

Jared S. Goodman

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September 6, 2011

VIA FIRST CLASS MAIL AND E-MAIL (bking@jud5.flcourts.org)

The Honorable Brad King
State Attorney, Fifth Judicial Circuit
110 N.W. First Ave., Ste. 5000
Ocala, FL 34475

Dear Mr. King:

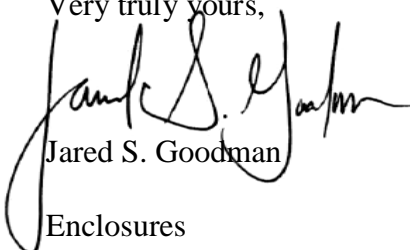
I am writing on behalf of PETA to respectfully request that you pursue felony and misdemeanor cruelty to animals charges against those responsible for cruelly causing the death of a young colt by forcing him to sprint for potential buyers despite extreme heat, resulting in a ruptured aorta. *See* FLA. STAT. §§ 828.12(1), 828.125.

As detailed fully in the enclosed letter, on June 19, 2011, during Ocala Breeders' Sales Company's ("OBS") "under tack" show at its Ocala, Florida facility, a colt known as Merciless Cat suffered an apparent burst aorta and died when he was required to conduct a speed trial despite track a temperature of 99.9 degrees. Links to footage of this breakdown are included in the attached letter, and a DVD is enclosed with the original.

Given the wealth of evidence establishing that driving young horses to run at these excessive speeds puts them at risk of catastrophic breakdowns, that extreme heat further compounds these risks, and that the culpable parties here failed to take any precautions to ensure Merciless Cat's safety, we believe the evidence provided is sufficient to trigger a criminal investigation and charges against them for causing him to be overdriven and, as a result, willfully and unlawfully killing him.

Please advise me that your office is taking action prosecute these violations of Florida's cruelty to animals law.

Very truly yours,


Jared S. Goodman

Enclosures

PETA
FOUNDATION

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS
FOUNDATION

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PETA FOUNDATION IS AN OPERATING
NAME OF THE FOUNDATION TO
SUPPORT ANIMAL PROTECTION

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Dear Mr. King:

I am writing on behalf of PETA to respectfully request that you pursue felony and misdemeanor cruelty to animals charges pursuant to Florida law, FLA. STAT. §§ 828.12, 828.125, against those responsible for cruelly causing the death of a colt by forcing him to conduct a speed trial despite extreme heat, resulting in a likely burst aorta.

On June 19, 2011, at the Ocala Breeders' Sales Company's ("OBS") facility, located at 1701 Southwest 60th Ave., Ocala, FL, OBS held an "under tack" show, in which young horses in training are pushed to sprint at speeds faster than they will ever run in their future racing careers. During a timed sprint at this event, where temperatures on the track reached nearly 100 degrees, a young colt named Merciless Cat suffered an apparent burst aorta and died. See OBS, 2011 JUNE SALE OF TWO-YEAR-OLDS & HORSES OF RACING AGE 615 (2011) (catalog entry for Merciless Cat, attached as Exhibit 1). In [video and audio of the incident](#) (also included on a DVD enclosed with the original of this letter), Merciless Cat is seen sprinting the second of three furlongs before abruptly collapsing. Due to the speed at which Merciless Cat was running, the jockey is thrown several feet in front of the colt.

Under Florida's cruelty to animals law, "[a]ny person who willfully and unlawfully, by any means whatsoever, kills . . . any animal of the genus Equus (horse)," or "jointly agrees, conspires, combines, or confederates with another person" to do so, it is guilty of a second degree felony, punishable by one to fifteen years in prison, a fine of between \$3,500 to \$10,000, or both. FLA. STAT. §§ 828.125(1)-(2), 775.082(3)(c), 775.083(1)(b). "Willfully," under the Florida criminal laws, "means intentionally, knowingly, and purposely" and does not require a bad motive or knowing unlawfulness. See *In re Standard Jury Instructions in Criminal Cases—Report No. 2010-02*, 44 So.3d 565 (Fla. 2010).

