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December 13, 2023

By Hand

Federal Trade Commission
Office of the Secretary
9050 Junction Drive
Annapolis Junction, MD 20701

Re: *Lynch vs. HIWU*; Notice of Appeal and Application for Review
HIWU Case No. 1501000597

To Whom It May Concern:

We represent Ms. Natalia Lynch ("Ms. Lynch") in this matter.

Pursuant to 15 U.S.C. § 3051 et seq., including § 3058(b), 5 U.S.C. § 556 et seq., and 16 C.F.R. 1.145 et seq., including § 1.146, Ms. Lynch gives notice that she appeals the November 9, 2023 decision of the Arbitrator appointed by the Horseracing Integrity Welfare Unit ("HIWU") of the Horseracing Integrity and Safety Authority ("HISA") in HIWU Case No. 1501000597. An original paper copy of the Notice of Appeal and Application for Review is annexed hereto.

I appreciate your attention to this Notice of Appeal and Application for Review. Please feel free to reach out to me with any questions.

Sincerely,

P.P. H. Christopher Boehning

H. Christopher Boehning

cc: FTC, Office of the Secretary, Washington
Chief Administrative Judge Hon. D. Michael Chappell
HIWU, Allison J. Farrell and James Bunting

Enclosures

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
MATTER NO. _____

ADMINISTRATIVE LAW JUDGE: _____

COMMISSIONERS: **Lina M. Khan, Chair**
Rebecca Kelly Slaughter
Alvaro Bedoya

IN THE MATTER OF:
NATALIA LYNCH **APPELLANT**

NOTICE OF APPEAL AND APPLICATION FOR REVIEW

Pursuant to 15 U.S.C. § 3051 et seq., including § 3058(b), 5 U.S.C. § 556 et seq., and 16 C.F.R. § 1.145 et seq., including § 1.146, aggrieved Appellant Natalia Lynch ("Ms. Lynch") gives notice that she hereby appeals the November 9, 2023, decision of the Arbitrator appointed by the Horseracing Integrity Welfare Unit ("HIWU" or "Agency") of the Horseracing Integrity and Safety Authority ("HISA") in HIWU Case No. 1501000597 (the "Decision").[1] The Decision found that Ms. Lynch violated Rule 3212 of HISA's Anti-Doping and Medication Control ("ADMC") Program (herein, the "Rules") for the presence of Altrenogest in a sample collected from her horse, Motion to Strike, on June 24, 2023, and Rule 3214(a) for possession of a prohibited substance (Levothyroxine, or "Thyro-L") on July 20, 2023. The Decision imposed the maximum period of ineligibility and financial penalty for each violation resulting in a total ban of 48 months, $50,000 in fines, and $5,000 in arbitration costs.

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[1] Notice of the sanction was submitted to the Federal Trade Commission ("FTC") on November 13, 2023. 16 C.F.R. § 1.145(a) and § 1.146(a).

Motion to Strike was also disqualified from the June 24, 2023 race, and the $1,100 winnings were ordered forfeited. A copy of the Decision of the Arbitrator is annexed hereto.

Ms. Lynch challenges the Decision and requests de novo review under 15 U.S.C. § 3058(b)(l)-(3) and 16 C.F.R. § 1.l46(b) for multiple reasons, including but not limited to the following:[2]

First, the Arbitrator repeatedly and wrongfully precluded Ms. Lynch from introducing critical evidence and from calling key witnesses to testify. As a result, Ms. Lynch was denied a full opportunity to present her defense and to confront her accuser. These failings included declining to admit testimony establishing that at least one other horse from the same barn at Monmouth used by Motion to Strike tested positive for the presence of Altrenogest. They further included the Arbitrator's failure to permit Ms. Lynch to examine one of HIWU's investigators.

Second, the Arbitrator penalized Ms. Lynch, including by imposing arbitration costs, excluding evidence, and making adverse credibility determinations, for errors and misstatements made by Ms. Lynch's former counsel.

