

Lindsay Waskey
Counsel

March 12, 2012

VIA FIRST CLASS MAIL AND E-MAIL

District Attorney Steve Cooley
District Attorney's Office
County of Los Angeles

Los Angeles, CA 90012-3210

Dear Mr. Cooley:

I am writing on behalf of PETA and its more than three million members and supporters, including more than 200,000 of whom reside in California, to respectfully request that you investigate and take appropriate action against those responsible for causing two seemingly unfit horses to be overdriven and inflicted with unnecessary pain, resulting in death, in violation of Cal. Penal Code § 597. The horses were forced to engage in racing sequences for the HBO television series "Luck" at the Santa Anita Race Track which tragically resulted in the fatal and catastrophic breakdowns of both horses

The Death of Outlaw Yodeler

Based upon information contained in the necropsy report, PETA believes the first horse was Outlaw Yodeler, a five-year-old thoroughbred race horse who was reportedly out of shape. He had participated in only one race in 2010 and the astonishing array of powerful pharmaceutical drugs referenced in his necropsy report suggests that Outlaw Yodeler was suffering from severe pain and inflammation. It also raises the possibility that he was not raced more frequently in 2010 due to injury or because he was physically unfit to participate in such strenuous events. (Exhibit A).

Upon information and belief, on or about April 30, 2010, Outlaw Yodeler suffered a fatal and catastrophic breakdown in the filming of two speed intervals that were to simulate a race for the television series "Luck." During the second speed interval "race," Outlaw Yodeler suffered an explosive fracture of his right front leg, which the necropsy report describes as "Fracture of humerus, distal epiphysis, close comminuted, transverse, complete and articular. Distally, two lines of fracture crossed the medial and lateral condyles. In addition, a third line of fracture divided the lateral condyle in two"; as well as cartilage erosion; tearing of the articular capsule of the elbow joint; acute, severe hemorrhage of muscles surrounding the

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elbow joint, cartilage lesions, and acute hemarthrosis of the elbow joint. In his left front leg, Outlaw Yodeler also suffered “[f]raying and hemorrhage of medial branch of suspensory ligament.”

According to an equine veterinarian and racing expert consulted by PETA, such a catastrophic fracture, in which the long bone of the horse’s front leg essentially explodes, indicates that the leg has been overloaded, as does the suspensory ligament injury to the other front leg, and that the horse was likely not fit for workouts.¹

The Death of Marc’s Shadow

Based on information contained in the necropsy report, PETA believes the second horse was Marc’s Shadow, an eight-year-old thoroughbred horse who had not worked or competed in a race since 2007. Multiple whistleblowers who were on the scene reported to PETA that this horse was arthritic and out of shape. These allegations are confirmed by his necropsy report which describes degenerative arthrosis to both the right carpus and the left carpus. (Exhibit B).

On or about March 28, 2011, Marc’s Shadow suffered a fatal and catastrophic breakdown during the filming of a racing sequence for “Luck”. According to the necropsy report, Marc’s Shadow suffered “[a]cute, open, complete, comminuted, displaced, non-articular fracture of right radius, with: a) shattered distal shaft with production of >19 variable sized bone fragments b) localized laceration and hemorrhage of distal musculature/fascia, distal right forearm c) focal skin tear with protuberant bone fragment, distodorsolateral right forearm.” *Id.* According to an equine veterinarian and racing expert consulted by PETA this means that the bone in Marc’s Shadow’s leg exploded into more than 19 pieces, some of which were poking through his skin.

California’s Prohibition on Overdriving and Inflicting Unnecessary Suffering or Pain on Animals

California Penal Code § 597(b) prohibits “caus[ing] . . . any animal to be . . . overdriven, overloaded, driven when overloaded, overworked, tortured, [or] tormented” It further prohibits “subject[ing] any animal to needless suffering, or inflict[ing] unnecessary cruelty upon the animal, or in any manner abus[ing] any animal,” as well as “driv[ing], rid[ing], or otherwise us[ing] the animal when unfit for labor.” *Id.* The words “torment,” “torture,” and “cruelty” include “every act, omission, or neglect whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.” *Id.* § 599b. Additionally, the word “animal” includes “every dumb creature” and the word “person” includes “corporations as well as individuals.” *Id.*

PETA requests an investigation of the roles of the following parties in the deaths of these two horses, which we believe may constitute violations of California’s prohibition against overdriving and causing unnecessary suffering or pain to any animal.