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Additionally, it is a misdemeanor of the first degree to “unnecessarily . . . overdrive[]” any animal, or cause the same to be done. *Id.* at § 828.12(1). A violation of this section is punishable by a fine of up to \$5,000, imprisonment of up to one year, or both. *Id.*; *id.* at § 775.082(4)(a). As used in these sections, “animal” is broadly defined to include “every living dumb creature,” and “person ‘shall be held to include corporations, and the knowledge and acts of agents and employees of corporations in regard to animals transported, owned, employed by or in the custody of a corporation, shall be held to be the knowledge and act of such corporation.’” *Id.* § 828.02.

It is noteworthy that a New York appeals court reversed the suspension of a harness racehorse driver for failing to drive his horse to the finish, stating that continuing to whip the horse as urged by the State Racing and Wagering Board “might make the cliché ‘to beat a dead horse’ too realistic” and constitute a violation of the state anti-cruelty law’s prohibition on overdriving. *Ricco v Corbisiero*, 565 N.Y.S.2d 82 (N.Y. App. Div. 1991).

We believe forcing each young horse to sprint in dangerous heat during the June 19, 2011, under tack show constitutes a violation of Florida’s prohibition on overdriving. However, we request only that you pursue a criminal investigation and indictment against the following persons responsible for Merciless Cat’s death:

- **Tom Ventura, General Manager and Director of Sales, OBS.** Upon information and belief, as a senior employee and director of sales at OBS auctions, Ventura was present at the June 19, 2011, under tack show, aware of the extreme heat, and nonetheless permitted the speed trials to continue. Ventura may therefore be charged with a first degree misdemeanor violation of § 828.12(1) for causing Merciless Cat to be unnecessarily overdriven, and a second degree felony violation of § 828.125 for willfully and unlawfully killing him by causing him to be fatally overdriven.
- **Tom Chiota, President, OBS.** As the principal for OBS, if present at the June 19, 2011, under tack show, otherwise aware of the extreme heat prior to Merciless Cat’s death, and the company has no policy against racing under such conditions, Chiota may be charged with a first degree misdemeanor violation of § 828.12(1) for causing Merciless Cat to be unnecessarily overdriven, and a second degree felony violation of § 828.125 for willfully and unlawfully killing him by causing him to be fatally overdriven.
- **Ocala Breeders Sales Company, P.O. Box 99 Ocala, FL 34478; (352) 237-2154 (phone); (352) 237-3566 (fax); obs@obssales.com.** OBS is the thoroughbred auction firm that held the under tack show at its facility on June 19, 2011, and was responsible for planning, orchestrating, and managing the event. It may therefore be charged with a first degree misdemeanor violation of § 828.12(1) for causing Merciless Cat to be unnecessarily overdriven, and a second degree felony violation of § 828.125 for willfully and unlawfully killing him by causing him to be fatally overdriven.
- **Shafta Montoya, Consigner, Robdale Farm, (352) 361-7090 (phone); (352) 347-0653 (fax); shaftamontoya@yahoo.com.** Upon information and belief, as the agent for Merciless Cat, Montoya was present at the June 19, 2011, under tack show and took no action to stop the colt from sprinting despite life-threatening weather conditions. Montoya may therefore be charged with a first degree misdemeanor violation of § 828.12(1) for causing Merciless Cat to be unnecessarily overdriven, and a second degree

felony violation of § 828.125 for willfully and unlawfully killing him by causing him to be fatally overdriven.

- **Didier A. Plasencia, Jason Forde, Marvin Richards**, 1001 SW 132nd Ter., Ocala, FL 34481; (352) 690-2376 (phone). Upon information and belief, Plasencia, Forde, and Richards were Merciless Cat's owners on June 19, 2011. Given that they entered her into the under tack show, if they were present at the show or otherwise aware of the extreme heat prior to Merciless Cat's injury, they may be charged with: (1) a first degree misdemeanor violation of § 828.12(1) for causing Merciless Cat to be unnecessarily overdriven, and a second degree felony violation of § 828.125 for willfully and unlawfully killing him by causing him to be fatally overdriven.