Third, the final civil sanctions imposed for these violations are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. The sanctions impose unprecedented and excessive periods of ineligibility and financial penalties for the alleged violations. Ms. Lynch is a rising young female trainer in a male-dominated industry. She has never in her career been accused of a breach of the rules in any jurisdiction in which she is licensed. And yet for alleged first-time violations in connection with substances that were not,

[2] The Decision has other deficiencies, which are not waived by the enumeration in this Notice of Appeal and Application for Review, but may be raised in the future in this or another forum.

prior to HISA's creation, violations at all (in the case of Thyro-L, of which only a miniscule amount is alleged to have been found) or did not incur any period of ineligibility (in the case of Altrenogest), Ms. Lynch finds herself confronted with a crippling fine and four-year period of ineligibility. That HIWU sought, and attained, the maximum penalty for Altrenogest is unjustified here for the additional reason that HIWU has provisionally suspended Rule 3212 violations for the presence of Altrenogest pending approval of HIWU's submission to the FTC on November 13, 2023, which would downgrade Altrenogest to a controlled substance.[3] The injustice here is even all the more apparent given that one of these provisional suspensions involves the very same trainer who saddled Motion to Strike on the day of the race and the very same barn at Monmouth where Motion to Strike was stabled prior to testing positive.

Third, the Arbitrator's findings were based in large part on illegally obtained evidence or evidence that was improperly admitted and were therefore an abuse of discretion, a violation of Ms. Lynch's rights under the Constitution, and otherwise not in accordance with law. 15 U.S.C. § 3058(b)(2)(A)(iii).

Pursuant to 16 C.F.R. § 1.146(a)(1), Ms. Lynch requests a hearing to contest the facts that the Arbitrator purported to find and to supplement the record with additional evidence and testimony on the ground she was denied adequate due process as required by 15 U.S.C. § 3057(c)(3). The Arbitrator improperly and inconsistently applied the Federal Rules of Evidence resulting in the exclusion of relevant evidence. Ms. Lynch was prevented from submitting evidence, providing witness testimony, and cross-examining HIWU's expert witness. In circumstances where Ms. Lynch has been deprived of her livelihood and made liable to pay

[3] HIWU has admitted, including in a communication with Ms. Lynch's prior counsel that Ms. Lynch's suspension and fine would be reduced upon approval by the FTC of the Proposed ADMC Rules.

significant financial penalties which will make her eventual return to the industry incredibly difficult, Ms. Lynch must be afforded a fair and proper opportunity to present her case.

Respectfully submitted,

P.P. H. Christopher Boehning

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Dated: December 13, 2023

CERTIFICATE OF SERVICE

Pursuant to 16 C.F.R. § 1.146(a) and 16 C.F.R. § 4.4(b), a copy of the forgoing is being served this 13th day of December 2023 via First Class mail, electronic mail, and hand delivery upon the following:

Office of the Secretary (First Class mail)
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580

Office of the Secretary (by hand)
Federal Trade Commission
9050 Junction Drive
Annapolis Junction, MD 20701

Hon. D. Michael Chappell (First Class mail and email)
Chief Administrative Law Judge
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
(courtesy copies via e-mail to oalj@ftc.gov and electronicfilings@ftc.gov)

Allison J. Farrell (First Class mail and email)
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BEFORE THE HORSERACING INTEGRITY AND SAFETY AUTHORITY'S ANTI-DOPING AND MEDICATION CONTROL PROGRAM ARBITRATION PANEL

ADMINISTERED BY JAMS, CASE NO. 1501000597

In the Matter of the Arbitration Between:

HORSERACING INTEGRITY & WELFARE UNIT,
Claimant,

v.

NATALIA LYNCH,
Respondent.

FINAL DECISION

I, the undersigned Arbitrator, having been designated, authorized, and duly sworn, and having heard and considered the arguments, allegations, submissions, proofs, testimony, and evidence submitted by the Parties, and after a full evidentiary hearing occurring by agreement of the Parties in New York, New York on October 18, 2023 (in-person) and on October 23, 2023 (via Zoom), pursuant to the Horseracing Integrity and Security Act of 2020, and its implementing regulations, do hereby Find and Decide as follows:

I. INTRODUCTION

1.1. Claimant is the Horseracing Integrity & Welfare Unit (the "Agency"), which is responsible for sample collection and results management in the anti-doping testing of thoroughbred racehorses in the United States, pursuant to the Horseracing Integrity Act of 2020, 15 U.S.C. §§ 3051-3060. During this Arbitration, the Agency has been represented by attorneys Allison J. Farrell of the Agency, and James Bunting and Anna White of Tyr LLP.

1.2. Respondent is Natalia Lynch. Ms. Lynch, referred to herein as "Trainer Lynch," is the trainer of a horse named "Motion to Strike." It is undisputed that Trainer Lynch is a "Covered Person," and that Motion to Strike is a "Covered Horse," under the law and rules applicable to this Arbitration. During this Arbitration, Trainer Lynch has been represented by attorney John Mac Hayes of Tulsa, Oklahoma.

