

Carter

v.

Colonial Casino & Racetrack, LLC

USED WITH ATTRIBUTION TO THE ORIGINAL  
AUTHORS



Cameron carter, AS PERSONAL  
REPRESENTATIVE OF THE Estate of Kenneth  
Carter, DECEASED, AND CAMERON CARTER,  
INDIVIDUALLY

v.

Colonial casino  
& Racetrack, LLC

**Authored by:**

Berkin Aslan, Esquire  
Kanner & Pinaluga, P.A.

Steven Saban, J.D. Candidate 2020  
Nova Southeastern University, Shepard Broad College of Law

Alexsandra Litowsky, J.D. Candidate 2020  
Nova Southeastern University, Shepard Broad College of Law

**Special Thanks to:**

Megan Chaney, Professor of Law  
Nova Southeastern University, Shepard Broad College of Law

*Copyright © 2020 by Berkin Aslan, Steven Saban, Alexsandra Litowsky, and  
Elizabeth Lippy*

## STATEMENT OF THE CASE

This is an action based on the wrongful death of Kenneth Carter Sr. on March 24, 2018, brought by the spouse of Kenneth Carter Sr., Cameron Carter, both in an individual capacity, and as personal representative of the estate of Kenneth Carter Sr. against Colonial Casino and Racetrack, LLC (hereinafter “Colonial”). Colonial is owned and operated by Frankie Fonsetti.

On March 24, 2018, Kenneth Carter Sr. was employed at Colonial as an assistant starter and was responsible for loading racehorses into the starting gate prior to any given race. On the date of the subject incident, Carter was assigned Southern Charm, a 2-year-old racehorse, who would be running his very first race on the morning of the subject incident.

Southern Charm arrived at Colonial on March 17, 2018. The horse was evaluated and analyzed by the head trainer at Colonial, Blake Bower, and placed on the head starter’s Schooling List. Southern Charm was young, in pristine physical condition, and was immediately running impressive quarter times. However, despite his promise, from the moment Southern Charm arrived at Colonial, he resisted being loaded into the starting gate—an issue that would normally preclude a racehorse from being eligible to compete in a race at Colonial. Horses who are eligible to race are placed on a Starter’s List, while those ineligible to race remain on a Schooling List for further training and observation. For the three (3) days after Southern Charm arrived at Colonial, Blake Bower worked with Southern Charm, attempting to train the horse to load into the starting gate. Jamie Wright, head starter at Colonial, took over the horse’s training when it appeared Blake Bower was not making adequate progress. Southern Charm was very resistant to the starting gate initially. During the week leading up to the subject incident the horse got better with the gate, only showing resistance in the mornings, which would resolve after several loading repetitions during training sessions.

Jamie Wright was responsible for deciding which horses would be placed on the Starter’s List. On the morning of March 24, 2018, Jamie Wright, after speaking with Frankie Fonsetti, placed Southern Charm on the Starter’s List to run in the track’s first race of the day. According to Jamie Wright, Southern Charm was not resisting the starting gate on that morning and was ready to race.

While getting ready for the race to begin, at the direction of Jamie Wright, Carter walked Southern Charm into Gate 5, the horse’s assigned gate for the race. Carter was not wearing a helmet despite the policies and procedures at the track requiring Carter to wear a helmet. Southern Charm resisted loading into the gate initially, but Carter eventually got the horse into the gate. Ari Litt, the jockey assigned to Southern Charm, sat on top of the horse, ready for the race to begin. Carter situated the horse, and was positioned on the gate pontoon, holding the horse in place.

Prior to the start of the race, Southern Charm unexpectedly and suddenly physically reacted to something. It is unclear exactly what the horse's movement was, but there is no dispute that the horse threw his head upward and was hopping around in the gate in distress. Carter was knocked off the pontoon and onto the ground, rendering Carter unconscious. EMT, Dani Mahan, was the first on scene and discovered that Carter was not breathing and was completely unresponsive. Carter was transported to the hospital but was pronounced dead on arrival.

Due to the suddenness of the incident, no one witnessed exactly what happened to Carter, but the injuries were consistent with blunt force trauma to the head. There is no dispute that the cause of death is traumatic brain injury.

**NOTE:** *The above is a brief synopsis of the case. However, nothing in the Statement of the Case is not evidence and is not admissible at trial.*

IN THE CIRCUIT COURT FOR NORTHERN WASHINGTONIA,  
STATE OF WASHINGTONIA

CAMERON CARTER, as Personal  
Representative of the Estate of  
KENNETH CARTER, Deceased, and  
CAMERON CARTER, individually,

Plaintiffs,

v.

COLONIAL CASINO & RACETRACK,  
LLC,

Defendant.

Case No. 13-CV-17-8995

**JURY TRIAL DEMAND**

---

**JOINT PRETRIAL ORDER**

**WITNESS LIST**

The Parties must call the following witnesses at trial. Each witness is gender neutral and may be a male or female:

**Plaintiff:**

1. Blake Bower
2. Cameron Carter

**Defense:**

1. Jamie Wright
2. Frankie Fonsetti

## **EXHIBIT LIST**

Exhibit A – Southern Charm Racing Profile

Exhibits B1-B5 – Transcript of Text Messages

Exhibit C – Colonial Casino Policies & Procedures re: Training Policies

Exhibit D – Colonial Casino Policies & Procedures re: Safety Equipment

Exhibit E – Cameron Carter Job Application for Colonial Casino

Exhibit F – Cameron Carter Criminal Record

Exhibit G – Affidavit of Mason Keller

Exhibit H – Picture of Pontoon and Starter Gate

Exhibit I – Diagram of Horse and Equipment

Exhibit J – Photograph of Helmet

## Procedural Matters

1. The Federal Rules of Evidence and Federal Rules of Civil Procedure apply. Only these rules shall be used in argument. Specifically, no statutory, regulatory, or outside case law shall be cited except for what is provided in the fact pattern. Students may argue the comments or advisory notes to the Federal Rules of Evidence but may not cite the cases contained therein. No written briefs or motions, trial notebooks, notices of appearances, or other written materials shall be presented to the court. Pretrial *motions in limine* and motions for judgement as a matter of law may be made and argued orally.
2. A team must consist of four (4) J.D. law students attending the same law school. Each team must prepare a plaintiff and a defense case. During each trial, two (2) students will serve as advocates and the other two (2) students will be witnesses. This competition permits students to be the attorneys on both sides of the case.
3. Teams are assigned a letter for identification throughout the competition. Schools shall remain anonymous to the judges throughout the competition.
4. Coaches may not speak with the competitors after the competitors begin to discuss substantive issues with the opposing team. Team members, including those who are not attorneys during the round, may talk to each other during breaks.
5. Each attorney must conduct one direct examination and one cross examination, as well as either an opening statement or a closing argument. The attorney who conducts a direct examination of a witness must be the attorney to handle any evidentiary matters, including objections, during that witness' testimony. Similarly, the attorney who cross examines a witness must handle the evidentiary issues of that witness. Plaintiff teams are not permitted to call a rebuttal case.
6. **Plaintiff must call Blake Bower and Cameron Carter. The defense must call Jamie Wright and Frankie Fonsetti.** Teams may treat the other witnesses as “unavailable” and may read their affidavit statements to the jury.
7. All witnesses are gender neutral and can be either a male or female. All advocates are to treat the characters as the gender of the testifying witness before them.
8. All witnesses called to testify who have identified the parties, other individuals, pre-marked exhibits, or tangible evidence in statements or deposition testimony must, if asked, identify the same at trial.
9. Teams are allowed to enlarge any documents or exhibits included in the problem. Competitors should bring their own easels, whiteboards, and flip pads, as these items will not be provided.

10. Courtroom technology will be available for publication of exhibits and for demonstrative presentations. Specifically, each courtroom will be equipped with a Microsoft Surface Pro for use of PowerPoints and an iPad with the exhibits pre-loaded onto the Trial Director app. The Trial Director app is free and available to every team to download on an iPad prior to competition. Teams are restricted to the use of PowerPoint and Trial Director for iPad so as to the level the playing field and make sure that every team has access to the same type of technology. Each courtroom will have a screen that projects the exhibits and PowerPoints. The best way to transfer PowerPoints to the Surface is to bring a thumb drive to upload the PowerPoint.
11. The ballot includes a point for effective use of technology. There will also be an award for best use of technology during the preliminary rounds.
12. Each witness who previously testified at a deposition did so under oath and agreed that he or she would provide a complete and accurate description of all material events within his or her knowledge that occurred. Each witness must admit the authenticity of the signature on his or her deposition transcript or sworn statement and, if asked, must admit that he or she reviewed the deposition transcript or sworn statement for its accuracy and completeness before signing it.
13. All signatures and exhibits are authentic. No team may attempt to impeach a witness by arguing that a signature on a transcript, statement, or exhibit does not comport with the witness's signature.
14. Other than what is supplied in the problem itself, there is nothing exceptional or unusual about the background information of any of the witnesses that would bolster or detract from their credibility.
15. Testifying witnesses may not invent an individual or invent an exhibit not mentioned in the problem or have testimony or evidence offered to the court or jury from that invented individual or exhibit.
16. An advocate may not invent or create material facts and shall be extraordinarily careful to be fair and accurate in staying within the bounds of the file. When in doubt as to whether the file supports a question or argument, an advocate shall err on the side of not asking the question or presenting the fact.
17. Witnesses testifying on direct or redirect examination must derive their responses solely from the facts contained in their respective statements and necessary inferences from their statements, case exhibits, and any matters judicially noted under FRE 201.
18. Should any team have a witness testify on direct examination to invented facts, the opposing counsel may not object on the grounds of "facts outside the record." Rather, teams shall use cross-examination to impeach the witness regarding any material facts not contained in the casefile. When asked, witnesses must admit that the fact to which they have testified is not in their statement or prior testimony. Advocates must instruct their witnesses that when



impeached (especially impeachment by omission), the witness may not make any of the following statements or any similar statements:

- a. I was not asked that question;
  - b. I was not asked to talk about that issue;
  - c. I was not asked about those facts;
  - d. Those answers are in another part of my testimony which has not been transcribed;
  - e. This is the first time I've been asked about those facts;
  - f. Would you like me to tell you why I didn't mention that before?
19. If there is a protest about a witness inventing material facts and stating any of the aforementioned examples when being impeached by omission, the competition director will decide whether the invented fact was material. If the competition director determines that the invented fact was material and the witness, when impeached, stated any combination of the aforementioned examples, the team whose witness invented the material fact will automatically be deducted 5 points from that witness's examination score on all ballots.
20. Advocates and witnesses are expected to observe the highest level of professionalism and fair play in every aspect of the trial. Teams who invent material facts risk a substantial downgrade in points, loss of round, disqualification from the competition, and being banned from the competition in future years. Judges and evaluators will be instructed in writing and in person before each round on the rules against the invention of facts.
21. At the conclusion of trial, if a team believes that its opponent invented material facts or committed some other violation of the rules of this competition, the aggrieved team will have ten (10) minutes after summations have ended to report the allegation to the competition director, Elizabeth Lippy. If the competition director determines that there has been a violation of the rules of competition, it is within her sole discretion to select the sanction for violations beyond the sanction listed above. Sanctions may include a warning, deduction of points, loss of round, and disqualification from the competition. The decision of the competition director is final.
22. Each team will be allocated **eighty (80) minutes** to present and argue its case. Each team's **eighty (80) minutes** shall include pretrial motions, opening statement, direct and cross-examinations, and closing arguments. The clock will **not** stop for objections and all time related to evidentiary objections will be counted against the team proffering the evidence. However, the scoring judges will be informed that a team making vexatious objections for the purposes of abusing the other team's time should be penalized for their unprofessional tactics.
23. No additions or deletions are permitted to the provided jury instructions or to the jury verdict form. That does not mean that a team is prohibited from requesting a limiting instruction or other instructions throughout the trial during a witness's testimony.
24. This case has been bifurcated into a liability phase and a damages phase. For purposes of this trial, **the parties will try the liability phase only.**

25. The Statement of the Case shall not be used as evidence or for examination or cross-examination of any witness.
26. Although the defense has raised multiple defenses in their Answer, they are not required to pursue all defenses at the time of trial.
27. Each team is guaranteed 3 rounds of competition. The first round is determined at the Challenge Ceremony. The second round is randomly matched. The third round will be power-paired (i.e., 1 v. 2, 3 v. 4, etc.).
28. AUWCL supports and encourages ethical and professional teaching and pedagogy. In order to further that goal, coaches will be given a ballot to vote for the most ethical and professional coach, who will receive an award at Saturday night's gala and free tuition to attend the annual Coaches & Competitions Clinic. More information, including the date and location of the 2020 Coaches & Competitions Clinic will be provided in the future.
29. AUWCL is honored to partner with Nova Southeastern University, Shepard Broad College of Law, for purposes of the 2020 Capitol City Challenge. Aslan, Esquire, Steven Saban, J.D. Candidate 2020 and Aleksandra Litowsky, J.D. Candidate 2020 authored the 2020 case file. A special thank you to these individuals for their hard work creating a fun and unique case file. Additional thanks to Professor Megan Chaney from Nova Southeastern for fostering this partnership and continuing to unify trial advocacy programs and professors throughout the country.
30. The authors of the case file hold all rights to these materials. This case file should not be replicated or used in any context without explicit permission from the authors. For more information or questions, contact the American University Washington College of Law Trial Advocacy Program at [elippy@wcl.american.edu](mailto:elippy@wcl.american.edu).

**IN THE CIRCUIT COURT FOR NORTHERN WASHINGTONIA  
STATE OF WASHINGTONIA**

CAMERON CARTER, as Personal  
Representative of the Estate of  
KENNETH CARTER, Deceased, and  
CAMERON CARTER, individually,

Plaintiffs,

v.

COLONIAL CASINO & RACETRACK,  
LLC,

Defendant.

Case No. 13-CV-17-8995

---

**SUBSTANTIVE STIPULATIONS**

The parties have agreed to the following substantive stipulations. Either party may read any of the following stipulations to the judge or jury:

1. Kenneth Carter, Sr. died on March 24, 2018 due to blunt force trauma to the head.
2. Cameron Carter is the proper legal representative of the estate of Kenneth Carter.
3. Exhibits B1 – B5 are text messages taken from the decedent’s telephone that were exchanged between Plaintiff and decedent on March 24, 2018. The grey messages are written by Cameron Carter. The blue messages are written by Kenneth Carter. The times displayed on the top of the cell phone are accurate times of when the text messages were sent and received. Plaintiff is aware of this information and stipulation.
4. Ari Litt, Dani Mahan, and Mason Keeler are all unavailable to testify at trial, as defined by the Federal Rules of Evidence and the Federal Rules of Civil Procedure.
5. Ari Litt’s and Dani Mahan’s sworn statements may be used at trial and the sworn statements *themselves* are not subject to a hearsay objection. However, teams may make any other application objection to Litt and Mahan’s statements and the judge may rule how he or she sees fit.
6. Mason Keeler’s affidavit (Exhibit G) is admissible.
7. All exhibits listed on the exhibit list have been authenticated. As such, neither party may object to the exhibits on grounds of lack of authentication. However, this stipulation does not prevent either party from objecting to the admissibility of the exhibits on other grounds per the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

8. Colonial Racetrack & Casino had a surveillance camera facing the loading gates which captured a portion of the incident in question. However, at some point over the course of discovery, that video was lost. The Plaintiff filed a timely motion for sanctions against the Defendant for spoliation of evidence. The Court denied that motion, finding the loss of the video was not intentional or done in bad faith and that the Plaintiff's ability to establish a *prima facie* case was not substantially hindered, as the Plaintiff had an opportunity to review the video before it was lost and admitted that the poor quality of the video significantly impaired its evidentiary value. Consequently, the video is unavailable for use at trial.
9. The horse profile for Southern Charm (Exhibit A) was accessed on November 20, 2019 and is complete and accurate record of Southern Charm's race record and earnings as of the date of trial. This stipulation does not prevent evidentiary objection from either party.
10. During a prior ruling on a Motion to Compel financial discovery from the Defendant, this Court ruled that obtaining the exact profit and loss figures for the day that the subject incident occurred would be unduly burdensome since such data would need to be compiled from a variety of sources, including regional and national simulcast data.
11. To avoid undue prejudice to the Plaintiffs, however, the parties have stipulated that on the subject day, the Racetrack operation within Defendant's business, exclusive of the Casino operation, earned a profit in excess of \$100,000.
12. At all times relevant hereto, the Defendant, Colonial Casino & Racetrack, LL.C. held any and all government required licenses.
13. Exhibits C and D are excerpts from Defendant's full employee manual. No argument is to be made about the absence of any other portions of the manual.

*Peter LeFleur*

\_\_\_\_\_  
**Attorney for the Plaintiffs**

*P. O'Houlihan*

\_\_\_\_\_  
**Attorney for the Defendant**

**IN THE CIRCUIT COURT FOR NORTHERN WASHINGTONIA  
STATE OF WASHINGTONIA**

**CAMERON CARTER, as Personal  
Representative of the Estate of  
KENNETH CARTER, Deceased, and  
CAMERON CARTER, individually,**

Plaintiffs,

v.

**COLONIAL CASINO & RACETRACK,  
LLC,**

Defendant.

Case No. 13-CV-17-8995

**JURY TRIAL DEMAND**

---

**COMPLAINT**

Plaintiffs, CAMERON CARTER, as Personal Representative of the ESTATE OF KENNETH CARTER, Deceased, and CAMERON CARTER, individually, by and through undersigned counsel, hereby bring this action against Defendant, COLONIAL CASINO & RACETRACK, LLC (hereinafter “COLONIAL”), and allege as follows:

**NATURE OF THE ACTION**

1. This is a wrongful death action for damages that exceed Fifteen Thousand Dollars, exclusive of interest and court costs, arising from the negligence of Defendant, COLONIAL RACETRACK.

**PARTIES, JURISDICTION, AND VENUE**

2. Plaintiff, CAMERON CARTER, is the surviving spouse and personal representative of Kenneth Carter, Decedent, and brings this action on behalf of the ESTATE OF KENNETH CARTER and survivors thereof. CAMERON CARTER has resided in Northern Washingtonia at all times material hereto.

3. Defendant, COLONIAL, is a limited liability company licensed under the laws of the State of Washington with its principal place of business located in Northern Washington at all times material hereto.

4. This is a wrongful death action against Defendant.

5. Venue is proper in this Court because COLONIAL maintains facilities and business operations in Northern Washington and all or most of the events giving rise to this action occurred in Northern Washington.

### **FACTUAL ALLEGATIONS**

6. At the time of the injury and eventual death on March 24, 2018, KENNETH CARTER SR., Decedent, was employed by COLONIAL as an assistant starter at COLONIAL, a quarter-horse racing facility owned by COLONIAL and located in Northern Washington.

7. At all times material hereto, KENNETH CARTER SR. was acting within the course and scope of his employment with COLONIAL.

8. At all times material hereto, COLONIAL's employees were acting within the course and scope of their employment, or as the agent of and on behalf of COLONIAL.

9. At all times material hereto, COLONIAL's owner, Frankie Fonsetti, and COLONIAL's employee, the racetrack's designated head starter, were the only individuals with control over which specific horses were chosen for each race at COLONIAL.

10. At all times material hereto, Frankie Fonsetti held great financial interest in each horse at the racetrack and the wagering thereupon.

11. On or about March 24, 2018, KENNETH CARTER SR. reported the horse known as "Southern Charm," to the starter as unfit to race out of the starting gates and requested the starter

to place the horse on the “Starter’s List” to receive additional starting gate training before being permitted race.

12. On the morning of March 24, 2018, the subject horse was removed from the Schooling List by the head starter, Jamie Wright, placed on the Starter’s List, and entered into the day’s first race under the instruction of Frankie Fonsetti.

13. Defendant, by its agents or employees, then represented to decedent, KENNETH CARTER SR. that the horse was adequately trained to safely load and race out of the starting gates and instructed KENNETH CARTER SR. to take the horse to the gate and work the horse into the gate in preparation for the first race.

14. While being loaded into the starting gate, the horse was reluctant to enter the starting gate and exhibited dangerous behavior similar to that it had shown earlier in the week.

15. Upon information and belief, the horse suddenly reared and violently tossed its head, colliding with KENNETH CARTER SR. and knocking Carter out of the starting gate, thereby causing Carter to strike the ground with Carter’s head and body.

16. As a direct consequence of the aforesaid conduct of Defendant, its agents, and/or its employees, on March 24, 2018, KENNETH CARTER SR. sustained traumatic brain injuries as well as other bodily injuries, from which, KENNETH CARTER SR. ultimately perished.

### **COUNT I – NEGLIGENCE**

17. Plaintiffs reallege and incorporate by reference paragraphs [1] through [16] as if fully set forth herein.

18. Defendant COLONIAL expressly and impliedly owed a duty to Plaintiffs to properly train and supervise its employees.

19. Defendant COLONIAL owed a duty to Plaintiffs to develop, maintain, and implement proper policies and procedures for the training and assessment of horses prior to their removal from the Starter's List and entry to the starting gate for the purpose of racing.