In under tack shows such as the one that resulted in Merciless Cat's death, young horses sprint at speeds faster than they will ever run in their future racing careers. The speeds they are driven to in the $\frac{1}{8}$, $\frac{1}{4}$, and $\frac{3}{8}$ mile breezes at under tack shows are faster fractions than even elite fully-mature horses would run in the Sprint at the Breeders' Cup World Championship. There is a wealth of evidence establishing that these speed tests are damaging to young horses and put them at risk for injuries and catastrophic breakdowns.

Dr. Sheila Lyons, an equine veterinarian who was featured on the cover of *The Blood-Horse*, a leading international horseracing publication, stated:

Experience has made it clear that it is not in the best long term interest of the horse to ask for excessive speed before the horse is mature enough both mentally and physically. [Breeders and resellers] protect the individuals they intend to keep and (reluctantly) push the sales prospects due to business pressure to produce the fastest works at the sales.

See Statement from Sheila Lyons, D.V.M. to PETA (June 28, 2011) (on file with PETA). Dennis Brida, a former trainer, owner, and president of the New York Thoroughbred Breeders, called these sales "idiotic speed tests," and said that auctions are "butchering" these horses. Telephone interview with Dennis Brida, former President, New York Thoroughbred Breeders (July 1, 2011). PETA's [footage of under tack shows](#) (a compilation of which is also included on the DVD enclosed with the original of this letter) shows numerous young horses suffering fatal breakdowns while sprinting at excessive speeds.

In recognition of these dangers, several auction companies have taken additional precautions to protect juvenile horses in under tack shows. For example, Adena Springs—an award winning national breeder—does not record individual times in its auctions and has horses gallop or accelerate through the stretch, as opposed to sprinting. The demonstrated risk for injuries and fatal breakdowns in under tack shows is even further compounded by extreme heat, which increases cardiac demand, often leading auction hosts to cancel or postpone the show.

On July 19, 2011, races at Prairie Meadows Racetrack in Altoona, Iowa were cancelled "after jockeys voted not to ride, saying the 97-degree temperature with a 111-degree heat index made conditions hazardous for the horses." *Heat Wave Cancels Horse Races*, KCCI.COM (July 19, 2011), <http://www.kcci.com/r/28600402/detail.html>. Acknowledging these dangers, jockey Ken

Tohill stated, “Even very well-conditioned racehorses, with the heat index this high, how can you feel comfortable asking them for everything they have to stay on their feet?” *Id.*

Races were canceled at the Woodbine Racetrack in Toronto, Ontario on July 21, 2011, when temperatures were expected to reach 100 degrees. *Heat Forces Tracks to Cancel Racing*, BLOODHORSE.COM (July 23, 2011), <http://www.bloodhorse.com/horse-racing/articles/64120/heat-forces-tracks-to-cancel-racing>. After consulting with the Ontario Horsemen’s Benevolent and Protective Association and Ontario Racing Commission veterinarians, racetrack management determined it to be “[i]n the best interest of the horses” to call off the races. *Id.*

After races were postponed at New Jersey’s Monmouth Park on July 22, 2011, because of expected “excessive heat and extreme humidity,” the track vice president and general manager stated that “[Monmouth Park’s] main concern is for the safety of our horses and jockeys[.] With temperatures expected to reach 100 degrees combined with high humidity, we had no choice but to reschedule the program to Monday.” *Id.* Similarly, Harrah’s Chester Casino & Racetrack in Chester, Pennsylvania, cancelled its races that day, citing “extreme heat.” The director of racing operations at the track stressed, “Our concern today is with the safety of the horses.” *Heat Forces Harrah’s to Cancel Racing Card*, The Delaware County Daily Times (July 22, 2011), <http://www.delcotimes.com/articles/2011/07/22/sports/doc4e29dc326d5d2534942185.txt>.

