROUGHT THE HORSE BACK DOWN HERE.
21 DID THE SURGERY. THE INJURY WAS CLEARLY MUCH MORE SERIOUS BY
22 EVERYBODY'S TESTIMONY IN APRIL THAN IT WAS IN FEBRUARY. HOW
23 THAT HAPPENED AND HOW IT PROCEEDED NOBODY KNOWS, AND NOBODY CAN
24 GUESS AS TO WHAT HAPPENED.

25 BUT AGAIN, I URGE YOU TO CONSIDER THE GRAVITY OF

1 THIS CHARGE WITH THE LIMITED, LIMITED INVESTIGATION THAT WAS
2 CONDUCTED, AND THE FACT THAT MR. PENDER RELIED UPON A REAL
3 EXPERT WITH 40 YEARS' EXPERIENCE WHEN YOU RULE ON THIS CASE.

4 THANK YOU.

5 STEWARD BAKER: THANK YOU, BOTH GENTLEMAN. UNLESS
6 ANYBODY HAS ANYTHING FURTHER, WE'LL BRING THIS HEARING TO A
7 CLOSE.

8 STEWARD JAUREGUI: IS THERE ANY RECOMMENDATIONS FROM
9 THE BOARD?

10 MR. BRODNIK: THE BOARD VIEWS THIS AS A VERY SERIOUS
11 CASE AND WOULD URGE IF THE STEWARDS FIND MR. PENDER IN
12 VIOLATION TO TREAT THIS WITH THE UTMOST SERIOUSNESS.

13 STEWARD JAUREGUI: THANK YOU.

14 STEWARD BAKER: MR. LICHT, DO YOU HAVE ANY RESPONSE TO
15 THAT?

16 MR. LICHT: I THINK THAT THERE WAS NO VIOLATION AND
17 THAT HE RELIED ON AN EXPERT'S OPINION, A LICENSED VET WITH A
18 TREMENDOUS REPUTATION AND A LOT TO PUT ON THE LINE. AND THE
19 FACT THAT HORSE DID BREEZE FAST, CAME BACK SOUND AND DIDN'T
20 HAVE A PROBLEM IS ALSO EVIDENCE THAT THERE WAS NO ABUSE. THE
21 HORSE WAS JUST AS GOOD AFTER THE WORK AS HE WAS GOING INTO THE
22 WORK.

23 AND AS WE ALL KNOW, MANY HORSES ARE QUOTE RACING
24 SOUND THAT HAVE A LOT OF PROBLEMS. THAT DOESN'T MAKE IT ABUSE.
25 THIS ISN'T A DETERMINATION OF WHAT THE OPTIMAL TREATMENT LIKE

1 FOR YOUR PET. THIS IS ABOUT NOT ABUSING AN ANIMAL, AND I DON'T
2 SEE ANY SIGN OF AN ABUSE HERE.

3 STEWARD BAKER: THANK YOU.

4 UNLESS ANYBODY HAS ANYTHING FURTHER, IF THERE IS
5 A RULING IN THIS MATTER, THE PARTY HAS 72 HOURS IN WHICH TO
6 APPEAL IF THERE IS A RULING.

7 UNLESS ANYBODY HAS ANYTHING ELSE, WE'LL BRING
8 THIS HEARING TO A CLOSE. THANK YOU, EVERYBODY.

9

10 (PROCEEDINGS CONCLUDED AT 1:48 P.M.)

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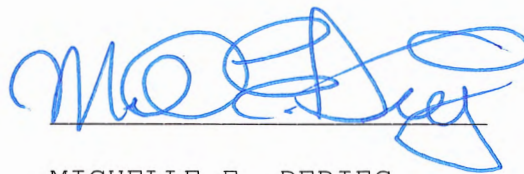
HEARING REPORTER'S CERTIFICATE

I, MICHELLE E. DERIEG, HEARING REPORTER, IN
AND FOR THE STATE OF CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT OF
PROCEEDINGS WAS TAKEN BEFORE ME AT THE TIME AND PLACE SET
FORTH, THAT THE TESTIMONY AND PROCEEDINGS WERE REPORTED
STENOGRAPHICALLY BY ME AND LATER TRANSCRIBED BY COMPUTER-AIDED
TRANSCRIPTION UNDER MY DIRECTION AND SUPERVISION, THAT THE
FOREGOING IS A TRUE RECORD OF THE TESTIMONY AND PROCEEDINGS
TAKEN AT THAT TIME.

I FURTHER CERTIFY THAT I AM IN NO WAY
INTERESTED IN THE OUTCOME OF SAID ACTION.

I HAVE HEREUNTO SUBSCRIBED MY NAME THIS 31ST DAY
OF MAY 2019.



MICHELLE E. DERIEG

HEARING REPORTER