20. Defendant COLONIAL knew or should have known that the horse known as "Southern Charm" was not adequately trained to load and race out of the starting gates, and therefore, that the horse presented an imminent danger to the Decedent, KENNETH CARTER SR.

21. Despite the fact that Defendant knew or should have known that individuals, such as KENNETH CARTER SR., were at risk of great bodily harm or death from the undertrained and thereby dangerous horse, Defendant COLONIAL, its agents, and/or its employees breached those duties owed to Plaintiffs in one or more of the following ways:

- a. Failing to adopt and implement proper policies and procedures for training and assessing a horse's ability to safely load and race out of the starting gates;
- b. Failing to determine the horse in question's ability to safely load and race out of the starting gates, prior to allowing said horse to be taken off the Starter's List and entered into a race;
- c. Failing to properly train and supervise its employees and instead encouraging or instructing said employees to remove an undertrained and thereby dangerous horse from the Starter's List to maximize profits from wagering;
- d. Placing Carter in an unreasonably dangerous position or location, without due regard for Carter's safety, which Defendant knew or should have known was in unreasonable danger;
- e. Failing to warn Carter of the latent dangerous condition of a horse, including its unreasonably dangerous and unmanageable characteristics when being loaded into the starting gates.

22. Defendant is therefore directly and vicariously liable to Plaintiffs for the acts and/or omissions of its employees and/or agents.

23. As a direct and proximate result of the negligence of Defendant COLONIAL, its agents or employees, Carter sustained injuries directly causing Carter's death on March 24, 2018.



24. Plaintiffs and survivors of the Decedent thereby suffered damages as a direct and proximate result of the negligence of Defendant.

**WHEREFORE**, Plaintiffs, CAMERON CARTER, individually and as Personal Representative of the ESTATE OF KENNETH CARTER, demand judgment against Defendant, COLONIAL CASINO & RACETRACK, LLC, for damages, exclusive of interest and costs, and for any other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a trial by jury of all issues triable by right.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy thereof has been electronically served via Washingtonia e-Portal to: Pierce O’Houlihan, Esq., on this 10th day of JUNE, 2018.

**LSA Law, P.A.**  
Attorneys for Plaintiffs  
952 South Washingtonia Highway  
Northern Washingtonia, WS 12354  
[LSApleadings123@LSALaw.com](mailto:LSApleadings123@LSALaw.com)

By: *Peter LeFleur*  
**PETER LE FLEUR, ESQ.**  
State Bar No. 12348956

**VERIFICATION**

I, CAMERON CARTER, am the surviving spouse of the Decedent, KENNETH CARTER SR., and the legally appointed Personal Representative of said Decedent's Estate. I have read the Verified Complaint and Jury Demand, and verify the allegations contained herein are true and accurate to the best of my knowledge and belief.

*Cameron Carter*

Plaintiff

06/10/2018

Date

**IN THE CIRCUIT COURT FOR NORTHERN WASHINGTONIA  
STATE OF WASHINGTONIA**

**CAMERON CARTER, as Personal  
Representative of the Estate of  
KENNETH CARTER, Deceased, and  
CAMERON CARTER, individually,**

Plaintiffs,

v.

**COLONIAL CASINO & RACETRACK,  
LLC,**

Defendant.

Case No. 13-CV-17-8995

**ANSWER AND AFFIRMATIVE DEFENSES**

Defendant, COLONIAL CASINO & RACETRACK, LLC, by and through undersigned counsel, hereby files this Answer and Affirmative Defenses to Plaintiffs' Complaint, and states as follows:

1. Defendant denies all factual allegations and legal conclusions that form the basis of this action. Strict proof is hereby demanded at trial.

2-3. Admitted.

4-5. Defendant admits the allegations in Paragraphs 4 through 5 only to the extent that venue is proper in this Court. However, Defendant denies all other allegations of Paragraphs 4 through 5. Defendant further denies all factual allegations and legal conclusions that form the basis of this action. Strict proof is hereby demanded at trial.

6. Admitted.

7. As the allegations in Paragraph 7 constitute conclusions of law, no response is required. To the extent the allegations contained in Paragraph 7 are not legal conclusions, they are specifically denied, and strict proof thereof is demanded.

8–9. Admitted.

10. Denied as stated. Frankie Fonsetti is the legal owner of Colonial Casino & Racetrack, LLC. However, Frankie Fonsetti is not the legal owner of the horses that are housed, trained, or raced at Colonial Casino & Racetrack.

11. Denied. By way of further response and contrary to Plaintiffs' allegations, the horse named Southern Charm was "fit" to race out of the starting gates on March 24, 2018. The Decedent's own negligent actions, which include physically slapping the horse on its head while loading the horse into the starting gate and failing to wear proper safety gear as required by the policies and procedures of Colonial Casino & racetrack, were the causes of Carter's injuries and resulting death.

12. Defendant admits the allegations in Paragraph 12 only to the extent that the horse known as "Southern Charm" was removed from the Schooling List and entered into the day's first race. Defendant denies all other allegations in Paragraph 12.

13. Defendant is without adequate knowledge as to the allegations in Paragraph 13. As such, Defendant denies those allegations.

14. Denied.

15–16. Defendant is without adequate knowledge as to the allegations in Paragraphs 15 through 16. As such, Defendant denies those allegations.

17. As the allegations in Paragraph 17 are merely an incorporation paragraph, no response is required.

18–24. As the allegations in Paragraphs 18 through 24 constitute conclusions of law, no response is required. To the extent the allegations in Paragraphs 19 through 24 are not legal

conclusions, they are specifically denied. To the contrary, the horse known as “Southern Charm” was adequately trained in all regards. Strict proof is hereby demanded at trial.

#### **FIRST AFFIRMATIVE DEFENSE**

Decedent failed to act in a reasonable manner and was negligent, thereby causing Decedent’s accident and resulting injuries and death. Therefore, this action is barred by the doctrine of comparative negligence.

#### **SECOND AFFIRMATIVE DEFENSE**

Decedent expressly and impliedly consented to the alleged danger or assumed the risk of the danger and/or conduct contained in the Complaint that is said to have caused and/or contributed to all or part of Plaintiffs’ and Decedent’s alleged injuries, death, and/or damages.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff’s claims were caused or contributed by the superseding and intervening acts of persons, entities, or circumstances beyond the control of Defendant.

**WHEREFORE**, Defendant, COLONIAL CASINO & RACETRACK, LLC, demands this Honorable Court dismiss Plaintiffs’ Complaint in its entirety and order Plaintiff to provide full compensation for Defendant’s attorney’s fees and legal expenses in defending this action.

#### **DEMAND FOR JURY TRIAL**

Defendant demands a trial by jury.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy thereof has been electronically served via Washingtonia e-Portal to: Peter Le Fleur, Esq., on this 1st day of July, 2018.

**Patches & O'Houlihan, P.A.**  
Attorneys for Defendant  
33 Highway 17 South  
Northern Washingtonia, WS 12354  
[pleading3313@hprlaw.com](mailto:pleading3313@hprlaw.com)

By: *P. O'Houlihan*  
**Pierce O'Houlihan, ESQ.**  
State Bar No. 12340987

**VERIFICATION**

I, FRANKIE FONSETTI, am the legal owner of Defendant, COLONIAL CASINO & RACETRACK, LLC, as named in the above-captioned action. I have read the Verified Answer and Affirmative Defenses and verify the responses provided herein are true and accurate to the best of my knowledge and belief.

Defendant: *Frankie Fonsetti*

Date 07/01/2018

**DEPOSITION TESTIMONY OF CAMERON CARTER**

- 1 **Q:** Cameron Carter, I'm counsel for Colonial Casino and Racetrack and I'd like to ask you  
2 some questions.
- 3 **A:** Alright, I'll do my best but it's not easy to talk about this whole thing.
- 4 **Q:** I understand. Please state your full name and spell your last name for the record.
- 5 **A:** Cameron Carter. C-A-R-T-E-R.
- 6 **Q:** How old are you?
- 7 **A:** 48 years old.
- 8 **Q:** Where do you live?
- 9 **A:** 5400 Mill Springs Court, Northern Washingtonia.
- 10 **Q:** Do you have any children?
- 11 **A:** Yes, Kenny, Jr. You all took Kenneth away from him.
- 12 **Q:** You're referring to your son Kenneth Carter, Jr.?
- 13 **A:** Yes.
- 14 **Q:** How old is Kenneth now?
- 15 **A:** He is nine years old.
- 16 **Q:** Do you have any other children?
- 17 **A:** Yes, a son and daughter, but from a previous relationship. They are adults and have been  
18 on their own for a while. Their names are Francis Balmer, who's 28, and Monique Morgan,  
19 who's 26. Unfortunately, we do not have the best relationship.
- 20 **Q:** Why is that?
- 21 **A:** That is between me and my children.
- 22 **Q:** I understand that you'd like to keep some things private, but you chose to bring this lawsuit  
23 and so it is my job to gather as much information as I can to better understand your claims  
24 and evaluate your case.
- 25 **A:** I still don't see what my relationship with my older kids has anything to do with Colonial  
26 killing my spouse by putting that rogue horse out there.



- 1 **Q:** We're going to discuss everything you know about what happened with your spouse, but  
2 first I need to learn more about you. I believe your counsel has made clear you need to  
3 answer my question. Are you refusing to answer the question?
- 4 **A:** My older kids don't talk to me because of some legal trouble I got into years ago.
- 5 **Q:** What kind of legal trouble?
- 6 **A:** A little over 10 years ago there was a big misunderstanding with my kids' school where  
7 they accused me of stealing money from a PTA fundraiser I was leading.
- 8 **Q:** What was the result?
- 9 **A:** I didn't steal anything! I don't know where that money came from, but I would never steal  
10 from a school!
- 11 **Q:** What was the result?
- 12 **A:** I was forced to take a deal from the prosecutor because he was threatening to throw me in  
13 prison for up to 3 years! Can you believe that?!
- 14 **Q:** What was the deal?
- 15 **A:** Since I had no criminal record, they offered me 2 years of probation, and I had to pay back  
16 all \$3,000 that they accused me of stealing, plus interest for however long it took me to pay  
17 it back. It's all been paid back, I never violated my probation, and as far as I'm concerned  
18 it is ancient history. I was not guilty of the crime they accused me of committing, but I had  
19 to think about my family and stay out of prison, so they forced me to take a guilty plea.
- 20 **Q:** I am showing you what has been marked as **Exhibit F**. Is this a copy of the disposition of  
21 that criminal case?
- 22 **A:** Yes. It is.
- 23 **Q:** I see. And your kids from your previous marriage don't speak to you over this single issue?
- 24 **A:** To my knowledge. I guess you'd have to ask them if there's more to it.
- 25 **Q:** Any other criminal convictions since that one?
- 26 **A:** No. I am not a criminal. Like I said, it was all one big misunderstanding.
- 27 **Q:** What do you do for a living?
- 28 **A:** I'm an administrative assistant at a tire shop.
- 29 **Q:** How long have you been doing that?
- 30 **A:** Since Kenny's death almost exactly a year ago.

- 1 **Q:** What did you do before that?
- 2 **A:** Before Kenny died, I hadn't worked for about 3 years. I used to work at Colonial before  
3 that.
- 4 **Q:** You mean you used to work at Colonial Casino and Racetrack?
- 5 **A:** Yes, as a clocker and a mutuel teller.
- 6 **Q:** In case this is read for the jury, please explain what a mutuel is and what you do as a mutuel  
7 teller?
- 8 **A:** Mutuel is actually short for pari-mutuel, which, simply put, is a method of betting on  
9 racehorses. My job was to stand at the betting window, collect bets from people and give  
10 them their betting slip.
- 11 **Q:** What does a clocker do?
- 12 **A:** In the mornings the horses run and have their runs timed to see how fast they are.  
13 Sometimes it's just a workout run for a certain distance, and sometimes it's the whole track.  
14 It depends on what the trainers want to do, but I was out there timing them. I would work  
15 with the trainers and also gave my input on what I saw. They valued my observations given  
16 how long I worked there.
- 17 **Q:** Why did you stop working at Colonial?
- 18 **A:** Because they fired me after they found out about the PTA thing. Kenny and I were loyal  
19 employees there for 10 years at that point, and they just got rid of me like that. I applied to  
20 other racetracks but they all rejected me outright, so I stopped working.
- 21 **Q:** Wait, let me see if I understand correctly — you were convicted a little over 10 years ago,  
22 but Colonial didn't fire you for it until about 3 years ago?
- 23 **A:** They lost some office files to a flood from a broken water pipe, and so they had to do  
24 background checks on everyone again. Whoever was in charge of that reported me to  
25 Fonsetti, who called me into the office and promptly fired me. I was then blacklisted, that's  
26 why no one else would hire me.
- 27 **Q:** When you say Fonsetti, who are you referring to?
- 28 **A:** Frankie Fonsetti. Owner of Colonial. Frankie has taken everything from me. First it was  
29 my livelihood, and now my spouse.
- 30 **Q:** Any proof that Frankie Fonsetti somehow prevented you from being hired by other tracks?
- 31 **A:** No, but I know.
- 32 **Q:** You don't think Frankie Fonsetti fired you because you hid the fact that you were charged  
33 with embezzlement?

- 1    **A:**    I had already worked there for years without incident so there was no reason to think I was  
2           going to steal at that point. And the employment application just asked if I had a criminal  
3           record, and I checked “no” because I am not a criminal.
- 4    **Q:**    I’m showing you what’s been previously marked as **Exhibit E**. Do you recognize it?
- 5    **A:**    Yes, that’s the application I filled out when I first applied to Colonial.
- 6    **Q:**    Is that your signature at the bottom?
- 7    **A:**    Yes.
- 8    **Q:**    Do you hold a grudge against Frankie Fonsetti?
- 9    **A:**    Frankie will get the appropriate comeuppance one day. Never mind what Frankie did to  
10           me, Frankie put my spouse’s life on the line all the time to make more money and finally,  
11           it killed Kenny. That horse should have never been out there and Frankie knew it. Kenny  
12           told Jamie Wright that horse was dangerous, and Frankie ignored it.
- 13   **Q:**    We’ll come back to your characterization of Frankie Fonsetti in a moment, but if I  
14           understood you correctly, you believe your spouse thought Southern Charm was  
15           dangerous?
- 16   **A:**    Yes, I know Kenny did. Kenny told me.
- 17   **Q:**    When did that happen?
- 18   **A:**    Kenny called me from the track one morning early in the week of March 17<sup>th</sup> as Kenny  
19           was watching the trainers with Southern Charm. While Kenny was telling me how the  
20           horse was beautiful and looked lean, Kenny suddenly stopped talking mid-sentence, and  
21           when I asked what happened, Kenny said Kenny was startled because Southern Charm had  
22           reared up when the trainers tried to load him into the starter gate. Kenny told me it had  
23           been a while since Kenny had seen a horse resist the gate like that, and that Kenny hoped  
24           the trainers would get the horse to come around, otherwise it might never get on to the  
25           Starter’s List. But Kenny also told me Kenny was concerned because a horse that has such  
26           a strong reaction like that will always have anxiety about the gate, no matter what the  
27           trainers do. Kenny was worried that horse was going to be trouble for the starter crew on  
28           race day whenever it was cleared to race.
- 29   **Q:**    Did your spouse ever actually use the word “dangerous” in describing Southern Charm to  
30           you?
- 31   **A:**    Kenny didn’t have to. A trouble horse is a dangerous horse.
- 32   **Q:**    Do you recall how many days before race day that your spouse shared those observations  
33           with you?

- 1 **A:** No, I don't remember the exact day, but obviously it was sometime early in the week  
2 between Southern Charm's arrival and Sunday, the day it killed Kenny.
- 3 **Q:** Do you know if your spouse ever spoke with Frankie Fonsetti or head starter Jamie Wright  
4 about concerns regarding Southern Charm?
- 5 **A:** Yes. Kenny told me that was the plan, that Kenny was going to talk to Jamie about it right  
6 after we hung up.
- 7 **Q:** Do you know if that conversation ultimately happened?
- 8 **A:** I wasn't there, so I can't say for sure, but there's no reason Kenny wouldn't have shared  
9 those concerns with Jamie right after we spoke about it. They would always talk about the  
10 new horses and everyone valued Kenny's opinion because of Kenny's experience.
- 11 **Q:** Did your spouse ever tell you specifically that your spouse shared concerns about Southern  
12 Charm with Jamie Wright?
- 13 **A:** Kenny was not the type to come home and tell me about the workday. If I asked Kenny  
14 how work was, Kenny would say, "fine," and then ask me what was for dinner.
- 15 **Q:** A moment ago you said Frankie Fonsetti put your spouse's "life on the line all the time."  
16 What are you referring to?
- 17 **A:** It was common knowledge amongst the staff and tellers at the track that Frankie's sole  
18 purpose in life is to make money. Frankie didn't care about the safety of the crew or anyone  
19 else.
- 20 **Q:** But what exactly are you basing that on?
- 21 **A:** That was Frankie's reputation with the employees. In all the years I worked there, I never  
22 heard anything positive about Frankie Fonsetti.
- 23 **Q:** Did you ever observe something that Frankie did that put a crew member's life in danger?
- 24 **A:** Yes, I saw Frankie make a young kid, fresh out of high school, part of a starter crew so  
25 Frankie could pay him minimum wage instead of what assistant starters normally get paid.  
26 The guy had no experience and eventually quit because he was terrified of the horses.  
27 Horses are very large and powerful. Even standing by one poses some risk, and everyone  
28 that's ever worked at a track understands that. So knowing where to stand and how to read  
29 the animal's body language can make all the difference. Having a weak link in the crew  
30 can put everyone else's safety at risk. Luckily no one got hurt because of that kid's  
31 inexperience. There are other examples I'm sure, I'm just drawing a blank.
- 32 **Q:** Alright, I guess let's get to the heart of the matter. As you are aware, we are here to discuss  
33 the incident involving your spouse that occurred a year ago at the Colonial Casino and  
34 Racetrack starting gate –

- 1 **A:** “Incident involving my spouse?” Wow. Don’t you mean to say, “we’re here to discuss how  
2 a rogue horse killed the love of your life because it should have never been cleared to race?”
- 3 **Q:** You’ve now referred to the horse involved in the incident, Southern Charm, as a “rogue  
4 horse” twice. What do you mean by that?
- 5 **A:** You’re really clueless about this stuff, aren’t you? A rogue horse is an ornery, or ill-  
6 tempered horse. They’ll bite and kick until they’re broken in by a trainer, but some never  
7 let up and cannot be raced. Southern Charm was as ornery as they come, and everyone  
8 knew it.
- 9 **Q:** Did you ever see Southern Charm bite or kick anyone?
- 10 **A:** No.
- 11 **Q:** Did you ever hear about Southern Charm biting or kicking anyone?
- 12 **A:** No, but he was new to the track. He had only been there since the 17<sup>th</sup> and everything  
13 happened exactly a week later. In that little time, he couldn’t have been properly trained  
14 yet and that’s why he should have stayed on the Schooling List. But Frankie was worried  
15 about the track’s bottom line and forced the horse on to the Starter’s List.
- 16 **Q:** Let’s break that down a bit. First, what is a Schooling List?
- 17 **A:** When a horse first arrives, they are tested by the trainers and head starter. Some horses can  
18 be ridden fine, but have trouble with being enclosed in a starting gate because it is a very  
19 small space for such a large animal. If the horse has a problem with the gate, it’s placed on  
20 a Schooling List and it’s not supposed to be allowed to race until the head starter takes  
21 them off that list and puts them on their Starter’s List. I know all this because I received a  
22 lot of training on the basics while I was a clocker. I was planning on eventually becoming  
23 part of the starter crew or maybe even a trainer, so I was getting a lot of hands-on education  
24 from the experience people that were teaching me as they worked.
- 25 **Q:** So, a Starter’s List is the list of horses that the head starter has approved to race?
- 26 **A:** Yes. And Southern Charm would have automatically been placed on the Schooling List  
27 when he first arrived because he was a young colt and had no previous history. That’s part  
28 of Colonial’s policies and procedures anyways. Only the head starter should be able to  
29 okay him for the Starter’s List, and only after several workouts from the gate. And as I  
30 already told you, the horse was resisting the gate. But of course, the owner of the track  
31 usually gets the owner’s way and somehow Southern Charm ended up on the Starter’s List  
32 that morning.
- 33 **Q:** When all this happened with Southern Charm, you were no longer an employee of the  
34 track, right?
- 35 **A:** That’s right.