On June 9, 2011, Belmont Park in Elmont, New York, called off races due to “oppressive heat.” See Tom Wilkin, *Heat Waves Forces NYRA to Cancel Belmont Races*, TIMES UNION (June 9, 2011). Temperatures at the track “were predicted to get close to 100 degrees and the heat index was about 102.” *Id.* Colonial Downs in New Kent, Virginia, Presque Isle Downs & Casino in Erie, Pennsylvania, and Finger Lakes Casino & Racetrack in Farmington, New York, have also cancelled or rescheduled races in recent months due to extreme temperatures.

Although the culpable parties were therefore aware of the well-recognized and life-threatening danger extreme heat presents, neither Ventura, Chiota, nor OBS canceled or postponed the show to ensure the horses’ safety on June 19, 2011, resulting in Merciless Cat’s fatal burst aorta during peak afternoon temperatures. In fact, the company did not even take the necessary precaution of postponing the under tack show following the breakdown. Nor did Montoya, Plasencia, Forde, or Richards take any action to stop Merciless Cat from sprinting under these conditions and causing his death despite their ability and, indeed, responsibility to do so.

Historic data for Ocala reveals that, at the time of Merciless Cat’s breakdown, the temperature was 96.8 degrees. See *History for Ocala, FL*, WEATHER UNDERGROUND (June 19, 2011), <http://www.wunderground.com/history/airport/KOCF/2011/6/19/DailyHistory.html>.

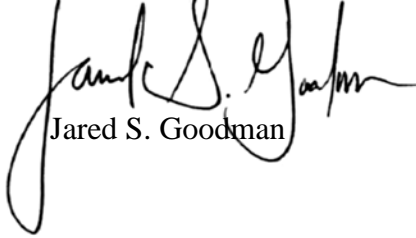
██████████ president and chief executive officer of ██████████ a consulting company that provides video analysis of sprints to potential buyers and was the leading buyer at the June 2011 OBS auction—reported that at the time of the breakdown, his “[equipment] on the track’s rail said 99.9 degrees and the track itself was probably well above that.” E-mail from ██████████ President and CEO, ██████████ to PETA (June 19, 2011) (on file with PETA). He further stated, “Some horses were in heat distress. They could have started at normal racetrack hours like 5:30 AM and stopped before it got deadly hot, or not tried to pack it all into 2 days so they had to go through the worst of the afternoon heat.” *Id.* According to

█ “There was a lot of chatter that the show should not have been done through such hot afternoon sessions because of horse and rider distress.” *Id.*

Given the already demonstrated risk for injuries and catastrophic breakdowns from driving young horses to run at excessive speeds, Ventura, Chiota, and OBS’ refusal to postpone the under tack show and Montoya, Plasencia, Forde, and Richards’s failure to pull Merciless Cat from her trial despite dangerous heat and industry-wide knowledge of these dangers, each caused Merciless Cat to be overdriven in violation of Florida Statutes § 828.12(1), and by causing Merciless Cat to be fatally overdriven, willfully and unlawfully killed him in a violation of § 828.125.

Please advise me that your office is taking action to investigate and prosecute these violations of Florida law and contact me if you have any questions or if PETA can be of any assistance to your office in addressing this matter.