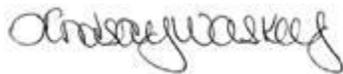
¹ The name of PETA’s equine veterinarian and racing expert is available upon request.

- **Matthew Chew, Horse Trainer.** Chew is by profession a thoroughbred race horse trainer and was the trainer for both Outlaw Yodeler and Marc's Shadow. Chew should be well aware that out of shape, arthritic and injured horses are at risk of life-threatening injury if they are forced to run in what, to them, is a race. Furthermore, Chew should know that even a very fit race horse is never asked to race more than once a week, and would never be raced twice in a single day. As the head trainer, Chew apparently forced each horse to race twice, with only a short rest period, between the races. The necropsy report references a claim that Marc's Shadow was trained for 45 days, which would be a difficult training regimen for an arthritic horse, moreover, 45 days is an inadequate period of time to train even a young, healthy horse who has not trained in nearly four years. And, no amount of training could undo the horse's arthritic condition. Chew would also likely have been aware of the cocktail of powerful painkillers and anti-inflammatory drugs that were administered to Outlaw Yodeler on the day he died. If he agreed with veterinarian Heidi Agnic that these drugs were necessary, it appears that he knew that Outlaw Yodeler was unfit to run and in danger of life-threatening injury. To PETA's knowledge, there is no evidence to suggest that Chew took any action to prevent these horses from participating in these speed races and therefore may have caused Outlaw Yodeler and Marc's Shadow to be overdriven and inflicted with unnecessary suffering and pain, resulting in death, in violation of Cal. Penal Code § 597(b).
- **Heidi Agnic, DVM, Veterinarian, License Number 16739.** Outlaw Yodeler and Marc's Shadow were under the veterinary care of Agnic who specializes in race horse care. Despite both horses' physical conditions and past history, there is no indication that Agnic made any attempt whatsoever to prevent the use of Outlaw Yodeler or Marc's Shadow on the dates that their catastrophic injuries occurred. Also, the astonishing array of powerful pharmaceutical drugs administered to Outlaw Yodeler before his injury, suggests that Agnic was well aware that he was suffering from severe pain and inflammation and knew, or should have known, that the medication may cause Outlaw Yodeler to have a difficult time being able to recognize and respond to pain that would normally be a signal to a horse to slow down, pull up, or in some way indicate that he is injured. Accordingly, PETA requests that Agnic's conduct be investigated and, if appropriate, charges brought for violations of Cal. Penal Code § 597(b).
- **David Milch and other key personnel.** As creator, writer, and producer for "Luck" when these injuries occurred, it is likely that David Milch and/or other key personnel specified the manner in which these horses were forced to race, which is dangerous even for a healthy, properly conditioned horse. To PETA's knowledge Milch and his associates had no policy against racing unfit horses or a policy against racing horses multiple times per day to ensure the safety and well-being of the horses used in "Luck". To the contrary, on January 24, 2012, HBO sent an email to PETA: "Horses ran anywhere from a quarter mile to a third of a mile at any one time, and the horses did not run at full speed. This was limited to a maximum of three times a day with at least a 15 to 20 minute break between runs." Forcing horses to race in this manner is extremely dangerous as thoroughbreds do not generally race twice in one day, and rarely even twice in one week. Thoroughbreds cannot differentiate between what is actual training and racing and what is a mock race

filmed by the entertainment industry. A horse who for most of his life has known the starting gate only as the beginning of a race would have no comprehension of the fact that he will be “raced,” rested, and then raced a second time, which according to information provided to PETA by HBO is exactly what happened.² Accordingly, PETA requests an investigation into the relevant protocols in the production of “Luck” as well as the extent of Milch’s and his associates’ knowledge of the health and conditions of these horses in particular.

Please advise me that your office is taking action to investigate and prosecute any violations of California law discovered and a result of the investigation, and please contact me if you have any questions or if PETA can be of any assistance to your office in addressing this matter. Thank you.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lindsay Waskey".

Lindsay Waskey

² Further, representatives of American Humane Association were on site to supervise the use of horses while filming, and PETA requests that your office investigate both the adequacy of the recommendations made by AHA and the production company’s compliance with those recommendations.