- 1    **Q:**    So how would you know any of what happened with the lists?
- 2    **A:**    Racetrack employees are a closely-knit family. We all look out for each other and talk all  
3    the time. I still know most of the people that work at the track, and I'm friends with many  
4    of them. When you live and breathe this job, it's all you talk about, even outside of work.  
5    And I wasn't banned from the track or anything, so I'd be over there often to visit Kenny  
6    and other friends. I knew about the arrival of Southern Charm because it was common  
7    knowledge amongst the staff that he was new and young, and I saw him with my own eyes  
8    trotting around a couple of times when I visited Kenny at work that week. People were  
9    excited about him. Little did they know.
- 10   **Q:**    You still haven't told me how you could know anything about what happened between the  
11    Schooling and Starter's Lists as far as Southern Charm was concerned.
- 12   **A:**    I know about what happened with the lists because there's no way a new horse like that  
13    gets on to the Starter's List that quickly. I'm no trainer, but over the years I've watched  
14    many horses come and go and I've never seen a horse get on the Starter's List that fast. It  
15    had to be Fonsetti.
- 16   **Q:**    Okay, so you're guessing that that's what happened?
- 17   **A:**    When I texted with Kenny the morning Kenny died, Kenny said the race might be called  
18    off because several of the horses were sick, and Kenny's guess was that only four horses  
19    would make it onto the Starter's List that day. But the track would not run a four-horse race  
20    because there wouldn't be enough betting to justify the race, and for the betting that did  
21    happen, the odds of people winning a quinella or even trifecta would be too high for the  
22    track's liking.
- 23   **Q:**    Please define quinella and trifecta.
- 24   **A:**    Ugh. Am I here to talk about why Kenny died, or to teach you about horse racing? A  
25    quinella is when someone picks which two horses will run the fastest, but it does not matter  
26    what order they finish, as long as they are the first two finishers. A trifecta is where  
27    someone correctly picks the first three finishers, in the right order. These bets have large  
28    payouts. The last thing the track wants is for people to be cashing in trifecta slips left and  
29    right. In a short field race like that, they would only stand to lose money.
- 30   **Q:**    Thank you for that information. Do you know how many horses were placed in the starting  
31    gate that morning?
- 32   **A:**    Five. That's already a short field, and they only got to five because Southern Charm was  
33    added that morning, a few hours before the race. I know because Kenny texted me from  
34    the track that morning. Kenny couldn't believe that Southern Charm was on the Starter's  
35    List. And to make matters worse, Kenny texted me that Kenny was assigned to place  
36    Southern Charm in the gate.
- 37   **Q:**    I'm showing you what has been previously marked as **Exhibits B1-B5**. Do you recognize  
38    these?

- 1    **A:**    Yes. Those are the text messages between me and Kenny from that morning.
- 2    **Q:**    Do you remember sending and receiving these texts?
- 3    **A:**    Yeah. I'll never forget those.
- 4    **Q:**    You'd agree your spouse never expressed any concern about his/her safety that morning,  
5           right?
- 6    **A:**    Kenny would never say something like that. Kenny was tough as nails and trusted Kenny's  
7           own experience.
- 8    **Q:**    In fact, Kenny told you that if Jamie Wright put the horse on the Starter's List, Kenny  
9           trusted Jamie's judgment, right?
- 10   **A:**    Yes, but that's just Kenny being Kenny. Kenny never wanted to rock the boat.
- 11   **Q:**    You are familiar with Jamie Wright?
- 12   **A:**    Yes. Jamie has been the head starter at Colonial for 20 years and used to be a good friend  
13           to Kenny and me.
- 14   **Q:**    Not friends anymore?
- 15   **A:**    Not after Jamie put a rogue horse on the Starter's List. Jamie knew better and did it anyways  
16           because Jamie didn't want to lose the job. I'll never forgive Jamie for that.
- 17   **Q:**    Have you spoken to Jamie since your spouse's passing?
- 18   **A:**    Yes. I shared my feelings about what happened and how I believed a lot of fault fell on  
19           what Jamie did in fear of Frankie. Jamie apologized for what happened to Kenny and then  
20           said, "If I had to do it all over again, I would have done things differently."
- 21   **Q:**    How long had Kenny been doing this kind of work?
- 22   **A:**    Kenny was born into horseracing and it's all Kenny ever knew. There was nobody better  
23           than Kenny.
- 24   **Q:**    How long was Kenny working at Colonial?
- 25   **A:**    Almost 15 years.
- 26   **Q:**    What did your spouse do...strike that. What was your spouse's job title at Colonial the day  
27           Kenny died?
- 28   **A:**    An assistant starter.
- 29   **Q:**    And as an assistant starter, what were Kenny's job responsibilities?

- 1 **A:** Assistant starters load the horse into the gate before the race. As the horse walks into the  
2 gate, the assistant starter is on a pontoon next to the horse inside the gate. It is a very  
3 confined small space, so the pontoon is elevated off the ground so the starter can avoid  
4 getting pinned in the tiny gate by the horse. They hold the horse steady until the race starts.  
5 Kenny had a lot of experience in the training process too and believed Kenny needed to get  
6 to know all the horses so they would behave for Kenny inside the gate. Kenny worked a  
7 lot with Gabe Hasting before Gabe retired and worked a ton with Blake Bower.
- 8 **Q:** Who are Gabe Hastings and Blake Bower?
- 9 **A:** Gabe was the head trainer at Colonial for like 100 years. Obviously, I am exaggerating, I  
10 am not sure how long Gabe worked there, but for a long time. Blake was a trainer, too.  
11 Blake was the one in charge of training Southern Charm. Blake couldn't stand Frankie or  
12 Jamie, and after Kenny died, I heard Blake quit because Blake couldn't stomach working  
13 for Frankie anymore.
- 14 **Q:** How do you know that?
- 15 **A:** I told you, the racing community is a small one. People talk and word travels fast.
- 16 **Q:** So, based on your spouse's responsibilities at Colonial, it is safe to say your spouse had a  
17 lot of experience?
- 18 **A:** Yes, Kenny was the best. Simple as that. Kenny should have been head starter long ago.  
19 The only reason Kenny wasn't was because Jamie "kisses the ring" of Frankie and does  
20 whatever Frankie says.
- 21 **Q:** Do you think Kenny was assigned to place Southern Charm in the gate, as opposed to one  
22 of the other starters, because Kenny was the best?
- 23 **A:** You'd have to ask Jamie that.
- 24 **Q:** Other than the conversation you've already shared with us that you had with your spouse  
25 about Southern Charm, did Kenny tell you anything else about the horse?
- 26 **A:** Yes. Kenny told me the horse was young and seemed to be very fast. Like I said, most  
27 people at the track were excited about the horse, including Kenny. But Kenny never met a  
28 horse Kenny didn't like. That was just Kenny's way.
- 29 **Q:** Over the years, you had lots of opportunities to observe your spouse work around the horses  
30 and the starting gate, correct?
- 31 **A:** Yes.
- 32 **Q:** Do you know how your spouse would handle a horse that was not being cooperative when  
33 being placed in the starting gate?
- 34 **A:** No idea.



- 1 **Q:** Have you ever seen your spouse slap a horse on the snout?
- 2 **A:** No that's absurd. Kenny always respected the horses.
- 3 **Q:** Would you be surprised to find out that when Southern Charm was resisting entering the  
4 gate that morning, your spouse slapped the horse several times on the snout?
- 5 **A:** Wow, so now we're blaming Kenny?! This is unbelievable. Yes, I would be surprised, but  
6 I would trust Kenny's judgment on what Kenny felt Kenny needed to do in that situation.
- 7 **Q:** Given your experience around horse racing and starter crews, you're familiar with the types  
8 of protective gear they wear, right?
- 9 **A:** Yes, they wear helmets and a flak jacket for protection.
- 10 **Q:** What is a flak jacket?
- 11 **A:** It looks like a bullet proof vest. It protects the chest and the internal organs of a starter.  
12 Horses are strong. If they kick you in the body, they can do damage.
- 13 **Q:** Do you know how your spouse felt about wearing helmets?
- 14 **A:** I know Kenny hated wearing a helmet. No one likes wearing helmets though, especially  
15 when it's hot out there.
- 16 **Q:** This happened in March in Washingtonia. Are you telling me it was hot outside?
- 17 **A:** Well, I mean, it was spring. But I'm no weather forecaster. I have no idea what the  
18 temperature was.
- 19 **Q:** Do you know whether Kenny wore a helmet on the day this incident occurred?
- 20 **A:** I've been told Kenny wasn't wearing a helmet that day. I know you all are making a big  
21 deal about that. But here's the simple truth: Kenny would still be alive today if Southern  
22 Charm hadn't been put on the Starter's List that day.
- 23 **Q:** You are aware Kenny died of brain trauma?
- 24 **A:** Yes, I am, but there's no way to know whether the helmet would have made a lick of  
25 difference. You're talking about a 1,000-pound animal rearing up suddenly, and you expect  
26 a dinky little helmet to make everything alright?
- 27 **Q:** I have nothing further, thank you for your time.
- 28
- 29
- 30

I have carefully reviewed the above deposition transcript to determine whether the answers contained are true and correct, and whether I had any additional information relevant to the matters therein. I hereby certify, under penalty of perjury, that the deposition transcript is accurate, and I have no information relevant to the matters discussed other than what is discussed in this deposition. Everything was covered and nothing was left out.

Signed: *Cameron Carter*

Date: 08/02/2018

**DEPOSITION TESTIMONY OF BLAKE BOWER**

- 1    **Q:**    Hello, please just state your name and spell your last name for the record.
- 2    **A:**    Blake Bower. B-O-W-E-R.
- 3    **Q:**    Where do you live?
- 4    **A:**    2214 Copans Avenue, Washingtonia.
- 5    **Q:**    How old are you?
- 6    **A:**    46 years old.
- 7    **Q:**    Where do you work?
- 8    **A:**    Right now, I am a freelance racehorse trainer.
- 9    **Q:**    How long have you been freelancing?
- 10   **A:**    Since I resigned from Colonial after Kenny tragically died.
- 11   **Q:**    Are you referring to the incident on March 24, 2018 involving Kenneth Carter?
- 12   **A:**    Yes. What a terrible day.
- 13   **Q:**    What is Colonial?
- 14   **A:**    Colonial Casino and Racetrack.
- 15   **Q:**    What did you do there?
- 16   **A:**    I was a trainer.
- 17   **Q:**    Who were you responsible for training over at Colonial?
- 18   **A:**    It's really more like what I was responsible for training. And the answer to that would be  
19       that I trained the horses there.
- 20   **Q:**    How long did you work at Colonial?
- 21   **A:**    30 years — well, almost. It would have been 30 years on June 17, 2018.
- 22   **Q:**    Were you a trainer all those years?
- 23   **A:**    No, I have moved up in the ranks...I mean, I started cleaning the stables back in high school.
- 24   **Q:**    What else did you do at Colonial?

- 1 **A:** Like I said, I started just cleaning the stables. I also groomed and made sure all the horses  
2 were fed. Then I was a pony-rider for a few years. After that I was an assistant trainer for  
3 a while. And I had been a trainer for about 15 years before I resigned.
- 4 **Q:** Do you have any formal education in training horses?
- 5 **A:** Yeah. I got my associate degree in equine studies. Then I did an apprenticeship at Colonial  
6 with Gabe Hastings for 4 years.
- 7 **Q:** Who is Gabe Hastings?
- 8 **A:** Good old Gabe...man, he was one of the best horse trainers Washingtonia has ever seen.  
9 He was like the horse whisperer. He had a connection with every horse he ever trained.
- 10 **Q:** Does he still work at Colonial?
- 11 **A:** No. He retired about 10 years back and sadly just passed away a few months ago. I really  
12 miss that man. He taught me everything I know.
- 13 **Q:** Did you ever speak to him after he retired?
- 14 **A:** All the time. He was my mentor and my friend. I would see him once a month for lunch or  
15 dinner and if I was ever having trouble getting through to a stubborn horse I was training  
16 or if I ever had any questions regarding training in general, I would reach out to him. You  
17 had to be able to bond with the horse, connect.
- 18 **Q:** Did you ever reach out to him about Southern Charm?
- 19 **A:** Yes, a couple times actually. I needed his advice on how to use some different techniques  
20 for loading. It'd been a real struggle working to get Southern Charm to load into the gates  
21 and I had gotten a little frustrated over it all.
- 22 **Q:** What do you mean by "loading"?
- 23 **A:** Loading is just what we call it when we walk a horse into the starting gate.
- 24 **Q:** So, Southern Charm was giving you trouble when trying to load him into the starting gate?
- 25 **A:** Oh, yeah. That horse was not a fan of the gates.
- 26 **Q:** What was Gabe's advice?
- 27 **A:** He just explained that sometimes these things take time. He told me to be patient and  
28 remember that safety was the most important. He reminded me to just keep developing a  
29 relationship with the horse and that eventually he would load. "It's about feedin' em' with  
30 a spoon, not a shovel" he said. That was always his go-to line.
- 31 **Q:** What responsibilities did you have as a trainer?

- 1 **A:** Pretty much anything having to do with making sure the horses were race-ready. I would  
2 analyze the new horses when they came in to see what they needed to work on and then I  
3 train them based on my analysis.
- 4 **Q:** Walk us through your typical analysis for a horse when it arrived at Colonial.
- 5 **A:** Okay...well, the first thing I do is determine if they need lead training—if they do, we start  
6 there. If not, I skip right to saddle training—I get them familiar with the equipment they’re  
7 required to wear: a girth and saddle, reins, a bridle and bit, and also blinkers. Now, this is  
8 a process because you need to make sure the individual horse will be comfortable with the  
9 equipment and eventually with the additional weight of a rider. Once they are familiar with  
10 the equipment, I begin conditioning them without a rider, then with a rider. Once the horse  
11 is conditioned and at about 80 percent of where they need to be for a race, I start gate  
12 training them—getting them used to loading. As soon as they are comfortable with being  
13 loaded, the hard part of the training is over. Then, I just need to monitor them, and make  
14 sure they remain conditioned and in good health.
- 15 **Q:** That was a lot of specific terms, let’s break some of them down. What is “lead training”?
- 16 **A:** When training a horse, it’s important for them to know who the leader is—the person  
17 training it. Horses must display good manners when coming in contact with people, so I  
18 make sure they are familiar with me and listen to me. I ensure they can walk beside me and  
19 listen to simple commands—verbal and nonverbal—to stop, turn, go back. Things like that.
- 20 **Q:** What about “saddle training”?
- 21 **A:** First the horse gets used to having someone on his back with no equipment. Then the saddle  
22 training is getting the horse comfortable with wearing a saddle. Then slowly adding the  
23 other equipment. Then introducing them to a rider with the saddle and the equipment on.
- 24 **Q:** What is all the equipment you mentioned?
- 25 **A:** Every horse that races wears a girth and saddle. A saddle is like a chair for the rider that  
26 fits on the back of the horse. A girth is used to keep the saddle in place. It’s two or three  
27 straps, which wrap around the belly of the horse and connect to the sides of the saddle —  
28 kind of like a belt for horses. The reins are long leather straps that connect to the bit, which  
29 is a piece of metal that goes inside the horse’s mouth. Then there’s the bridle, which is the  
30 leather straps the horse wears around its head and holds the bit in place. The rider uses the  
31 bridle, along with bit and the reins, to direct the horse and give it commands during the  
32 race — like turn, slow down, speed up.
- 33 **Q:** So, besides the reins, bit, and bridle, is there any other equipment that you’d use to guide  
34 the horse?
- 35 **A:** There’s also the blinkers, but those are less about guiding the horse and more about helping  
36 the horse to focus on the race and not get spooked or distracted by what is going on around  
37 him. They act as a sort of blinder. They are basically a cloth hood with cups that sit behind  
38 the horse’s eyes so the horse can only see what is in front of them.

- 1 Q: I am now showing you **Exhibit I**. What are we looking at?
- 2 A: This is a diagram of some of the equipment we just talked about. This shows the bridle,  
3 the reins, the blinkers and the saddle.
- 4 Q: How does a horse become conditioned for a race?
- 5 A: We start with LSD training, then we do anaerobic training.
- 6 Q: “LSD”?
- 7 A: Long slow distance. It conditions the horse’s cardiovascular and respiratory system, so it’s  
8 essential to build foundation for the fast speeds the horse will eventually need to run at.
- 9 Q: What does LSD training involve?
- 10 A: LSD involves walking, trotting, and galloping for increasing durations of time. The  
11 repeated, mild impact of hooves with ground at slow speeds is the best way to gradually  
12 stress—and eventually re-model—the hard-supporting tissues of the body to prepare the  
13 horse to run fast and hard.
- 14 Q: And what is “anaerobic training?”
- 15 A: High speed training. We increase the horse’s speed at very short distances until they reach  
16 maximum speed, then we begin to increase the distance.
- 17 Q: What does “gate training” consist of?
- 18 A: Well, you have to understand that it’s against a horse’s nature to enter or be confined in a  
19 space. These animals like their wide-open spaces. But obviously a racehorse needs to start  
20 the race in the starting gate. So, we begin by familiarizing the horse with the gate, then we  
21 start leading them into the gate casually and let them stand there for a little while, but we  
22 don’t close the door behind them. We repeat this—a lot—and if the horse shows resistance,  
23 we then have to use other methods like having two assistant starters guide them in.
- 24 Q: And if that doesn’t work?
- 25 A: If that doesn’t work, we have a number of other techniques. We might toss a blanket over  
26 their eyes, lead them into the gate, and remove the blanket.
- 27 Q: Once they get into the gate with no problem, then what?
- 28
- 29
- 30

- 1 **A:** Then we start shutting the door to see their reaction. We build up to having the horse stand  
2 for periods of time in the space, both by themselves and beside other horses, and finally we  
3 teach them how to exit the stall at a run.
- 4 **Q:** Showing you **Exhibit H**. Can you explain what this picture shows?
- 5 **A:** Sure. So this is basically what a starting gate looks like. This picture shows the gate from  
6 the back where the starting trainer and the horse would enter walking forward. The horse  
7 would race out the smaller door to the front of this gate.
- 8 **Q:** What's the ledge that looks almost like a bench on the left hand side of the gate?
- 9 **A:** Oh. That's the pontoon. Where the starting trainer would stand when the horse first gets  
10 into the gate.
- 11 **Q:** You mentioned earlier that you analyze the horse before you start training it. Is it common  
12 that some horses need a lot more training than others?
- 13 **A:** Sure. Every horse is different. They each have their own history of experiences and  
14 personality. Some are older and have raced before, so they don't need as much. But many  
15 are young with no experience. That's why I would analyze them, to see what areas they are  
16 strong in and what areas they are weak in. A big part of it is analyzing their disposition for  
17 possible behavioral issues and what their current physical condition is.
- 18 **Q:** And simply based off this analysis, you can determine how much training a particular horse  
19 needs before it's ready to race?
- 20 **A:** Well, I use that and the horse's profile, of course.
- 21 **Q:** What is a profile?
- 22 **A:** It the horse's permanent record. It shows everything about the horse. It shows the horse's  
23 parents, all its owners, any associated jockeys. It also shows the career history of the horse  
24 — basically its lifetime earnings and how it has done in every race.
- 25 **Q:** I am now showing you what has been marked as **Exhibit A**. Do you recognize it?
- 26 **A:** Yes, this is Southern Charm's profile. It looks like it is his most recent one.
- 27 **Q:** What do you mean his most recent one?
- 28 **A:** Well, it has his entire career stats on it, all the way through 2019. So, it might not be the  
29 most recent, but it is current through 2019. It shows the number of races he's won and the  
30 money each finish has brought in for the track. Southern Charm ended up being a  
31 successful horse so far. I would hope that is thanks to some of my training, despite what  
32 happened that day.
- 33 **Q:** How many horses have you trained over the years?

- 1 **A:** I couldn't give you an exact number, but it's in the hundreds.
- 2 **Q:** Have they all been successful?
- 3 **A:** Of course not. I do the very best I can, but sometimes a horse just doesn't have the  
4 qualifications or capability to be a racehorse.
- 5 **Q:** What percentage would you say have been successful?
- 6 **A:** Successful is a subjective term. I would say 85 percent of the horses I have trained have  
7 taken part in races. Of that 85 percent, about 75 percent have experienced success in their  
8 finishes.
- 9 **Q:** What do you mean by all that?
- 10 **A:** Not every horse that comes to the track will ever see a race. If I train 100 horses, 85 of  
11 them will partake in races. Of the 85 horses that race, I would say about 60 have had  
12 consistent top three placements in their races, meaning they have finished first, second, or  
13 third. Do not quote me on that number, I train the horses, I don't bet on them. I was never  
14 great at math.
- 15 **Q:** Did you personally train Southern Charm?
- 16 **A:** Yes. I was assigned Southern Charm when he came to Colonial and I trained him until  
17 Jamie kind of took him over.
- 18 **Q:** Who is Jamie?
- 19 **A:** Jamie Wright—the head starter at Colonial.
- 20 **Q:** How long did you work with Southern Charm before Jamie took over?
- 21 **A:** Not long at all—a couple days.
- 22 **Q:** Did Jamie give you an explanation as to why, before taking over?
- 23 **A:** Jamie wasn't happy with how Southern Charm's gate training was going. The horse hated  
24 the gate and refused to load. Even when we could get him into the gate, he wasn't happy  
25 to be inside and that can be really dangerous for the jockey and for the starter assigned to  
26 the horse. So, Jamie wanted to lead the training in this area because it was Jamie's  
27 contention that Southern Charm needed to start racing as soon as possible.
- 28 **Q:** Why did Southern Charm need to start racing so soon?
- 29 **A:** Because we were short on horses at the time. And while Southern Charm was young and  
30 inexperienced, he was also conditioned, riding very well, and was running really great  
31 quarter times.
- 32 **Q:** Quarter times?