Very truly yours,



Jared S. Goodman

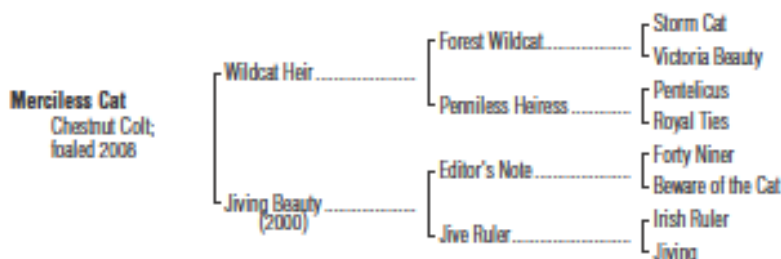
Exhibit 1

Consigned by Robdale Farm, Agent

Barn
13

Merciless Cat

Hip No.
615



By WILDCAT HEIR (2000). Black-type winner of \$424,460, Frank J. De Francis Memorial Dash S. [G1] (PIM, \$180,000), etc. Sire of 3 crops of racing age, 270 foals, 165 starters, 11 black-type winners, 118 winners of 272 races and earning \$6,934,829, including Wildcat Marie (to 4, 2011, \$257,-155, Whimsical S. [G3] (WO, \$90,000(CAN))), Richiegirllgonewild (\$105,-924, Old Hat S. [G3] (GP, \$60,000)), Derwin's Star (\$372,570, Charles Town Oaks [L] (CT, \$232,800), etc.), Karmageddon [L] (\$214,380).

1st dam

JIVING BEAUTY, by Editor's Note. Dam of 5 other registered foals, 5 of racing age, including a 2-year-old of 2011, 3 to race, 2 winners—
Mr. Jolson (g. by Songandaprayer). 7 wins, 2 to 4, 2010, \$87,036.
A Song for You (c. by Songandaprayer). 3 wins at 3 and 4, \$44,184.

2nd dam

JIVE RULER, by Irish Ruler. 3 wins at 2, \$16,185. Dam of 11 winners, incl.—
RILEY'S HEAT (f. by Pentelicus). 12 wins, 2 to 4, \$274,734, Witches' Brew S. (MED, \$27,000), 2nd Blue Sparkler S. (MTH, \$9,000), Klassy Briefcase S. (MTH, \$9,000), Egret S. (MED, \$8,550). Producer.
Without Papers (f. by One Magic Moment). 12 wins, 3 to 5, \$196,555, 2nd Monmouth County S. (MED, \$8,000), Seton Hall University S. (MED, \$6,-650), 3rd Luvinheriseasy S. (MED, \$4,200).
South Beach Sunny. 4 wins to 3, \$61,311. Dam of 4 foals, 3 winners, incl.—
South Beach Boy (g. by Notebook). 6 wins, 2 to 6, \$86,820, 3rd Bossier City H. (LAD, \$5,000), Excalibur S. (LAD, \$5,000).

3rd dam

JIVING, by Baldski. Unraced. Dam of 9 foals, 7 to race, all winners, incl.—
JIVING AROUND. 5 wins, 3 to 6, \$214,488, Navajo Princess S. (MED, \$21,000), 2nd Drumtop S. [L] (BEL, \$11,250). Producer.
Workout Wonder. Unraced. Dam of 10 foals, 9 to race, 6 winners, incl.—
EISHIN BODIN. 18 wins, 3 to 8, placed at 9, 2010, ¥113,326,000, in Japan, Hokuriku S. (Total: \$999,516).
Bluestarobethlehem. 8 wins, \$120,826, 2nd Birmingham H. (DET, \$5,000).

4th dam

JIVEY, by Mr. Music. 3 wins at 2 and 3, half-sister to **DECORATED** (7 wins, \$108,135, sire), **Red Jess** (\$54,368). Dam of 9 winners, including—
FARBIZON. 7 wins, 2 to 4, \$40,746, James H., Bright Memorial H., etc.
FIGURATION. 3 wins at 2, \$25,882, Mademoiselle S., 3rd Majorette S. Dam of **ENUMERATING** (\$164,062, Ashland S.-G2, etc.), **United Appeal**.
Fleet Beat. 2 wins at 2, \$16,170, 2nd Colleen S. Dam of **Vienna Belle** [G3].

RACE RECORD: At 2, 2010, unplaced. Earned \$3,210.

Engagements: **OBS Championship S.**

Foaled in Florida.