- 1    **A:**    It's a quarter-mile track.
- 2    **Q:**    I see...how old was Southern Charm at this time?
- 3    **A:**    He was about two years old.
- 4    **Q:**    How many official races had he run prior to the date of this incident?
- 5    **A:**    None. This was going to be his first official race.
- 6    **Q:**    Did you assist in the training after Jamie took over?
- 7    **A:**    Yes, Jamie had every trainer at Colonial helping—against my advice.
- 8    **Q:**    Why was that “against your advice”?
- 9    **A:**    Too many cooks in the kitchen. Like I said, a horse needs to know who the leader is and  
10       with that many people fussing over the horse and trying to force him into doing something  
11       he doesn't want to do. Without the proper relationship and techniques for that specific  
12       horse, the horse doesn't know who to listen to or what is expected of him.
- 13   **Q:**    How long did Jamie work with Southern Charm?
- 14   **A:**    A few days...if you can even call it training. Jamie just bossed all of us around and said  
15       that Frankie needs this horse, and this horse better be loading, or all of our jobs were on  
16       the line.
- 17   **Q:**    Who is Frankie?
- 18   **A:**    A skeez-ball.
- 19   **Q:**    Sorry?
- 20   **A:**    Frankie Fonsetti—the owner of Colonial. Look, I know I worked at Colonial a long time,  
21       but I never really liked Frankie, you know?
- 22   **Q:**    Why do you say that?
- 23   **A:**    Well for starters it was Frankie who forced Gabe to retire because Frankie said Gabe was  
24       making too much money and he was too old to be around. Personally, I think it was because  
25       Gabe found out some stuff he shouldn't have, but that is a story for another day. Ever since  
26       Gabe left, Frankie was really mean to me and blamed me any time something went wrong  
27       with one of the horses. Even docked my pay one time because a horse was too sick to race.  
28       Like that was in any way my fault. Frankie just doesn't care about the horses. And doesn't  
29       make decisions in the best interest of the horse. All Frankie Fonsetti sees is dollar signs,  
30       and is willing to do whatever it takes to make money. A lot of the times that means racing  
31       horses before they are ready or pushing horses to race that are too old or tired.

- 1 **Q:** I was under the impression that the head starter decides who races. How does Frankie get  
2 to make those decisions?
- 3 **A:** In actuality, Frankie shouldn't and doesn't. But Frankie is the owner and has Jamie right  
4 under the proverbial thumb or twirled around the proverbial finger. I don't know what the  
5 saying is. Anyway, I should be the head starter with my qualifications, but Jamie was in  
6 that position because Jamie and Frankie are inseparable, and Jamie does whatever Frankie  
7 wants.
- 8 **Q:** How many times did Southern Charm load without an issue prior to the date of the incident?
- 9 **A:** Never. Throughout the entire week, there was always some issue we were having with  
10 Southern Charm — either with getting him into the gate, him standing on all fours alone,  
11 him standing on all fours with a rider ... I mean, name an issue and he displayed it at some  
12 time over that week.
- 13 **Q:** What about on the date of the incident?
- 14 **A:** Well, I will say, he did load that day—a few times in a row actually.
- 15 **Q:** What did you do when you heard that Southern Charm was being placed on the Starter  
16 List?
- 17 **A:** I told Jamie that it was a bad idea and that the horse wasn't ready. He was riding great and  
18 he was in pristine condition and health, but he was not safe to race.
- 19 **Q:** Why did you believe he was not safe to race?
- 20 **A:** I mean—sure, he loaded a few times that day, but was he ready to race? No. He had been  
21 too inconsistent and unpredictable and that can be extremely dangerous for the jockey on  
22 the horse and the starter on the pontoon—not to mention the potential danger that posed to  
23 the other riders and horses as well, depending on their own horses' reactions.
- 24 **Q:** Why would he be dangerous?
- 25 **A:** If a horse gets spooked, its natural instinct is to try to get away from what it believes is  
26 dangerous. Once that fight or flight response kicks in for the horse, they are likely to kick,  
27 jump, or buck. And let's not forget, they are large, powerful animals. Inside a tight space  
28 like the gates, a frightened horse puts everyone in danger with its response.
- 29 **Q:** What did Jamie say when you expressed your concerns?
- 30 **A:** Jamie said that I didn't know what I was talking about—which is why the training was  
31 taken away from my control in the first place—and that Southern Charm needed to race so  
32 he was racing. End of story.
- 33 **Q:** Why did Southern Charm need to race?

- 1    **A:**    I'm not entirely sure...probably because of the short field and I am sure that Frankie made  
2           the call. Frankie hates short fields and they were becoming entirely way too common,  
3           which is why they purchased Southern Charm in the first place.
- 4    **Q:**    Was this the first time they tried to race a horse without trainer approval?
- 5    **A:**    No. They had run dangerous horses before. I remember one time we had a horse named  
6           Starlight Twinkle—she was a gorgeous horse! But she was also a feisty one. I worked with  
7           her for weeks and weeks and she refused to load into the gate. She actually threw more  
8           than one jockey off her. One time, while in the gate, she bucked and hit an assistant starter.  
9           He was okay, but Frankie fired him the next day. Frankie makes the worst judgment calls  
10          and really doesn't think about the consequences before acting.
- 11   **Q:**    Other than racing dangerous horses, what other actions on Frankie Fonsetti's part are you  
12          referring to?
- 13   **A:**    There is a huge turnover rate with assistant starters. Frankie puts a lot of people on the  
14          starter crews that are not qualified or inexperienced. Everyone working with these horses  
15          needs to have training and Jamie and Frankie do not care about that. They just want to  
16          make sure they have enough horses racing to keep the betters coming back and make  
17          money.
- 18   **Q:**    Do starters need to wear any safety gear when inside the gate on the pontoon?
- 19   **A:**    I mean, yes, but a lot of the experienced ones don't. Jamie is supposed to remind anyone  
20          who isn't wearing the gear to get it on and if they don't, Jamie is supposed to pull them  
21          from their duties until they put it on. But I know Jamie doesn't care about all that and  
22          believes if they want to take the risk, then they deserve whatever comes of it. It's almost  
23          like Jamie enjoys it when someone gets hurt—just to be able to say, "I told you so."
- 24   **Q:**    How do you know that?
- 25   **A:**    Because I have heard Jamie tell assistant starters that. "If you want to take the risk, be my  
26          guest. It is your body, not mine."
- 27   **Q:**    I'm showing you **Exhibit J**. What does Exhibit J show?
- 28   **A:**    Oh. That's a picture of the helmet everyone is supposed to wear.
- 29   **Q:**    How did you get one of these helmets when you worked at Colonial?
- 30   **A:**    Colonial gave us one. They provided it.
- 31   **Q:**    Where were you when Southern Charm was being loaded on the day of the incident?
- 32   **A:**    I was nearby, but I was at the stables with another horse.
- 33   **Q:**    Did you see what happened?

- 1   **A:**    No, but from the stories I have heard, it was really bad. Poor Kenny. And Kenny's spouse  
2            and kids...ugh.
- 3   **Q:**    Is Southern Charm still racing at Colonial?
- 4   **A:**    I believe so. But I resigned a few days after Kenny died, so I am not sure.
- 5   **Q:**    How was Southern Charm doing before you resigned?
- 6   **A:**    After Kenny died, he had a ton of training and practice. He was still a little cranky from  
7            time to time and required a lot of attention to stay consistent with loading, but he showed  
8            improvement in the few days I remained at Colonial before resigning.
- 9   **Q:**    Why did you resign?
- 10  **A:**    I could not support the business anymore. I did not respect Frankie, and I could not believe  
11           that they literally cost Kenny's life because they were afraid to lose a couple bucks. I just  
12           could not be around it any longer.
- 13  **Q:**    Did you tell Frankie why you decided to resign?
- 14  **A:**    Yes. After I did Frankie smirked at me and told me to get out of the office and pack my  
15           things because Colonial did not need or want my two weeks.
- 16  **Q:**    How long does the average horse need to be trained before entering its first race?
- 17  **A:**    It really depends on the horse. What the horse's experience is, the age of the horse, how  
18           conditioned the horse is. But on average, three to five weeks I would say.
- 19  **Q:**    In your opinion, how much more training did Southern Comfort need before being entered  
20           into his first race?
- 21  **A:**    At least another three to five days of loading consistently without issue. But he probably  
22           needed about a week to load and then practice exiting the gate also.
- 23  **Q:**    Thank you, Blake. That is all I have for today.

I have carefully reviewed the above deposition transcript to determine whether the answers contained are true and correct, and whether I had any additional information relevant to the matters therein. I hereby certify, under penalty of perjury, that the deposition transcript is accurate, and I have no information relevant to the matters discussed other than what is discussed in this deposition. Everything was covered and nothing was left out.

Signed: Blake Bower

Date: 11/21/19

**DEPOSITION TESTIMONY OF JAMIE WRIGHT**

- 1   **Q:**    Good morning. Please go ahead and state your full name and spell your last name for the  
2            record.
- 3   **A:**    Jamie Wright. W-R-I-G-H-T.
- 4   **Q:**    Where do you live?
- 5   **A:**    419 Sample Road, Washingtonia.
- 6   **Q:**    How old are you?
- 7   **A:**    54 years old.
- 8   **Q:**    What do you do for a living?
- 9   **A:**    I am the head starter at Colonial Casino and Racetrack.
- 10  **Q:**    How long have you worked there?
- 11  **A:**    Over 20 years.
- 12  **Q:**    What does a head starter do?
- 13  **A:**    Basically oversee all aspects of the horseracing at the track. I am the one that actually starts  
14           each race, but I also oversee all facets of training and I supervise all the assistant starters  
15           and trainers. I'm also the only one at the track authorized to give a horse a "gate card."  
16           Really, it's not a card, but I place their name on something called a Starter's List, which  
17           gives the horse permission to race. Until the head starter puts a horse on their list, the horse  
18           cannot race.
- 19  **Q:**    Were you always the head starter?
- 20  **A:**    No, I started as part of the starter crew. Technically everyone on the starter crew that is not  
21           the head starter is called an assistant starter, but we just call each other the starter crew. So,  
22           I started out as an assistant starter and about 12 years ago, became the head starter. Been  
23           doing it ever since.
- 24  **Q:**    When you first started at Colonial, who was the owner?
- 25  **A:**    Frankie Fonsetti.
- 26  **Q:**    And has Frankie Fonsetti owned Colonial continuously till this day, right?
- 27  **A:**    Yes. Frankie actually owns two other racetracks as well, but Colonial was the first and  
28           Frankie calls the office there the central office, so Frankie is at the track most days.

- 1 **Q:** Do you know whether or not Colonial is Frankie Fonsetti's most valuable racetrack?
- 2 **A:** There's no doubt about that. The other two racetracks are much smaller and lesser known.
- 3 **Q:** As you know, we're here to talk about an incident that occurred at Colonial Casino and  
4 Racetrack about two years ago involving a horse named Southern Charm.
- 5 **A:** Yes.
- 6 **Q:** First let's talk about your relationship with Kenneth Carter, Sr. How long did you know  
7 Kenny prior to Kenny's tragic death?
- 8 **A:** Kenny was a good friend to me for over 10 years before Kenny died. I'll always consider  
9 Kenny one of my closest friends and still go to Kenny's grave and talk to Kenny from time  
10 to time.
- 11 **Q:** Is that because you feel guilty about Kenny's death?
- 12 **A:** Excuse me? I have nothing to feel guilty for. Anyone that works around horses knows that  
13 there's always a risk to their safety. As an experienced assistant starter, Kenny knew that  
14 better than anyone and I know if Kenny were sitting here today, Kenny would tell you the  
15 same thing.
- 16 **Q:** Is that why you apologized to Cameron about Kenny's death and told Cameron "if you had  
17 to do it all over again, you would have done things differently"?
- 18 **A:** What are you talking about? I never said that. I might have said that I'm sorry about  
19 Kenny's death. Because I am. But I never would've said that to Cameron.
- 20 **Q:** Was Southern Charm dangerous?
- 21 **A:** No more dangerous than any other colt. Working at a racetrack is kind of like being a  
22 zookeeper, or one of those people that used to ride killer whales around at waterparks. You  
23 always know there's some risk to being around such a large and powerful animal. All you  
24 can do is take precautions and hope for the best.
- 25 **Q:** You know Orcas aren't actually whales, right? They're the largest species of dolphin.
- 26 **A:** Umm, ok.
- 27 **Q:** Let's get some basics out of the way. You said Kenny was an assistant starter and part of  
28 the starter crew. What does an assistant starter do?
- 29 **A:** You have to understand that it is against a horse's nature to enter a small or confined space  
30 like a starting gate. Yet it has to happen before every race. So, on race day, each assistant  
31 starter is assigned a horse from the Starter's List and it's their job to get the horse from the  
32 pony rider and walk them to the assigned gate and load them into the gate.
- 33 **Q:** Pony rider?

- 1    **A:**    That’s just someone on a working horse that leads each racehorse from their stable to the  
2            race area. That can be a very long distance, so it would take forever to walk the horse on  
3            foot. That’s why they ride ponies.
- 4    **Q:**    How is a horse “loaded” into the gate?
- 5    **A:**    Loading just means getting the horse to enter the gate and closing the door behind him.  
6            The assistant starter has to get the horse into the gate, and close the door behind them. They  
7            also have to make sure the jockey is secure on the horse, that all four feet of the horse are  
8            on the ground and stay on the ground, and that the horse’s head is pointed straight ahead.
- 9    **Q:**    Are the assistant starters standing next to the horse inside the gate doing all this?
- 10   **A:**    Oh, no. Once they lead the horse into the gate, they have to hop up onto a ledge and stand  
11            on it while keeping the horse steady and then waiting for the race to actually start. We call  
12            those ledges “pontoons.” There’s no room at all to try and stand alongside the horse because  
13            the gates have to be small enough to make sure the horse can’t turn around and stays  
14            pointing straight ahead. And the last thing you’d want to do is to have a horse pin you  
15            against a wall with all its weight. That’s why the pontoon is several feet off the ground, to  
16            allow the assistant starter to avoid the horse’s body and jump out of the gate if the horse  
17            gets wild.
- 18   **Q:**    I am showing you what has been marked as **Exhibit H**. What is this?
- 19   **A:**    It is a picture showing the pontoons the assistant starters stand on top of when they are  
20            inside a gate with one of the horses. You can see the pontoon, right here. *[indicates the*  
21            *ledge on the left side of the gate as the pontoon by pointing to picture].*
- 22   **Q:**    Do assistant starters take part in training the horses at all?
- 23   **A:**    Yes, especially experienced ones like Kenny. In the mornings Kenny would do what we  
24            call “scoodling.” That just means the process of getting the horse to walk into the gate  
25            casually, stand there for a bit, and then allowing them to leave out of the front. Then they  
26            stop and do it all over again. As I said, horses are naturally resistant to confined spaces, so  
27            this repetition helps them get used to it. It also allows us to see just how resistant a horse  
28            may be to the gate.
- 29   **Q:**    When a new horse shows resistance to loading into the gate, what does the assistant starter  
30            or crew do?
- 31   **A:**    Different people do different things. At Colonial we try having two assistant starters link  
32            arms, slide their arms down to the horse’s rear, and slowly guide the horse forward into the  
33            gate. Of course, anytime you’re around the hindquarters of a horse, especially one showing  
34            anxiety, you have to position yourself to stay away from their feet if they kick backwards.  
35            That usually works, but if it doesn’t, we’ll try other things like throwing a blanket over the  
36            horse’s eyes, leading them into the gate, and then removing the blanket. Occasionally  
37            though, you get a horse that just will not load into a gate no matter what you do.

- 1 **Q:** You've dealt with horses like that?
- 2 **A:** It's very rare, but yes, I've had horses on my Schooling List that never left the list.  
3 Eventually they get retired as racehorses and get sold or sent to a farm or something.
- 4 **Q:** A Schooling List is a list of horses that have not been cleared to race yet by the head starter,  
5 is that correct?
- 6 **A:** Yes.
- 7 **Q:** Who has the authority to remove a horse from the Schooling List?
- 8 **A:** Me.
- 9 **Q:** Anyone else?
- 10 **A:** No.
- 11 **Q:** As head starter at Colonial, who is your boss?
- 12 **A:** Frankie Fonsetti.
- 13 **Q:** You don't have a supervisor or anything like that?
- 14 **A:** Well, every racetrack has a Racing Secretary, and at some places the head starter answers  
15 to the Racing Secretary. But not at Colonial. I only answer to Frankie and that's how it has  
16 always been.
- 17 **Q:** What is a quarter horse?
- 18 **A:** Well, Colonial is a quarter-mile track, and the horses that run quarter-mile races are known  
19 as quarter horses. They don't always run a quarter mile, but they specialize in running very  
20 fast for a short distance, unlike thoroughbreds.
- 21 **Q:** How fast can quarter horses run?
- 22 **A:** Up to 55 mph.
- 23 **Q:** You mentioned that the Racing Secretary keeps records on horses?
- 24 **A:** Yes. When a horse becomes a racehorse, they have a permanent record that follows them  
25 around as they get sold and moved to different tracks.
- 26 **Q:** What does this history show?
- 27 **A:** We call them profiles. It'll show everything about the horse, including its parents, past and  
28 current owners, and any associated jockeys. It'll also show the horse's career history,  
29 including all its finishes and life-time earnings. Obviously, the length of the history  
30 depends on the age and use of the horse.



- 1 **Q:** And as the head starter, you see the profile of every new horse that comes to the track?
- 2 **A:** Absolutely. It is a critical part of determining what degree of training the horse needs or if  
3 it is a seasoned horse that is ready on arrival.
- 4 **Q:** I'm showing you what has been previously marked for identification as **Exhibit A**. Do you  
5 recognize it?
- 6 **A:** Yes. This is the profile for Southern Charm. It has his statistical earnings and all his  
7 information from when he got to Colonial, until the end of 2019.
- 8 **Q:** Is this the same profile information for Southern Charm that you reviewed when the horse  
9 first arrived at Colonial?
- 10 **A:** Yes and no. There was no racing information or statistical earnings on the profile I  
11 reviewed when he got to Colonial. This is his current profile, because you can see first  
12 place earnings.
- 13 **Q:** So, on the profile you reviewed in determining what kind of training the horse would need,  
14 it did not show a single race, correct?
- 15 **A:** Correct, but that should be obvious. He was a two-year old colt that had never raced before.
- 16 **Q:** Two years old for a racehorse is very young, isn't it?
- 17 **A:** Yes, that's about as young as you could possibly have a racehorse. But Southern Charm  
18 was highly recommended to us from a breeder we trust because of how long his legs were  
19 and how much potential he had as a racehorse. We wanted to make sure we got him before  
20 another track did. Technically the track doesn't own the horse, there's a separate owner.  
21 But that's all above my paygrade. All I know is that the horse is the track's responsibility  
22 while it's there.
- 23 **Q:** When you say "we," who are you referring to?
- 24 **A:** Me and Frankie Fonsetti.
- 25 **Q:** So, you and Frankie knew Southern Charm was extremely young for a racehorse, yet you  
26 decided to race him anyways?
- 27 **A:** You make it sound like we just threw the horse out there as soon as it got to the track.  
28 Couldn't be further from the truth. I took on his training personally, and along with the  
29 other trainers we worked him out continuously for a week straight before he was put on the  
30 Starter's List.
- 31 **Q:** When did Southern Charm actually get moved from the Schooling List to the Starter's List?
- 32 **A:** March 24th, 2018.
- 33 **Q:** The morning Kenneth Carter died?

- 1 **A:** That is correct.
- 2 **Q:** Why did you wait until then to move the horse?
- 3 **A:** Because I wasn't convinced until that morning that Southern Charm would load into the  
4 gate.
- 5 **Q:** What changed your mind that morning?
- 6 **A:** I got to the track extra early to take Southern Charm out for some more scoodling. Through  
7 several repetitions, the horse never balked at loading, and we already knew he rode well,  
8 so I decided to take him off the Starter's List.
- 9 **Q:** Did you speak with Frankie that morning?
- 10 **A:** Yes, Frankie was also at the track early.
- 11 **Q:** Is that normal?
- 12 **A:** Getting there early is not normal for Frankie. Because Frankie also runs a casino, Frankie  
13 has late nights often. Sometimes, Frankie actually stays overnight at the property. I don't  
14 know if that's what happened on that morning, but I saw Frankie there early.
- 15 **Q:** What did you all talk about?
- 16 **A:** Well, that whole week we were dealing with sick horses going on and off the Starter's List,  
17 so we discussed that.
- 18 **Q:** And what did you say?
- 19 **A:** I told Frankie that we only had 4 horses on the Starter's List because all the others were  
20 too sick to race. But at the time Frankie approached me, I was working with Southern  
21 Charm as I just explained, so I also said that the horse had done very well that morning  
22 with the gate.
- 23 **Q:** How did Frankie respond to that?
- 24 **A:** Frankie said, "Do you know if Southern Charm would make it onto the Starter's List in  
25 time to avoid a short field?"
- 26 **Q:** What's a short field?
- 27 **A:** The bane of every racetrack. Short field means only a handful of horses available to race.
- 28 **Q:** Why is it the bane of every racetrack?
- 29 **A:** Because short fields mean less money wagered, which means less money made by the  
30 track. We generally don't run races with less than five horses, but we have before.

- 1 **Q:** Why do you care how much money is wagered?
- 2 **A:** Even though Frankie owns the track, I treat it as my own.
- 3 **Q:** When Frankie asked about whether Southern Charm would make it onto the Starter's List  
4 that morning, how did you respond?
- 5 **A:** I don't recall. I think I just kept working with the horse and Frankie walked away.
- 6 **Q:** Southern Charm was ultimately put on your Starter's List that morning, wasn't he?
- 7 **A:** Yes.
- 8 **Q:** Can you tell me how much time passed between your interaction with Frankie and the  
9 release of your revised Starter's List that morning?
- 10 **A:** I can't.
- 11 **Q:** You can't, or you won't?
- 12 **A:** I wasn't holding a stopwatch, so I can't.
- 13 **Q:** Can you at least give us an estimate?
- 14 **A:** I'd estimate between 30 minutes and an hour.
- 15 **Q:** When you and the trainers were working with Southern Charm throughout the week, he  
16 was resisting loading into the gate, right?
- 17 **A:** Well not all the time.
- 18 **Q:** Explain please.
- 19 **A:** At the beginning of each day he would initially balk and make a small fuss about it, but  
20 after some repetition, he was fine.
- 21 **Q:** Race day was March 24th, right?
- 22 **A:** Yes.
- 23 **Q:** So the day before the race, Southern Charm was still resisting loading?
- 24 **A:** Yes, a little, but with each passing day his resistance was less. The day before, he resisted  
25 only once in the morning and then didn't have any problems after that.
- 26 **Q:** When a horse resists loading, describe for us what they do.

- 1 **A:** Horses have personalities just like any other intelligent animal. Every horse is different so  
2 they all react different. Some horses kick. Some horses whinny loudly. Others toss their  
3 huge heads around.
- 4 **Q:** Sometimes they also rear up, don't they?
- 5 **A:** It's very rare because these horses are used to having riders on them. Normally horses rear  
6 up when they're disagreeing with someone riding them. When one of our horses rears up  
7 though, you're never going to mistake it for a scene from the Lone Ranger, where he's  
8 yelling "Hi-ho Silver!" and the horse is standing fully upright on its hind legs. It's more  
9 like the horse hops up with its two front legs for just a moment and then settles down. It's  
10 just the horse trying to cope with stress, not an attempt to throw a rider or anything like  
11 that.
- 12 **Q:** Southern Charm had reared up during his gate loading training that week, hadn't he?
- 13 **A:** He would hop around a bit to let us know how he felt, but I would not characterize it as  
14 rearing up.
- 15 **Q:** He did that on more than one occasion?
- 16 **A:** Yes, a few times at the beginning of the week. By Thursday he had calmed down a lot and  
17 was behaving well. He'd stop walking for a moment as he was approaching the gate, but  
18 with minimal guidance, he would load. And when I was testing him at the gate that  
19 Saturday morning he didn't resist at all.
- 20 **Q:** If he had we'd never know, would we?
- 21 **A:** If he had, I wouldn't have put him on my Starter's List.
- 22 **Q:** It's your testimony that Southern Charm behaved perfectly that fateful morning, and that's  
23 why you put him on the list?
- 24 **A:** I don't know what you mean by "perfectly," but I was convinced he would load. Simple as  
25 that. He had no other problems.
- 26 **Q:** You told us earlier that assistant starters also take part in training the horse, and do much  
27 of the gate training themselves, is that right?
- 28 **A:** Yes.
- 29 **Q:** Do you know whether Kenny ever took part in any training for Southern Charm?
- 30 **A:** Kenny did not.
- 31 **Q:** Could Kenny have?
- 32 **A:** Certainly. Someone like Kenny has free reign to work with these horses as Kenny sees fit.

- 1 **Q:** Would Kenny have to ask permission from you before doing something like that?
- 2 **A:** No. I'm the head starter, but Kenny was the next closest thing. I trusted Kenny's judgment  
3 completely and would never have questioned Kenny if Kenny wanted to gate train a horse  
4 some more.
- 5 **Q:** Had Kenny ever done that in the past with other horses?
- 6 **A:** Countless times.
- 7 **Q:** Do you think Kenny thought Southern Charm was dangerous?
- 8 **A:** I know for a fact Kenny didn't because Kenny would have told me if Kenny did.
- 9 **Q:** Did Kenny ever talk to you about Southern Charm?
- 10 **A:** I don't recall.
- 11 **Q:** You can't recall whether you had a conversation with Kenny about Southern Charm?
- 12 **A:** That's what I said.
- 13 **Q:** So, it is possible that you did have a conversation with Kenny about the horse?
- 14 **A:** Anything's possible.
- 15 **Q:** And if that did happen, we will never know what Kenny thought about Southern Charm?
- 16 **A:** I guess so.
- 17 **Q:** On the morning of the incident, after you moved Southern Charm onto your Starter's List,  
18 you assigned him to Kenny for loading, correct?
- 19 **A:** Yes.
- 20 **Q:** Why Kenny?
- 21 **A:** Kenny had to be assigned a horse and that was the one Kenny happened to be assigned.
- 22 **Q:** It had nothing to do with the fact that Kenny was your most experienced assistant starter?
- 23 **A:** I don't know if that thought occurred to me that morning or not.
- 24 **Q:** When assistant starters are loading horses into the gates, they have to wear protective gear,  
25 right?
- 26 **A:** Yes. We mandate all crew members to wear helmets and specially designed flak jackets.  
27 No matter how good and experienced you are, you're still dealing with a 1,000-pound

- 1 animal, and I've seen the most well-behaved horses get spooked and do something sudden  
2 and unexpected. You can't ever predict that.
- 3 **Q:** Showing you **Exhibit J**. What is this?
- 4 **A:** What's it look like? It's a picture of the helmet Colonial makes everyone wear.
- 5 **Q:** Was there anyone at the track that would make sure all crew members wore their helmets  
6 and flak jackets?
- 7 **A:** No, but if I saw anyone without the right gear, I'd immediately send them back to the locker  
8 room to get it. I guess it was my responsibility, but we didn't have anyone specifically  
9 checking each person's gear.
- 10 **Q:** So you've never told people who don't wear helmets that if they want to take the risk they  
11 can?
- 12 **A:** That's ridiculous. No.
- 13 **Q:** Isn't it true that Kenny was known for not wearing a helmet?
- 14 **A:** Kenny didn't like wearing a helmet when it was hot. But Kenny still wore it most of the  
15 time. Whenever I saw Kenny without a helmet, all I had to do was make eye contact with  
16 Kenny and Kenny would go running back into the locker room.
- 17 **Q:** You are aware that when Kenny died, Kenny wasn't wearing a helmet?
- 18 **A:** Yes. And I think if Kenny had been wearing a helmet, it would have definitely saved  
19 Kenny's life that day. I don't mean to speak ill of someone who's passed, and who I still  
20 consider a friend, but Kenny was a bit fast and loose with Kenny's own safety.
- 21 **Q:** Where were you when the incident happened?
- 22 **A:** I was at the end of the starting gate with my hand on the lever to start the race.
- 23 **Q:** Did you see what happened to Kenny?
- 24 **A:** No. I was at one end of the gate and Kenny was at the fifth gate away from me when it  
25 happened so there was a lot obstructing my view.
- 26 **Q:** Did you see the video?
- 27 **A:** Yes, but it's impossible to tell what happened. It's a very old camera system to begin with  
28 so the footage was really grainy. Add to that the distance of the camera, and all you're  
29 really seeing is a couple of dark blobs inside what looks like a gate move around.
- 30 **Q:** But you can tell that the horse's head suddenly moved up and made contact with Kenny's  
31 head, can't you?

- 1 **A:** I can't say that for certain. I know Kenny died of brain trauma, so obviously Kenny's bell  
2 got rung pretty good, but I don't know what the horse did.
- 3 **Q:** Let's move back in time a bit then. Did you see Kenny attempting to load Southern Charm  
4 into the gate before all that happened?
- 5 **A:** Yes, as the head starter, I watch each horse get loaded into their gates.
- 6 **Q:** Am I correct in saying that Southern Charm was resisting being loaded before the race?
- 7 **A:** Yes, the horse had dug his feet in and was not budging despite Kenny trying to pull the  
8 horse in.
- 9 **Q:** What did Kenny do next?
- 10 **A:** Kenny went and got another crew member and tried to push the horse in with locked arms  
11 as I described before.
- 12 **Q:** Did that work?
- 13 **A:** No.
- 14 **Q:** What happened next?
- 15 **A:** Kenny looked frustrated and went around to the front of the horse and slapped him on the  
16 snout a couple of times. You have to understand that by this point all the other horses were  
17 loaded and I have my hand on the start lever to release them. Everyone's waiting for Kenny  
18 and Kenny knew that. I had never seen Kenny slap a horse in the snout like that, and we  
19 strongly condemn any abuse towards these horses, so I wasn't happy to see that. But it  
20 seemed to work because Kenny was able to pull Southern Charm into the gate after that.
- 21 **Q:** As Kenny pulled Southern Charm into the gate, did you see Kenny get up onto one of the  
22 pontoons?
- 23 **A:** Yes, and that's when I turned my attention elsewhere because I thought the horse was  
24 loaded. But seconds later I heard some commotion and looked back over. By then Kenny  
25 was on the ground outside the gate and Southern Charm was fussing inside the gate. His  
26 jockey had to be pulled off by one of the safety crew otherwise he was going to get hurt,  
27 too.
- 28 **Q:** Did you ever see Kenny get up?
- 29 **A:** I think so, but I do not really recall. I just remember Kenny lying on the ground, not moving.  
30 It was hard to watch such a strong person appear so weak. The on-site EMT's rushed over  
31 to Kenny immediately and got Kenny into the ambulance to the hospital. I never saw Kenny  
32 again. Not until the funeral.
- 33 **Q:** Was the race called off?

- 1 **A:** No. Southern Charm was scratched but Frankie called me on my cell and told me to run  
2 the race with four as soon as the EMTs were clear with Kenny.
- 3 **Q:** Did you see anything wrong with that?
- 4 **A:** It may seem heartless, but there were lots of people in the stands waiting for the race to  
5 run, and they had all placed wagers so we couldn't just cancel the race. Something like that  
6 would really hurt the track's reputation. And at the time, you have to remember that we  
7 didn't know how serious Kenny's condition was, and we certainly didn't consider that  
8 Kenny might die. It's one thing to cancel a race before any bets are placed due to a short  
9 field. But canceling a race after collecting bets, and then having to refund all those bets to  
10 those angry patrons...not a pleasant situation for the track.
- 11 **Q:** Did you ever apologize to Kenny's spouse for Kenny's death?
- 12 **A:** I don't think so. I tried to console Kenny's spouse as any friend would, but Cameron  
13 wouldn't really talk to me. I know Cameron thinks I did something wrong, but Cameron  
14 knows how dangerous this work can be.
- 15 **Q:** Knowing what you now know, do you think Southern Charm should have been on your  
16 Starter's List that morning?
- 17 **A:** As they say, hindsight is twenty-twenty. Obviously if I knew for a fact then that he was  
18 going to react like that in the gate, I would not have put him on the list. But that morning I  
19 had no reason to believe Southern Charm would behave like that. And I still don't know if  
20 the horse reacted like that because of the gate, or if he got spooked by something else.
- 21 **Q:** In all your years of doing this, have you ever moved a brand-new racehorse from the  
22 Schooling List to the Starter's List in a week?
- 23 **A:** I don't know.
- 24 **Q:** Don't you think you'd remember something like that?
- 25 **A:** Probably.
- 26 **Q:** Because that would be very unusual?
- 27 **A:** Unusual, yes, but certainly not unprecedented. I know I've seen other head starters that  
28 I've worked for in the past do that. But when you've been a head starter as long as I have,  
29 you can't remember every horse and every list move.
- 30 **Q:** Was Southern Charm ornery?
- 31 **A:** Well he never bit or kicked anyone, and other than Kenny, he's never hurt anyone. But I  
32 will say that early on, when he was younger, he was a very strong-willed horse and it took  
33 a steady hand to handle him. But since that day, he's been a model horse and consistently  
34 finishes at the top.



- 1 Q: He's attracted a lot of business to the track?
- 2 A: I don't look at the books, but I can tell you the track is much busier these days.
- 3 Q: If you hadn't moved Southern Charm to your Starter's List that morning, the race would  
4 not have run with four horses, correct?
- 5 A: That's what I would have expected. Frankie put in a rule several years ago that, barring  
6 unusual circumstances, we will not run four-horse races.
- 7 Q: How do you feel about that?
- 8 A: It's not my job to have feelings on something like that.
- 9 Q: You just do whatever Frankie Fonsetti tells you to do?
- 10 A: I resent that statement.
- 11 Q: That's all I have, thanks for your time.

I have carefully reviewed the above deposition transcript to determine whether the answers contained are true and correct, and whether I had any additional information relevant to the matters therein. I hereby certify, under penalty of perjury, that the deposition transcript is accurate, and I have no information relevant to the matters discussed other than what is discussed in this deposition. Everything was covered and nothing was left out.

Signed: *J. Wright*

Date: 11/23/2019

**DEPOSITION TESTIMONY OF FRANKIE FONSETTI**

- 1    **Q:**    Hello, please state your full name and spell your last name for the record.
- 2    **A:**    Frankie Fonsetti. F-O-N-S-E-T-T-I. Please, just call me Frankie.
- 3    **Q:**    Where do you live, Frankie?
- 4    **A:**    33 Oriole Drive, Washingtonia.
- 5    **Q:**    How old are you?
- 6    **A:**    67 years old.
- 7    **Q:**    What do you do for a living?
- 8    **A:**    I am the owner of Colonial Casino and Racetrack, Eagle’s Landing Racetrack and  
9        Whispering Willows Racetrack.
- 10   **Q:**    How did you come to own Colonial Casino and Racetrack?
- 11   **A:**    My grandfather purchased it before I was born. When he died, my Pops took over  
12        ownership. My father tragically died in a car accident when I was 31 and he left the place  
13        to me.
- 14   **Q:**    So, besides family ownership, what qualifies you to own and operate a horse racetrack and  
15        casino?
- 16   **A:**    Well I grew up around the place. I was doing break-even analysis paperwork pretty much  
17        before I was out of diapers. I spent every summer working on the grounds helping with the  
18        horses and learning from all of the trainers and starters. On weekends, I would sit with  
19        Pops in his office and go over inventory, cash flow, budgeting, marketing strategies—you  
20        name it. Once I graduated high school, I became the manager and I was running the show  
21        for my father.
- 22   **Q:**    Did you go to college?
- 23   **A:**    No. I went right into working full time as the manager at Colonial right after I graduated  
24        High School.
- 25   **Q:**    Is Colonial the only track you own?
- 26   **A:**    No. I own two others; Eagle’s Landing Racetrack and Whispering Willows Racetrack. I  
27        spend almost all of my time at Colonial though. It was my first baby and I can manage the  
28        other tracks from my central office there.
- 29   **Q:**    Are they all as successful as Colonial?

- 1 **A:** No way. I am working on it. But Colonial is much larger, it has a full Casino attached, and  
2 it has been owned and operated by my family for almost 75 years. The other two are small  
3 and have not had the time to make it on the map yet. Come talk to me in a few years though;  
4 they'll be just as profitable as Colonial before too long.
- 5 **Q:** Are you familiar with the incident that occurred at Colonial Casino and Racetrack on  
6 March 24, 2018, involving a horse named Southern Charm?
- 7 **A:** Yes.
- 8 **Q:** Where were you that day?
- 9 **A:** It was a weekend day and weekends are very busy for us so I was at work. I believe my  
10 day started around 6:00 a.m.
- 11 **Q:** Why so early?
- 12 **A:** I was at the casino until late—running some reports—so I stayed overnight in my office on  
13 Saturday night. I do that on rare occasions when I feel too tired to drive home. These days  
14 the casino is so busy and popular that I end up working really late most nights but usually  
15 I make it home. And when I sleep in my office, it's on a small, uncomfortable couch, so I  
16 wake up early.
- 17 **Q:** Was this a typical morning for you?
- 18 **A:** No, I can't get to the track in the morning hours when I work late the night before because  
19 I have to get some sleep, or I'll go crazy. But that day it felt kind of like Christmas morning  
20 because I was excited to see our newest horse Southern Charm run his first race.
- 21 **Q:** You knew the night before that March 24th was going to be Southern Charm's first race ?
- 22 **A:** Not necessarily, but I was hoping that was the case, and I was very excited to see him run.  
23 He had looked really good all week during training.
- 24 **Q:** What experience do you have in training horses?
- 25 **A:** Nothing formal, but like I said, from the time I was about 7 years old until I graduated high  
26 school, I spent every summer on the Colonial grounds. I worked with the trainers, the  
27 starters, the jockeys. I watched, listened, asked questions, and they taught me everything I  
28 know about tracks and racing. I knew from a very young age that this is what I want to do  
29 with my life and I made sure to gain as much knowledge as I could.
- 30 **Q:** Who was the head trainer when you first took over as owner of Colonial?
- 31 **A:** Gabe Hastings.
- 32 **Q:** Does he still work at Colonial?

- 1 **A:** No. That old bat retired about 10 years ago—I mean, he was 75 years old and still training  
2 horses. He loved the job, but he made the decision that it was time to retire. He passed  
3 away not too long ago, so I am glad he got to enjoy the retired life a bit before he did.
- 4 **Q:** Was it solely his decision to retire?
- 5 **A:** Well—yes and no. He was getting old and he was not as strong as he once was. We had a  
6 long talk and after that he put in for his retirement.
- 7 **Q:** What did you speak about?
- 8 **A:** That was a long time ago, I really do not remember.
- 9 **Q:** But you encouraged him to retire?
- 10 **A:** Yes. He just wasn't up to it anymore.
- 11 **Q:** You said you started working early on March 24, 2018. How did you start your day?
- 12 **A:** I woke up, took a shower in the small bathroom I have in my office, put on some spare  
13 clothes, and headed down to the track by about 6:30 a.m.
- 14 **Q:** Who else was there when you got down to the track?
- 15 **A:** Well there are crew members and staff running around doing things in the mornings, but I  
16 went down to see Jamie and Blake.
- 17 **Q:** Who are they?
- 18 **A:** Jamie Wright and Blake Bower.
- 19 **Q:** Who is Blake Bower?
- 20 **A:** Blake was our head horse trainer at the time.
- 21 **Q:** Was?
- 22 **A:** Yes, shortly after Kenny passed away, Blake quit. I couldn't believe it. But some people  
23 just can't hack it, you know?
- 24 **Q:** Did Blake give a reason for resigning?
- 25 **A:** Nope. Just that it was time to part ways and I respected that.
- 26 **Q:** Did you speak to Blake the morning of March 24, 2018?
- 27 **A:** No.
- 28 **Q:** Did you ever speak to Blake concerning Southern Charm?

- 1 **A:** Yes. The first time was after Blake did the horse's initial analysis for training when it  
2 arrived at the track, and then again a few days later during Southern Charm's training.
- 3 **Q:** What was Blake's initial assessment of Southern Charm?
- 4 **A:** That he rode really well despite his youth, and that he was a lean, fast horse, but had no  
5 experience with starting gates.
- 6 **Q:** Does that mean Southern Charm needed gate training?
- 7 **A:** Yes, and that's pretty much all he needed. He got a lot of gate training from Blake and the  
8 rest of the training staff throughout the week leading up to March 24th.
- 9 **Q:** Tell me about that second conversation you had with Blake about Southern Charm.
- 10 **A:** As the week progressed, I was not happy with how Southern Charm's training was  
11 progressing. It was like Blake did not want the horse to race or Blake was trying to delay  
12 Southern Charm's debut. I observed much of Southern Charm's gate training from a  
13 distance, but Blake was the one calling the shots. I give a lot of deference to my employees  
14 who know more than I do about these things like Jamie and Blake. But in this case, I felt  
15 like Blake was trying to slow Southern Charm's progress instead of speed it up.
- 16 **Q:** What was Jamie Wright doing when you arrived on the 24th?
- 17 **A:** Jamie was in a panic trying to figure out the Starter's List because we only had four horses  
18 on it, all the while Blake was just taking the sweetest time getting Southern Charm to load.
- 19 **Q:** What do you mean by "load"?
- 20 **A:** Loading is just what we call it when we walk a horse into the starting gate before a race.
- 21 **Q:** Was Southern Charm on the Starter's List at this point when you first went down and met  
22 with Jamie and Blake?
- 23 **A:** No. Which was surprising to me. I know the horse had only been there a week, but from  
24 what I saw during the week, he rode really well, and only had issues with loading at the  
25 beginning of his training early in the week. It is natural for a new horse to initially resist  
26 the gate because it is a confined space, but by the end of the week, I saw the horse load  
27 without issue. That's why I was hoping that Southern Charm would be on the list that  
28 morning, but I was wrong.
- 29 **Q:** Why would Jamie be panicking with four horses on the Starter's List?
- 30 **A:** Anything less than five is what we call a "short field" in the race world. Short fields are  
31 bad for business. Jamie cares about the business as much as I do and understands the  
32 importance of not running short unless it is absolutely necessary.
- 33 **Q:** What would make it necessary?

- 1 **A:** Our first concern is the well-being and safety of our employees, patrons, and horses. On  
2 the morning of a race day, if horses are sick or are not ready to race for one reason or  
3 another, then we have to run a short field. But at the end of the day, we have to provide our  
4 patrons something to bet on or they won't come, so we can't just call off the race because  
5 we have a short field.
- 6 **Q:** Why are short field's bad for business?
- 7 **A:** The more horses that race, the harder the odds to pick the right horse. The shorter the field,  
8 the higher the likelihood patrons who bet have to win.
- 9 **Q:** Generally, the more horses, the more money there is in bets, and the more money Colonial  
10 makes, right?
- 11 **A:** Yeah.
- 12 **Q:** Can you tell us how much profit you earned that day when Southern Charm was placed on  
13 the Starter's List?
- 14 **A:** First of all, when you say, "you," I don't know if you're referring to me or the track. If  
15 you're referring to me, I draw a yearly salary from my track no matter what the books are.  
16 If you're talking about the track, I have people in the front office that deal with all the  
17 numbers. But I can tell you, because I designed our system, that we don't keep our books  
18 by daily profits and losses, so that's not something they're going to be able to tell you either.  
19 Several races are run a week and we focus on weekly and monthly results. But it would  
20 also be impossible because we keep our casino and racetrack books together as one  
21 business operation.
- 22 **Q:** But let's be clear, you made money off that race?
- 23 **A:** Well, I'm not going to deny that it was another profitable day at my track. Profit is not a  
24 dirty word. It is what drove the American Dream. I can be sad about what happened to  
25 Kenny and still take pride in the success of my business.
- 26 **Q:** Profit is what drives you?
- 27 **A:** There's a lot that drives me. Providing for my family is certainly one motivation, and in  
28 order to do that my business has to be profitable.
- 29 **Q:** After everything happened with Kenny, isn't it true that you observed an increase in  
30 attendance for Southern Charm's races?
- 31 **A:** He's a great racehorse. People like fast horses.
- 32 **Q:** So that's a yes to my question?
- 33 **A:** Yes, I am aware that Southern Charm drew in more people besides the regulars, but it's  
34 like I said, people like fast horses.

- 1 **Q:** Do you think the increased attention to Southern Charm had anything to do with the fact  
2 that it was involved in Carter's death?
- 3 **A:** I resent the implication. If you think for one second that I'm going to sit here and listen to  
4 you accuse me of profiting off a good person's death, we're done with this deposition.
- 5 **Q:** Calm down, no one is making accusations. I was just asking if you made any observations  
6 in that regard.
- 7 **A:** I did not. I mourned Kenny's death just like everyone else.
- 8 **Q:** Alright, tell me about how betting takes place at your racetrack.
- 9 **A:** Well, there are straight bets, which require at least \$2 to place, include three types of bets  
10 — win, place and show. A win bet means you bet on a specific horse to win the race. A  
11 place bet means the horse needs to finish second or first. A show bet means the horse you're  
12 rooting for can place first, second or third. You win based on where the horse actually  
13 finishes, with exact selections paying out larger sums obviously. And then there are exotic  
14 bets like exacta, trifecta and superfecta.
- 15 **Q:** What are those?
- 16 **A:** Exacta is when you bet on which horses you think will come in first and second and to win,  
17 but you must get them in the correct order. Trifecta means you bet on which horses you  
18 think will come in first, second, and third in that exact order. And for superfecta, you bet  
19 on which horses you think will come first, second, third, and fourth in exact order. Those  
20 bets cost more, but they pay out more. If betters hit on those, the odds are different, and the  
21 track can lose money.
- 22 **Q:** How much money does the track lose if you cancel a complete race on the day of the race?
- 23 **A:** It would depend on the day, the horses, the season, a lot of factors.
- 24 **Q:** But you would lose some amount of money, correct?
- 25 **A:** Sure. Just can't tell you how much. Heck, come to think of it, we could actually make  
26 money—you never know when some lucky sap is going to hit that jackpot of a winner and  
27 clear us out.
- 28 **Q:** "Clear you out"?
- 29 **A:** You know, hit it big, clear the coffers, do what these folks come to do—pick the right  
30 horses and win a ton of money.
- 31 **Q:** Was Southern Charm eventually put on the Starter's List that day?
- 32 **A:** Yes.

- 1 **Q:** So to be crystal clear, Southern Charm was not on the Starter's list at the beginning of the  
2 day on March 24th, but by the time the first race was to start later that day, he was?
- 3 **A:** Yes.
- 4 **Q:** In between the time when Southern Charm was absent from the list, and then later appeared  
5 on the list, did you have any conversations with Jamie Wright?
- 6 **A:** Of course, Jamie is my head starter. We speak almost every day, usually multiple times a  
7 day.
- 8 **Q:** Did you tell Jamie to put Southern Charm on the Starter's List at any point?
- 9 **A:** Absolutely not. I mean—look, I own the place, but like I said earlier, I let Jamie make those  
10 particular calls. I have a head starter for a reason, and it is the head starter's job to decide  
11 which horses race and which ones don't. Jamie is much more knowledgeable than I am  
12 when it comes to that stuff.
- 13 **Q:** Do you recall whether you spoke with Jamie Wright specifically about Southern Charm on  
14 the morning of March 24th?
- 15 **A:** I don't recall exactly, but I'm sure I asked about the horse because Southern Charm was  
16 the shiny new toy everyone was excited about.
- 17 **Q:** Do you have any recollection of what Jamie Wright told you about Southern Charm?
- 18 **A:** No.
- 19 **Q:** Do you know why Southern Charm was not on the Starter's List first thing in the morning  
20 on March 24?
- 21 **A:** I do not know. He was in amazing shape. He was running great. He was personable and  
22 obedient. I mean, like I said, he resisted the gate a little early on, but he was loading just  
23 fine the day before, and from what I saw, he was ready to race.
- 24 **Q:** You watched Southern Charm loading on March 23rd?
- 25 **A:** Yes, like I said, I was observing his training from a distance all week. I didn't see him resist  
26 loading at all that day, and I didn't see him cause any trouble on the morning of March  
27 24th, until the tragedy with Kenny. From what I observed, the horse was ready to race, but  
28 as I said, I leave that decision up to my head starter.
- 29 **Q:** I'm sure you're a very busy person while you're running your business Frankie, so when  
30 you say you were observing his training during the week, you weren't standing there for  
31 hours watching the trainers work with the horse, right?



- 1    **A:**    Obviously not, but in between meetings or phone calls, I would either walk out to the track  
2           and watch him for a few minutes, or look out from my office window which overlooks the  
3           training area.
- 4    **Q:**    The horses weren't being trained all day, right?
- 5    **A:**    No, the training took place at various times throughout the day with various horses. Some  
6           need a lot more attention than others. With Southern Charm it was a little different because  
7           he was new and young, but he rode really well from the start, so he really only needed gate  
8           loading training. That's why most of his training happened in the morning hours, but  
9           sometimes Blake would take him out in the late afternoon as well to reinforce the morning's  
10          training.
- 11   **Q:**    Speaking of Blake, would Blake have had any say in whether Southern Charm was ready  
12          to be placed on the Starter's List?
- 13   **A:**    Of course! Blake was the head trainer. Jamie always consulted with everyone who works  
14          with a horse prior to putting it on the Starter's List.
- 15   **Q:**    Would you be surprised to hear that Blake Bower did not believe Southern Charm was  
16          ready to race that day?
- 17   **A:**    I guess so. But like I said, Blake had it in for us with that horse. I am not sure what it was,  
18          but Blake worked as slow as molasses with Southern Charm. In my opinion the horse was  
19          ready to race—and clearly in Jamie's opinion, the horse was ready to race. If Blake said he  
20          was not, it was only to hurt me or some selfish self-serving reason on Blake's part. Blake  
21          was always gunning for Jamie's job, and finally realized that it was not going to happen  
22          any time soon and that's why Blake quit.
- 23   **Q:**    You don't think Blake's resignation as your head trainer had anything to do with this  
24          incident?
- 25   **A:**    No.
- 26   **Q:**    Did Blake give you any explanation upon quitting?
- 27   **A:**    I'm sure some excuse was given, but I wasn't interested in what Blake had to say at that  
28          point, so I don't remember anything about that conversation.
- 29   **Q:**    But Blake quit shortly after Kenny Carter's passing, correct?
- 30   **A:**    Yes, just a few days later.
- 31   **Q:**    I am showing you what has been marked as **Exhibit C**. Do you recognize it?
- 32   **A:**    Yes.
- 33   **Q:**    What is it?

- 1    **A:**    It's a portion of the policies and procedures at Colonial.
- 2    **Q:**    Directing your attention to section III, subsection (b), what do you define as "sufficient  
3            competence"?
- 4    **A:**    I don't define that. That's the job of the trainers and head starter.
- 5    **Q:**    Who was assigned to load Southern Charm on March 24, 2018?
- 6    **A:**    Kenny Carter.
- 7    **Q:**    Do you know why?
- 8    **A:**    Nope. Just the way the cards laid out I guess. I don't get involved at that level. Again, that  
9            would be Jamie.
- 10   **Q:**    Have you ever witnessed Mr. Carter abuse any of the horses?
- 11   **A:**    Abuse? Never. But Kenny would occasionally slap them on the snout lightly. Kenny wasn't  
12           trying to hurt them or anything, it was just to get their attention. Some of these old hands  
13           just do things differently.
- 14   **Q:**    Did you witness Carter slap Southern Charm on March 24?
- 15   **A:**    No.
- 16   **Q:**    Showing you **Exhibit D**. Do you recognize this?
- 17   **A:**    Yes. It's another portion of our policies and procedures.
- 18   **Q:**    Which portion?
- 19   **A:**    This talks about the safety equipment that the crew members have to wear.
- 20   **Q:**    Who is responsible for making sure they are wearing the appropriate safety equipment?
- 21   **A:**    Jamie.
- 22   **Q:**    What equipment should they be wearing?
- 23   **A:**    A helmet and a flak jacket.
- 24   **Q:**    What's **Exhibit J** show?
- 25   **A:**    That's a picture of the helmet we provide all of our employees. I wish Kenny wore it that  
26           day. Such a shame.
- 27   **Q:**    What happens if they are caught not wearing their safety gear while working with the  
28           horses?

- 1 **A:** I don't know. I guess Jamie makes them put it on? If they do not listen, or if Jamie has a  
2 problem with them, Jamie can always come to me. But I give Jamie free reign to discipline  
3 if need be.
- 4 **Q:** Do you review these policies and procedures with your staff?
- 5 **A:** Each staff member gets a copy.
- 6 **Q:** So you do not meet with your new hires to discuss your policies and procedures at your  
7 track?
- 8 **A:** Counselor, I run 3 tracks and a casino. I have people in place that are responsible for these  
9 things. My time is better spent elsewhere dealing with big picture things. I mean, most  
10 months I do meet with Jamie to go over any issues of safety at the gates or stables. But  
11 again, there's just not enough hours in the day when you're in the type of position I'm in.
- 12 **Q:** I should have asked this earlier, what exactly are your responsibilities as owner of  
13 Colonial?
- 14 **A:** I have to keep the place afloat and uphold the Fonsetti name. I do the budget analysis, I  
15 review and order the inventory, I manage the marketing and advertising campaigns, and I  
16 do everything else necessary to make sure Colonial turns a profit. Lucky for me that is not  
17 hard because I have a fantastic staff that keeps the place running like a well-oiled machine.
- 18 **Q:** Have you ever had any previous incidents with horses like the one on March 24, 2018?
- 19 **A:** Horses can be dangerous and unpredictable and anyone signing up to work at a track knows  
20 that, and if they don't, we are sure to let them know when they sign on. There have been  
21 injuries and accidents, as there is with any track, but nothing remotely close to what  
22 happened to Kenny.
- 23 **Q:** Did you witness what happened?
- 24 **A:** No, I was not at the gate when it happened. But I did speak to Jamie and Ari about it.
- 25 **Q:** Who is Ari?
- 26 **A:** Ari Litt. He was the jockey sitting on Southern Charm as Kenny was loading them into the  
27 gate just before everything happened.
- 28 **Q:** What did Ari have to say?
- 29 **A:** He was in shock like everyone else that day but I think he did write a statement explaining  
30 everything he remembers. It wasn't much.
- 31 **Q:** What was Jamie's take on what happened?

- 1 **A:** Well Jamie didn't see it either. But we learned afterwards that Kenny was not wearing his  
2 helmet, which most definitely was the reason this was so terrible. Had Kenny been wearing  
3 that damn helmet, Kenny would have been fine.
- 4 **Q:** Do you have any medical training or any other type of qualification that would allow you  
5 to make such a statement?
- 6 **A:** Common sense. It is a helmet. Helmets protect the head and brain from injury.
- 7 **Q:** Did Southern Charm resist your staff's attempts to load him into the starting gate right  
8 before the race on March 24?
- 9 **A:** I don't know because by the time he was actually being loaded for the start of the race, I  
10 had gone back to my office. But I cannot imagine he did or Jamie would not have let him  
11 race.
- 12 **Q:** What did you do when you first found out that Kenny was involved in this incident at the  
13 gate?
- 14 **A:** I went into crisis-management mode. Once Kenny was put in the ambulance, we scratched  
15 Southern Charm, took him back to the stable, and we ran the short field race, as well as a  
16 few other races that day. The crowd had seen the commotion at the gate of course, so I  
17 made the announcement that everything was fine—the last thing I wanted was for the  
18 bettors to worry or freak out.
- 19 **Q:** Did you ever check on Kenny after being transported away?
- 20 **A:** I don't think I did—
- 21 **Q:** —you don't think you did, or you don't remember if you did?
- 22 **A:** I—No, I did not. Thinking back on it though, I learned later that day that Kenny had passed  
23 away from the injuries. We sent a care package to Cameron. We offered to help with the  
24 funeral costs too, but Cameron refused to even speak with me—probably because I had to  
25 fire Cameron a while back once I found out Cameron had lied on the employment  
26 application about Cameron's criminal background. All I'll say is Kenny was a great person  
27 and we miss Kenny at Colonial.
- 28 **Q:** Knowing what you know now, should Southern Charm have been on the Starter's List?
- 29 **A:** Jamie made the call and I support the decision. Surely, had we had a crystal ball that could  
30 have told us this was going to happen, we would not have put him on the Starter's List. But  
31 this was a freak accident with so many factors—no one could have predicted what  
32 happened to Kenny that day.
- 33 **Q:** How often do you get new horses for your track?

- 1 **A:** There is no set schedule or anything like that. When we find one we like, and we have  
2 room, we bring it in. Sometimes the horses are seasoned racehorses from another track,  
3 and sometimes they're young colts getting ready to run their first race.
- 4 **Q:** Southern Charm was a young colt getting ready to run his first race, correct?
- 5 **A:** Yes.
- 6 **Q:** In fact, Southern Charm was only 2 years old at the time he was supposed to run his first  
7 race on March 24th, 2018, correct?
- 8 **A:** Yes.
- 9 **Q:** Have you ever had a horse that young be placed on the Starter's List with only a week's  
10 training under its belt?
- 11 **A:** I don't think so, but some horses are just natural racehorses. That's what attracted us to this  
12 horse in the first place. He loved to run and had no issues with being ridden. As you may  
13 know, Southern Charm has gone on to be a very successful racehorse, and I knew it from  
14 the start that he was a horse born to race.
- 15 **Q:** Southern Charm has made you a lot of money?
- 16 **A:** Well, Southern Charm has attracted a lot of new bettors to the track, which in turn has  
17 helped the business make money.
- 18 **Q:** I know you said some horses come with experience, and others are brand new like Southern  
19 Charm was, so let's focus on the latter category for a second. When you get a new horse to  
20 the track that has never raced before, how long does it usually take from the time they  
21 arrive until the time they race their first race for you?
- 22 **A:** Impossible to say. Every horse is different. In my years of doing this, I've seen just about  
23 every kind. They have personalities and they have specific likes and dislikes. Some don't  
24 like riders but have no issue with the gate. For others, it's the opposite. Some are naturally  
25 skittish and some are very headstrong. The time it takes to get them ready varies a lot, from  
26 a few days to several months depending on the horse's needs. And then there are a few rare  
27 ones that are so resistant they never make it onto the track.
- 28 **Q:** In your opinion, is a week long enough for a new horse to be ready to run its first race?
- 29 **A:** As I just said, every horse is different. That's the best I can do to answer that question.
- 30 **A:** Thank you Frankie, that is all I have for now.
- 31
- 32
- 33

I have carefully reviewed the above deposition transcript to determine whether the answers contained are true and correct, and whether I had any additional information relevant to the matters therein. I hereby certify, under penalty of perjury, that the deposition transcript is accurate, and I have no information relevant to the matters discussed other than what is discussed in this deposition. Everything was covered and nothing was left out.

Signed: Frankie Fonsetti

Date: 08/31/2018

**SWORN STATEMENT OF DANI MAHAN**

On March 24, 2018 I was working at Colonial Casino and Racetrack. I was there working as a paramedic for *Right Now EMS*, a company contracted by Colonial Casino and Racetrack to attend races and be on site to provide emergency medical care to employees and patrons at Colonial.

I was dispatched to the starting gate at 11:56 AM. The radio call indicated that an assistant starter had been knocked unconscious by one of the racehorses. I arrived at the starting gate at 11:59 AM. When I arrived, Kenny Carter, Sr. was on the ground. Carter was unresponsive. Carter was not breathing, and I could not locate a pulse.

Our on-site ambulance was summoned to transport Carter to Bellcare Trauma Hospital in East Washingtonia. While waiting for the transport to arrive, I attempted to revive Carter.

After three rounds of CPR and chest compressions, I used the AED to deliver a shock. I then continued CPR and alternated with AED shock. The patient remained unresponsive.

The ambulance arrived at 12:05 PM, at which time the patient was loaded into the back and life-saving efforts were continued inside. Carter was pronounced deceased upon arrival at Bellcare Hospital at 12:16 PM.

It appeared from the immediate, severe bruising to the left temporal region of Carter's face, between his left eye and left ear, that he had suffered significant blunt force trauma.

*Dani Mahan*

Dani Mahan

12/29/18

Date

**SWORN STATEMENT OF ARI LITT**

On March 24, 2018 I was working as a jockey at Colonial Casino and Racetrack. I was riding a horse named Southern Charm and I was assigned Gate 5. Assistant Starter Kenny Carter was assigned to load us into Gate 5.

After some initial hesitation by the horse, we were fully mounted on Southern Charm and loaded into Gate 5 ready for the race. Kenny Carter was standing on the pontoon to our right. Then, without warning, Southern Charm suddenly reared and threw his head up.

At that point my focus was on keeping myself on the horse and avoiding injury. I did not see what happened to Kenny, but Kenny was no longer on the pontoon after the horse reared.

I tried watching the video, but it is extremely grainy and difficult to see anything specific.

*Ari Litt*

Ari Litt

12/10/2018

Date



**Exhibit A**

# Southern Charm (Washingtonia)

Career Statistics\*

QUARTER HORSE | MALE | FOALED FEBRUARY 16, 2016  
( [SOUTHSIDE CHARMER](#) – [EIGHTEENTH TIME'S A CHARM](#) )

| Starts | Firsts | Seconds | Thirds | Earnings  |
|--------|--------|---------|--------|-----------|
| 11     | 5      | 1       | 2      | \$257,257 |

**CONNECTIONS AS OF LAST START:**

Jockey: [Ari Litt](#)  
 Trainer: [Jamie Wright](#)  
 Owner: [Manni Alecedo](#)  
 Breeder: [Chuck Lesterman](#)

[See Complete Stats](#)

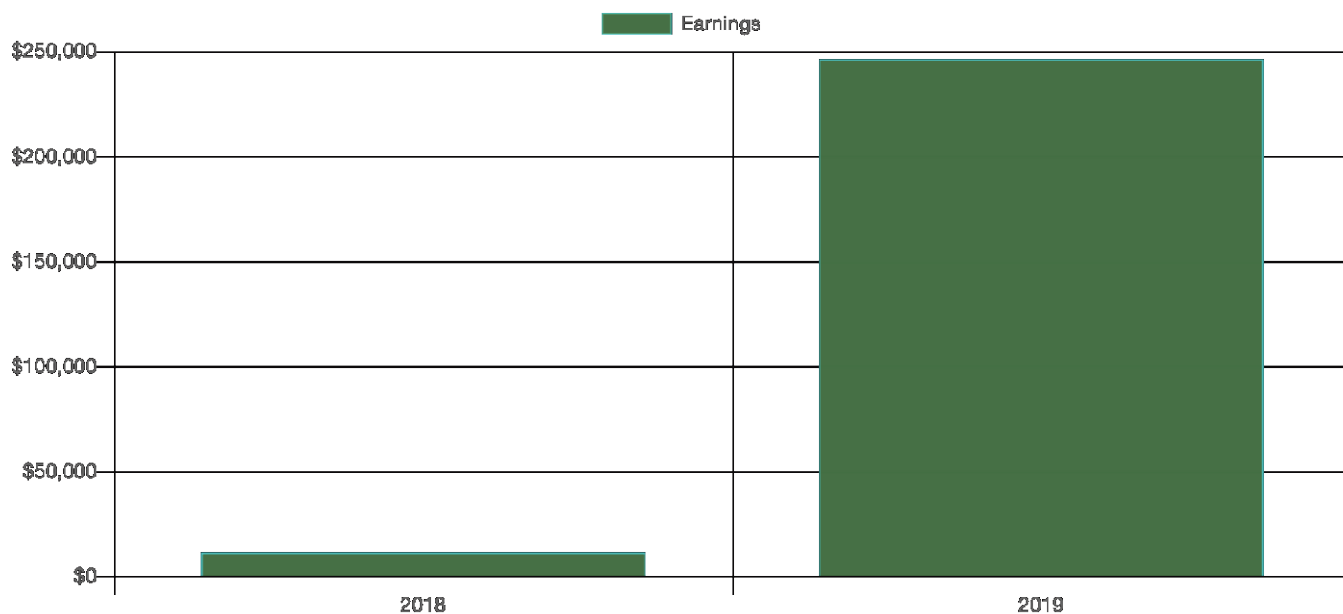
[+ Add to Compare](#)

\*All statistics on this page include results from all countries.

**Statistics**

Results

Auction History



**FILTER STATISTICS†**

All Races

**FILTER**

| Year          | Starts | Firsts | Seconds | Thirds | Highest | Earnings  | Earnings Per Start |
|---------------|--------|--------|---------|--------|---------|-----------|--------------------|
| <b>Career</b> | 11     | 5      | 1       | 2      | 103     | \$257,257 | \$23,387           |
| <b>2019</b>   | 8      | 5      | 1       | 1      | 103     | \$246,137 | \$35,162           |
| <b>2018</b>   | 3      | 0      | 0       | 1      | 91      | \$11,120  | \$2,780            |

†Data Provided by [equipower.com](http://www.equipower.com)

## Southern Charm (Washingtonia)

QUARTER HORSE | MALE | FOALED FEBRUARY 16, 2016  
 ( [SOUTHSIDE CHARMER](#) – [EIGHTEENTH TIME'S A CHARM](#) )

### CONTACT PROFILE: SOUTHERN CHARM

---

#### Account Wagering

DoubleSpires  
 Colonial Casino & Racetrack  
 Thorough Bread  
 Callije Fund Wagering  
 Hollywood Bettor  
 TVL  
 VANO Bets  
 Xpress'n Go Bet

#### Associations

Washingtonia QH Association

#### Publications

Colonial Racetrack Magazine  
 WSPN News - Washingtonia

#### Racetracks

Colonial Casino & Racetrack

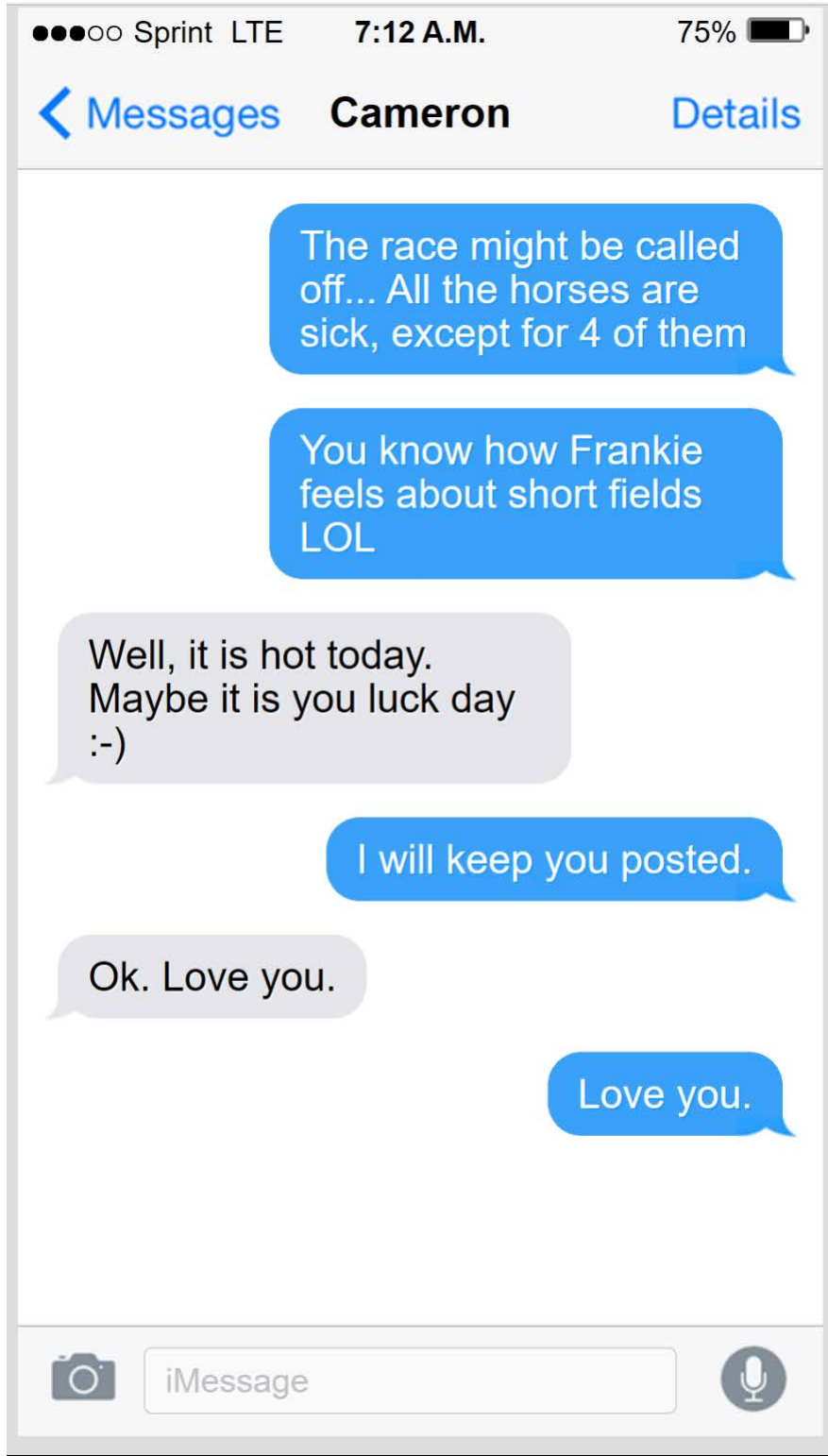
#### Bloodstock Agents

Horsey-Go-Bye-Bye, Inc.  
 Equipower.com

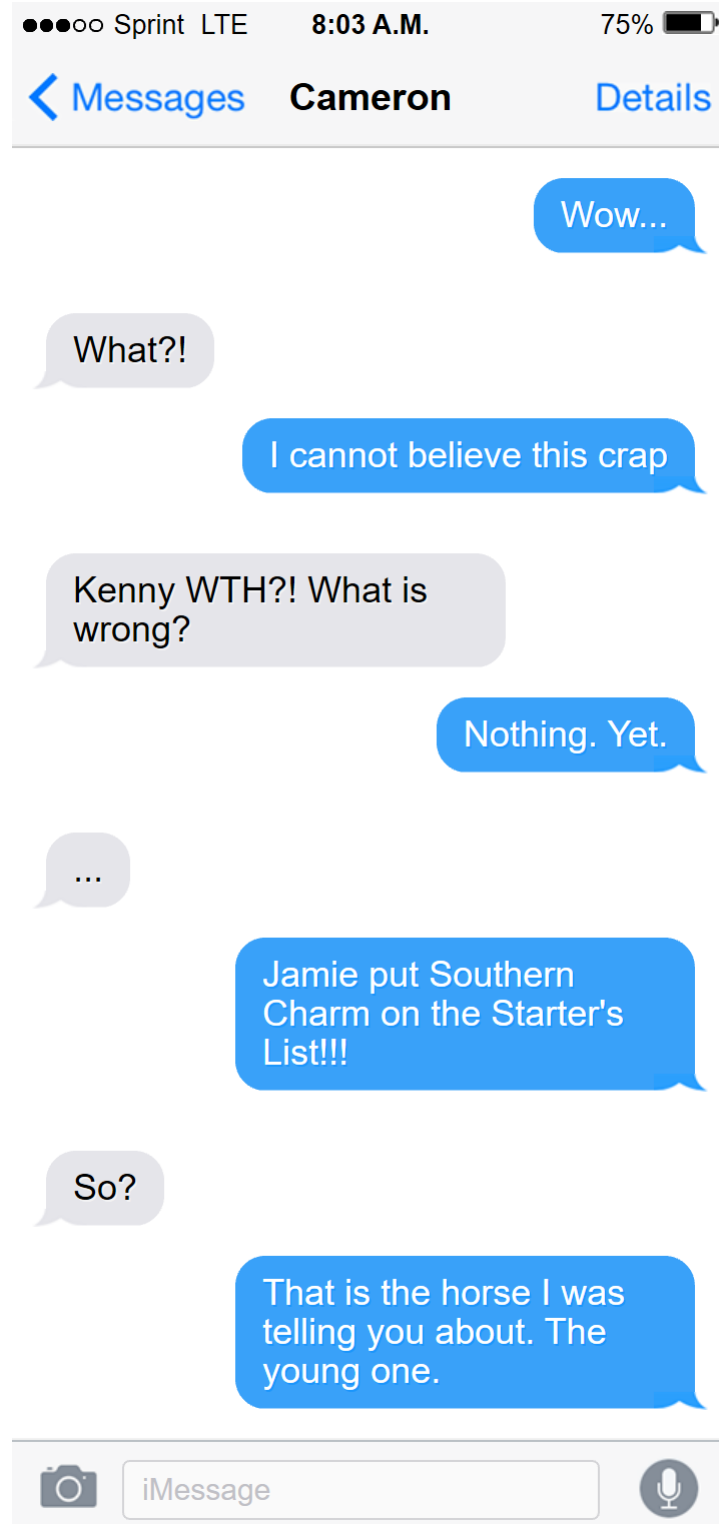
#### Racing Partnerships

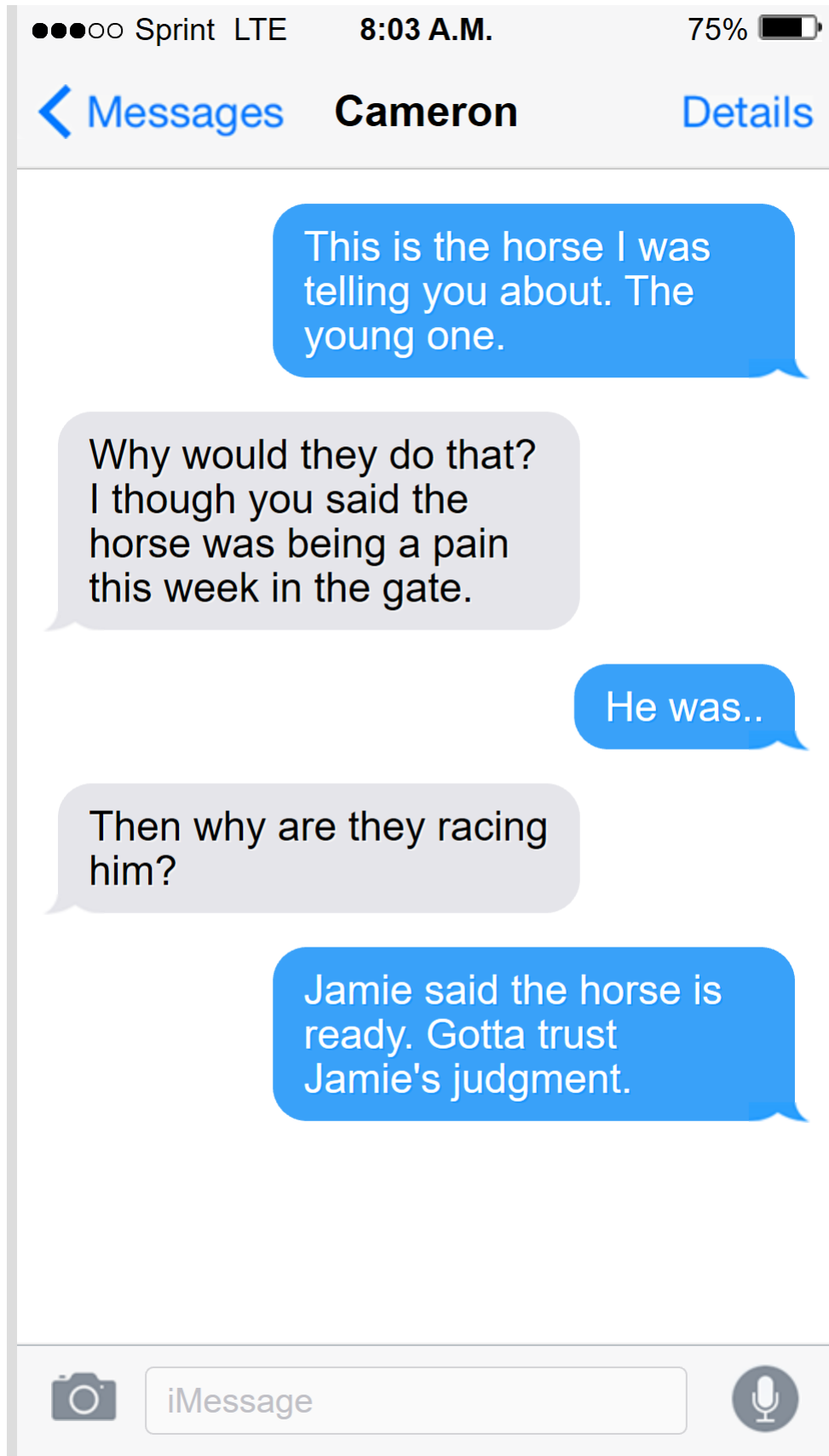
Centaur Farms  
 Franco's Studs, LLC  
 Northern Washingtonia Stables  
 Snake Eyes Racing  
 SuperNova Racing  
 Washingtonia Farms

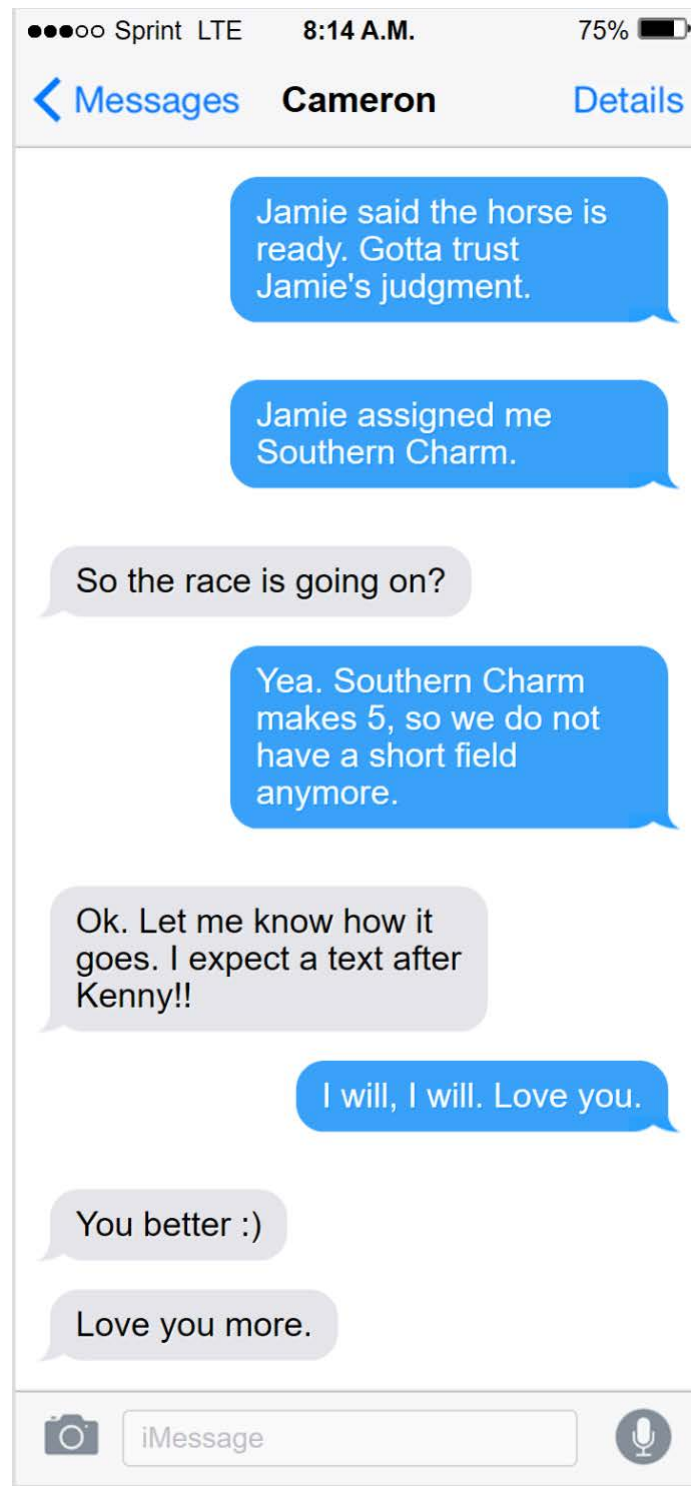
– END PROFILE –

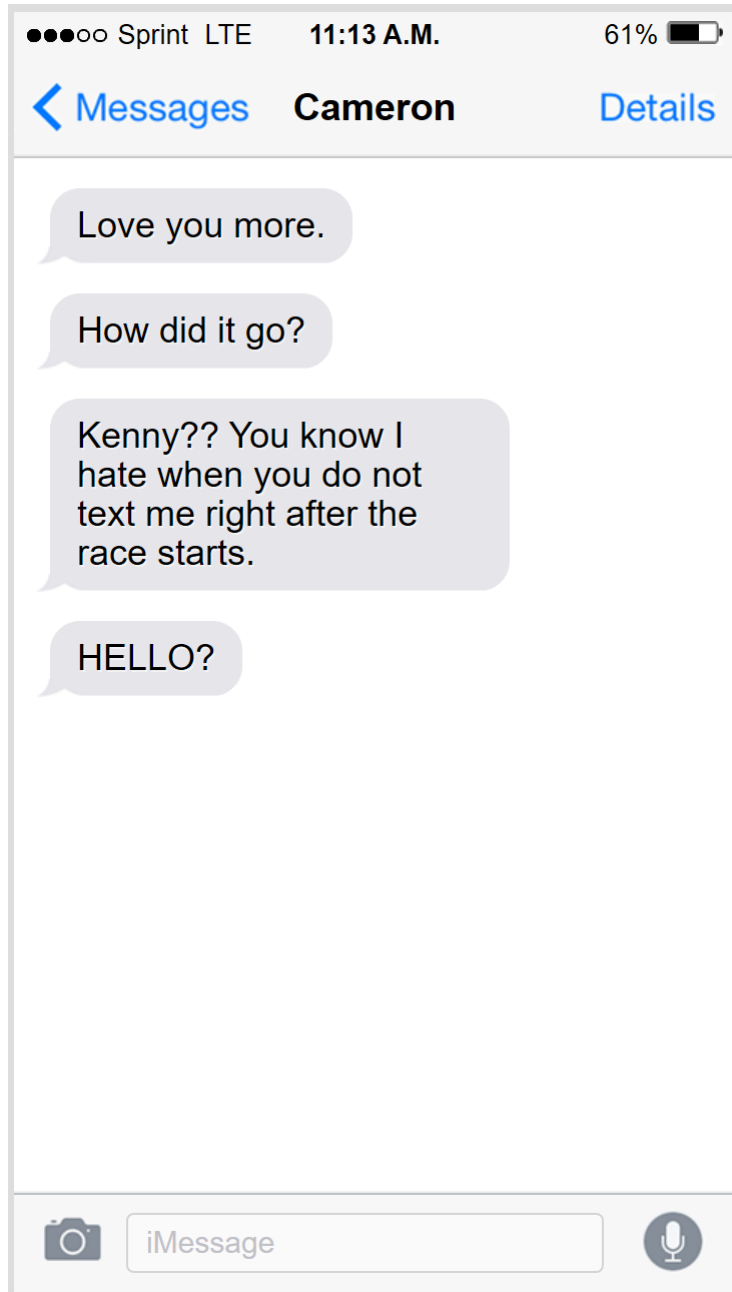


## Exhibit B2









---

## Colonial Casino & Racetrack, LLC

---

### Policies & Procedures

[pages omitted]

#### TRAINING POLICIES

**I. Initial Assessment:** Trainers should assume that all prospective horses have little ability or experience in racing until they have demonstrated otherwise. Trainers must assess and evaluate each horse's temperament and performance upon arrival. The process will vary in detail and duration, dependent upon the horse's age, temperament, and previous experience, if any.

[pages omitted]

**III. Starting Gate Training:** Trainers should focus on the physical aspects of instruction and observation of the horse's ability to comfortably enter and exit the starting gate. The depth and duration of gate training must be that which is necessary for the particular horse to safely load and start out of the starting gate.

- (a) Duration of Gate Training. Horses will remain on the Schooling List as long as necessary to demonstrate the horse's consistent ability to safely enter and exit the starting gate.
- (b) Placement on Starter's List. Horses must demonstrate sufficient competence in loading into, standing in, and exiting from the starting gate, before the horse may be given a gate card and placed on the Starter's List. *The Starter's List can only be modified by the head starter.*
- (c) Behavioral Issues During Training. No horse exhibiting disruptive behavioral issues may enter a race. Common issues may include: kicking, biting, rearing up, or any other dangerous behavior or reactions which are potentially dangerous to staff, riders, or other horses. A horse exhibiting such behavior *must* remain on the Schooling List until such time as the head starter determines that the behavioral issues have been resolved.
- (d) Behavioral Issues During a Race: If a horse misbehaves at the starting gate, it becomes a danger to other horses and staff members in the area, and the head starter has the authority to scratch the horse, remove it from the Starter's List, and conduct re-training as long as necessary to resolve the behavior.
- (e) Abuse. No staff member shall subject or permit any animal under his/her control, custody or supervision to be subjected to any form of cruelty, mistreatment, neglect, or abuse.

[pages omitted]



---

## Colonial Casino & Racetrack, LLC

---

### Policies & Procedures

[pages omitted]

### SAFETY EQUIPMENT

[pages omitted]

#### III. Safety Equipment for Staff Members:

- (a) Protective Gear. Any staff member, exclusive of jockeys on race-day, mounted on a horse or stable pony while on the grounds must wear a properly secured helmet and safety vest at all times. Additionally, all members of the starting gate crew must adhere to this policy while performing their duties or interacting with a horse in any manner. All helmets must be ASTM/SEI certified.

[pages omitted]

Exhibit E

# COLONIAL CASINO & RACETRACK, LLC

## APPLICATION FOR EMPLOYMENT

### PERSONAL INFORMATION

Name: Cameron A. Carter Social Security Number: [REDACTED]  
First MI Last

Present Address: 5400 Mill Springs Ct Washingtonia 12433  
Street City State Zip

Phone Number: (616) 213-0001

Do you have the legal right to work in the U.S.?  Yes.  No.

Position applying for: Clocker and Mutual Teller Preferred Shift: Early shift

Are you able to perform the essential functions of the position for which you are applying either with or without reasonable accommodations?  Yes.  No.

Colonial Casino & Racetrack, LLC offers equal employment opportunities regardless of sex, age, race, color, religious creed, national origin, ancestry, medical status, medical condition, physical or mental disability, pregnancy, or sexual orientation.

Have you ever been employed by Colonial Casino & Racetrack? If yes, where? No

Do you have a driver's license?  Yes.  No.

Driver's License Number: KC-001-81-0555-1 Are you at least 18 years old?  Yes.  No.

Have you ever been convicted of a crime?  Yes.  No. (Disclosure will not necessarily bar employment)

### -PLEASE REVIEW THE FOLLOWING BEFORE SIGNING THIS APPLICATION FOR EMPLOYMENT-

I authorize any representative of Colonial Casino & Racetrack, LLC, to investigate my background, including but not limited to, references, education, and work history. I authorize the above and any other individual or entity that may process information about my background to provide full disclosure without prior notice to me. I release all of the above from any and all liability for damage of any kind that may at any time result to me because of compliance with this authorization to release information.

I understand that any employment with Colonial Casino & Racetrack, LLC, is "at will" and can be terminated at any time with or without cause.

I understand that any falsification of this Colonial Casino & Racetrack, LLC, application for employment may result in failure to receive an offer or if hired, dismissal from employment. I understand that any offer may be conditioned upon the successful completion of this background investigation or drug testing.

Signature of Applicant: Cameron Carter Date: 2/12/2005

### STOP! BELOW IS FOR OFFICIAL USE ONLY!

Date of Hire: 2/22/2005 Job Position Title: Clocker & Mutual Teller W/C Code: 20021

Salary  Full Time  Part Time  Non-exempt

Hourly  Rate of Pay: \$ 12.00 Department: Track

HIRING MANAGER:

Name: Jon Batam Signature: Jon Batam Date: 2/22/2005

|           |
|-----------|
| Exhibit F |
|-----------|

IN THE CIRCUIT COURT FOR NORTHERN WASHINGTONIA  
STATE OF WASHINGTONIA

State of Washingtonia

v.

8995

Cameron A. Carter

Case No. 13-CV-17-

DISPOSITION

The defendant, **CAMERON A. CARTER**, voluntarily entered a plea of GUILTY to the following offenses (s): 318.658(2) EMBEZZELMENT. Embezzlement is a 3rd degree felony punishable by a maximum of seven years with an element of dishonesty under Washingtonia law. It is hereby ordered that Defendant is:

**ORDER OF THE COURT**

Adjudicated GUILTY.

**SENTENCE**

1. Two (2) years of probation.
2. Defendant is ordered to repay the \$3,000, plus interest.

**DONE AND ORDERED** in the Circuit Court in and for Northern Washingtonia, this   2   day of   December  , 2004.

---

Circuit Court Judge

|                  |
|------------------|
| <b>Exhibit G</b> |
|------------------|

**IN THE CIRCUIT COURT FOR NORTHERN WASHINGTONIA  
STATE OF WASHINGTONIA**

CAMERON CARTER, as Personal  
Representative of the Estate of  
KENNETH CARTER, Deceased, and  
CAMERON CARTER, individually,

Plaintiffs,

v.

COLONIAL CASINO & RACETRACK,  
LLC,

Defendant.

Case No. 13-CV-17-8995

**AFFIDAVIT**

COMES NOW, Mason Keeler, first being duly cautioned, and sworn, over 18 years of age, and without physical or mental defect, deposes and says the following:

**QUALIFICATIONS**

1. I am the owner of Head First Helmets, LLC (hereinafter “Head First”), a company that manufactures ASTM/SEI certified helmets. As part of our manufacturing process, we conduct routine impact tests of our products in our state-of-the-art facility.

2. Our company has contracted with Colonial Casino and Racetrack (hereinafter “Colonial”) to provide model #3317 helmets for employee use.

3. Both parties in this matter have asked Head First to test the helmet model #3317 and provide an opinion as to whether the helmet, if worn, would have prevented the fatal traumatic brain injury suffered by Kenneth Carter Sr. on the date of the subject incident.

**DOCUMENTS REVIEWED**

4. We have reviewed the following documents prior to coming to our opinion on this

matter:

- a. Video surveillance from the date and time of the subject incident.
- b. Sworn statement of Ari Litt.
- c. Sworn statement of Dani Mahan.
- d. Deposition testimony of Jamie Wright.
- e. Deposition testimony of Frankie Fonsetti.
- f. Colonial Policies and Procedures.

### SUMMARY OF CONCLUSIONS

5. Due to the nature of this incident, the number of variables present, and the lack of conclusive evidence, Head First is unable to conduct the test requested by the parties and therefore cannot provide any definitive conclusions as to whether Carter would have suffered a fatal traumatic brain injury during the subject incident had Carter worn a helmet.

6. Head First stands by the quality and effectiveness of its helmets. They are ASTM/SEI certified and endure rigorous quality testing prior to being shipped out for use. Head First helmets are designed to protect the wearer from significant impact forces, however, no helmet manufacturer can guarantee complete effectiveness in every unique scenario.

FURTHER AFFIANT SAYETH NAUGHT.

*Mason Keeler*

Mason Keeler

STATE OF WASHINGTONIA

Sworn to and subscribed before me this 6th day of December, 2018.

K.S. Shuster

NOTARY PUBLIC

My Commission Expires: 12/01/2020

Exhibit H



Exhibit I



Exhibit J





## **JURY INSTRUCTIONS**

Members of the jury, I shall now instruct you on the law that you must follow in reaching your verdict. It is your duty as jurors to decide the issues, and only those issues, that I submit for determination by your verdict. In reaching your verdict, you should consider and weigh the evidence, decide the disputed issues of fact, and apply the law on which I shall instruct you to the facts as you find them, from the evidence.

### **QUESTIONS OF LAW DURING TRIAL**

During the course of the trial, it has been my duty to rule on a number of questions of law, such as objections to the admissibility of evidence, the form of questions, and other legal points. You should not draw any conclusions from these rulings either as to the merits of the case, or as to my views regarding any witness, party, or the case itself.

It is the duty of a lawyer to make objections that the lawyer believes are proper. You should not be influenced by the fact that these objections were made, no matter how the court may have ruled on them. You must disregard any evidence which I have ordered stricken. If I sustained an objection to any question, you must not speculate about what the answer might have been.

### **WITNESS TESTIMONY CONSIDERATION**

Any person who testifies, including a party, is a witness. You are the sole judges of whether testimony should be believed. In making this decision, you may apply your own common sense and everyday experiences.

In deciding whether a witness should be believed, you should carefully consider all the testimony and evidence, as well as whether the witness's testimony was affected by other factors. You should consider such factors as:

- 1) the witness's behavior on the stand and way of testifying;
- 2) the witness's opportunity to see or hear the things about which testimony was given;
- 3) the accuracy of the witness's memory;
- 4) whether the witness had a motive not to tell the truth;
- 5) whether the witness had an interest in the outcome of the case;
- 6) whether the witness's testimony was consistent;

- 7) whether the witness's testimony supported or contradicted other evidence, and
- 8) whether and the extent to which the witness's testimony in the court differed from statements made by the witness on any previous occasion.

You are the sole judges of whether a witness should be believed. You need not believe any witness even though the testimony is uncontradicted. You may believe all, part, or none of the testimony of any witness.

### **IMPARTIALITY IN CONSIDERATION**

You must consider and decide this case fairly and impartially. All persons, including corporations, stand equal before the law and are entitled to the same treatment under the law. You should not be prejudiced for or against a person because of that person's race, color, gender, religion, political or social views, wealth, or poverty. You should not even consider such matters. The same is true as to sympathy for any party.

### **WHAT CONSTITUTES EVIDENCE**

In making your decision, you must consider the evidence in this case; that is

- (1) testimony from the witness stand; and
- (2) physical evidence or exhibits admitted into evidence; and
- (3) stipulations read to the jury

In evaluating the evidence, you should consider it in light of your own experiences. You may draw any reasonable conclusion from the evidence that you believe to be justified by common sense and your own experiences.

Objections of the lawyers are not evidence and you should not give them any weight or consideration.

You must not consider exhibits that I did not admit into evidence or testimony that I ordered be stricken. You must disregard questions that I did not permit the witness to answer and you must not speculate as to the possible answers. If after an answer was given, I ordered that the answer be stricken, you must disregard both the question and the answer.

Opening statements and closing arguments of lawyers are not evidence. They are intended only to help you understand the evidence and to apply the law. Therefore, if your memory of the evidence differs from anything the lawyers or I may say, you must rely on your own memory of the evidence.

### **BURDEN OF PROOF-PREPONDERANCE OF EVIDENCE STANDARD**

The party who asserts a claim or affirmative defense has the burden of proving it by what we call the preponderance of the evidence.

In order to prove something by a preponderance of the evidence, a party must prove that it is more likely so than not so. In other words, a preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces in your minds a belief that it is more likely true than not true. In determining whether a party has met the burden of proof you should consider the quality of all of the evidence regardless of who called the witness or introduced the exhibit and regardless of the number of witnesses which one party or the other may have produced.

If you believe that the evidence is evenly balanced on an issue, then your finding on that issue must be against the party who has the burden of proving it.

### **NEGLIGENCE**

The issue for your determination in this matter is whether Colonial Casino & Racetrack, LL.C. was negligent in failing to protect the decedent, Kenneth Carter, Sr. and, if so, whether such negligence was the proximate cause of Kenneth Carter's death.

The term "negligence" as used in these instructions means the failure to use that degree of care that an ordinarily careful and prudent person or business would use under the same or similar circumstances. The law does not say how a reasonably careful person or business would act under those circumstances. That is for you, as the fact finders, to decide.

When I use the words "ordinary care," I mean the care a reasonably careful person or company would use under circumstances similar to those shown by the evidence. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide.

"Proximate cause" is an act or failure to act which, in the natural continuous sequence, was a substantial factor in producing the injury, and without which it would not have occurred. Proximate cause occurs when the injury is the natural and foreseeable result of the act or failure to act.

In order to establish negligence on the part of Colonial Casino & Racetrack, LL.C., the plaintiff had to prove that:

- a. The Colonial Casino & Racetrack, LL.C. had a duty to provide a safe work environment by using ordinary care for the safety of its employees, including the decedent;
- b. The Colonial Casino & Racetrack, LL.C. breached or failed their duty by doing something a reasonably careful person would not do or failing to do something a reasonably careful person would do;
- c. The Colonial Casino & Racetrack, LL.C.'s acts or failures to act were substantial factors in producing the death of Kenneth Carter, Sr. and without which decedent's death would not have occurred.
- d. The Plaintiffs received injury in fact. It is not your determination at this time the extent of injury or damage to the plaintiffs, rather, whether there was in fact an injury.

#### **VICARIOUS LIABILITY FOR EMPLOYEES**

Colonial Casino & Racetrack, LL.C. is a limited liability company. A company is liable for all damages proximately caused by the negligence of the company's employees while acting within the scope of that person's employment. In reaching your decision whether Jamie Wright or Frankie Fonsetti were acting within the scope of their employment, you must determine whether they were acting within the ordinary course of such business. In making that determination, you may consider any of the following:

- a. Whether the act was expressly or impliedly directed by Colonial Casino;
- b. Whether the act was in the ordinary course of business or naturally incident to the business of Colonial Casino;
- c. Whether the act was performed, although mistakenly or ill-advisedly, with the intent to further Colonial Casino's interest; and
- d. Whether the act was performed from some impulse or emotion that was the natural consequence of an attempt to do the business of Colonial Casino.

#### **AFFIRMATIVE DEFENSES**

Colonial Casino & Racetrack, LL.C. has asserted three affirmative defenses. I will explain the elements of each of those four affirmative defenses below. The defense did not have to pursue all four of these affirmative defenses. To be successful, the defense had to establish each affirmative defense by a preponderance of the evidence.

### **FIRST AFFIRMATIVE DEFENSE – COMPARATIVE NEGLIGENCE**

Colonial Casino & Racetrack, LL.C. claims that the decedent's own negligence contributed to his/her harm. To succeed on this claim, Colonial Casino & Racetrack, LL.C. had to prove both of the following:

- a. That decedent was negligent; and
- b. That decedent's negligence was a substantial factor in causing his/her harm.

If Colonial Casino & Racetrack, LL.C. proved the above, plaintiff's damages are reduced by your determination of the percentage of decedent's responsibility. I will calculate the actual reduction, but you will need to provide the percentage of negligence you attribute to decedent's own conduct on the verdict form, where asked.

### **SECOND AFFIRMATIVE DEFENSE – ASSUMPTION OF THE RISK**

Colonial Casino & Racetrack, LL.C. claims decedent assumed the risk of the injuries sustained. To succeed on this claim, Colonial Casino & Racetrack, LL.C. had to prove each of the following four elements:

- a. That the danger was not created by the defendant's negligence, but is normally incident to, or inherent in, the employment;
- b. That the decedent voluntarily encountered the danger;
- c. That the decedent was fully aware of, understood, and appreciated the danger; and
- d. That the danger was the cause of decedent's death.

### **THIRD AFFIRMATIVE DEFENSE – PROXIMATE CAUSE – SUPERSEDING CAUSE**

Colonial Casino & Racetrack, LL.C. claims a superseding or intervening act broke the chain of proximate causation between defendant's negligence and decedent's death. A superseding cause is a new independent cause that breaks the chain of proximate causation between a defendant's negligence and an injury.

If you find that the defendant was negligent but that the sole proximate cause of the decedent's death was a later independent intervening act that the defendant, in the exercise of ordinary care, could not reasonably have anticipated, then any negligence of the defendant is superseded and such negligence was not a proximate cause of the death of Kenneth Carter. If, however, you find that the defendant was negligent and that in the exercise of ordinary care, the defendant should reasonably have anticipated the later independent intervening cause, then that

cause does not supersede defendant's original negligence and you may find that the defendant's negligence was a proximate cause of the decedent's death.

### **VERDICT FORM**

Shortly, you will retire to the jury room and be given a verdict form to fill out. Answer yes or no to all questions unless otherwise instructed. A yes answer must be based on a preponderance of the evidence unless you are otherwise instructed. If you do not find that a preponderance of the evidence supports a yes answer, then answer no. The term "preponderance of the evidence" means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than yes or no, your answer must be based on a preponderance of the evidence unless you are otherwise instructed.

At this point in the trial, you, as jurors, are deciding only if defendant is liable. You will first return a verdict on that issue. If you find defendant liable, you will hear additional argument from the attorneys and you will hear additional witnesses testify concerning damages.

Your verdict must be based on the evidence that has been received and the law on which I have instructed you. In reaching your verdict, you are not to be swayed from the performance of your duty by prejudice, sympathy, or any other sentiment for or against any party.

When you retire to the jury room, you should select one of your members to act as foreperson to preside over your deliberations and sign your verdict. Your verdict must be unanimous—that is, your verdict must be agreed to by each of you. You will be given a verdict form, which I shall now read and explain to you.

#### **(READ VERDICT FORM)**

When you have agreed on your verdict, the foreperson, acting for the jury, should date and sign the verdict form and return it to the courtroom. You may now retire to consider your verdict.

**IN THE CIRCUIT COURT FOR NORTHERN WASHINGTONIA  
STATE OF WASHINGTONIA**

**CAMERON CARTER, as Personal  
Representative of the Estate of  
KENNETH CARTER, Deceased, and  
CAMERON CARTER, individually,**

Plaintiffs,

v.

**COLONIAL CASINO & RACETRACK,  
LLC,**

Defendant.

**Case No. 13-CV-17-8995**

**VERDICT FORM**

We, the jury, unanimously find the following by a preponderance of the evidence:

**NEGLIGENCE**

(1) Did the defendant have a duty to provide a safe work environment by using ordinary care for the safety of its employees, including decedent?

Answer:      Yes \_\_\_\_\_      No \_\_\_\_\_

If you answered “No” to Question 1, then stop and sign. Otherwise, proceed to Question 2.

(2) Did the defendant breach or fail their duty by doing something a reasonably careful person would not do or by failing to do something a reasonably careful person would do?

Answer:      Yes \_\_\_\_\_      No \_\_\_\_\_

If you answered “No” to Question 2, then stop and sign. Otherwise, proceed to Question 3.

(3) Were the defendant’s acts or failures to act substantial factors in producing the death of decedent, and without which decedent’s death would not have occurred?

Answer:      Yes \_\_\_\_\_      No \_\_\_\_\_

If you answered “No” to Question 3, then stop and sign. Otherwise proceed to Question 4.

(4) Did decedent receive an injury?

Answer:      Yes \_\_\_\_\_      No \_\_\_\_\_

**AFFIRMATIVE DEFENSES**

**Comparative Negligence**

(1) Was the decedent negligent?

Answer:      Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “No” to Question 1, then stop and sign. Otherwise, proceed to Question 2.

(2) Was decedent’s negligence a substantial factor in causing his/her own death?

Answer:      Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “No” to Question 1, then stop and sign. Otherwise, proceed to Question 3.

(3) What percentage of negligence do you attribute to Decedent? \_\_\_\_\_

**Assumption of the Risk**

(1) Was the danger not created by defendant’s negligence, but instead normally incident to, or inherent in, the employment?

Answer:      Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “No” to Question 1, then stop and sign. Otherwise, proceed to Question 2.

(2) Did decedent voluntarily encounter the danger?

Answer:      Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “No” to Question 2, then stop and sign. Otherwise, proceed to Question 3.

(3) Was the decedent fully aware of, understood, and appreciated the danger?

Answer:      Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “No” to Question 3, then stop and sign. Otherwise, proceed to Question 4.

(4) Was the danger that the decedent was fully aware of and voluntarily encountered the cause of decedent’s death?

Answer:      Yes \_\_\_\_\_ No \_\_\_\_\_

If you answered “yes” to Question 4, then stop and sign. If you answered “no” to Question 4, then continue with the remaining questions.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson



**Superseding Cause**

(1) Was the sole proximate cause of decedent's death a later independent act separate and apart from Defendant's negligence?

Answer:      Yes \_\_\_\_\_      No \_\_\_\_\_

If you answered "no" to Question 1, then stop and sign. Otherwise, proceed to Question 2.

(2) Could Defendant, by exercising ordinary care, reasonably have anticipated the independent intervening act?

Answer:      Yes \_\_\_\_\_      No \_\_\_\_\_

If you answered "no" to Question 2, then stop and sign. Otherwise, sign at the bottom indicating Defendant's liability.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson

If you, the jury, did not sign any of the above locations, then sign below indicating that you unanimously determine the **defendant is liable**.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Foreperson