1.3. The issue in this Arbitration involves Trainer Lynch being charged with two separate Anti-Doping Rule Violations ("ADRV") of the Anti-Doping Medication Control Program.

1.4. The first alleged ADRV, as explained in more detail below, involves the presence of a banned substance in a Covered Horse, in violation of Rule 3212 of the Anti-Doping Medication Control Program. This charge is referred to herein as the "Presence ADRV."

1.5. The second alleged ADRV, as explained in more detail below, involves the possession of a banned substance, in violation of Rule 3214(a) of the Anti-Doping Medication Control Program. This charge is referred to herein as the "Possession ADRV."

1.6. In this Final Decision, the Agency and Trainer Lynch will be referred to individually as "Party," and collectively as "Parties."

II. THE FACTS

2.1. This section summarizes basic facts and allegations based on the Parties' written submissions and pleadings, and the evidence adduced at the October 18 and 23, 2023 Hearing before the Arbitrator. Additional facts and allegations found in the Parties' written submissions and pleadings and the evidence, are set forth, where relevant, in connection with the discussion elsewhere in this Final Decision. Although the Parties stipulated to and/or did not dispute certain facts, the legal effect and the nature of many of the facts were disputed, as explained more fully below.

2.2. The Arbitrator has considered all of the facts, allegations, legal arguments, evidence, and testimony submitted by the Parties in this Arbitration. When explaining the reasons supporting this Final Decision, the Arbitrator refers only to the submissions and evidence deemed necessary.

2.3. On the morning of June 24, 2023, Trainer Lynch shipped the Covered Horse to Monmouth Park in Oceanport, New Jersey ("Monmouth").

2.4. On the afternoon of June 24, 2023, the Covered Horse finished 4th in Race No. 2 at Monmouth and earned a purse of $1,100.00.

2.5. A post-race blood sample was collected from the Covered Horse on June 24, 2023, under the code B100100684.

2.6. On July 11, 2023, Industrial Laboratories ("Industrial") in Denver, Colorado, reported an Adverse Analysis Finding ("AAF") for the drug Altrenogest in sample B100100684. The estimated concentration of Altrenogest was 172.5 pg/mL. A quantitative analysis was not conducted, and there is no final quantification designation for the concentration of Altrenogest. (Stipulation ¶ 5.)

2.7. On July 20, 2023, Trainer Lynch was notified in person at Belmont of the AAF from Motion to Strike's blood sample.

2.8. Thereafter, a Provisional Suspension was imposed on Trainer Lynch effective July 20, 2023.

2.9. On July 20, 2023, Agency investigators found a tub labelled Sucralfate that contained a loose powder and a syringe labelled Levamisole in the trunk of the car Trainer Lynch had driven to Belmont that day. The tub contained a few scoops of powder, as depicted in the photograph below:

2.10. On July 25, 2023, Trainer Lynch requested a provisional suspension hearing and testing of the post-race B Sample taken on June 24, 2023.

2.11. A second Provisional Suspension was imposed on Trainer Lynch effective July 28, 2023.

2.12. On August 4, 2023, the Equine Analytical Chemistry Laboratory at the University of Kentucky reported that the contents of the tub labelled Sucralfate was Thyro-L and Levamisole.

III. PROCEDURAL HISTORY

3.1. This proceeding is based on the Presence ADRV charge, and a subsequent Possession ADRV charge.

3.2. On July 20, 2023, the Agency served Trainer Lynch with an Equine Anti-Doping ("EAD") Notice stating that the June 24, 2023, blood sample from the Covered Horse had returned an AAF for the drug Altrenogest, an S6 Banned Substance with respect to geldings.

3.3. The Agency further advised Trainer Lynch that, among other things, it was imposing an immediate provisional suspension. The Agency later, following B Sample testing as described below, charged Trainer Lynch with Presence of a Banned Substance, namely Altrenogest, in violation of Rule 3212.

3.4. On July 25, 2023, Trainer Lynch requested a provisional suspension hearing and testing of the post-race B Sample from June 24, 2023.

3.5. On July 28, 2023, the Agency served Trainer Lynch with a separate EAD Notice stating that the Agency found her in possession of two banned substances: Levothyroxine (Thyro-L), in violation of Rule 3214(a), and Levamisole, in violation of Rule 3315(b). The Agency imposed another immediate suspension.

3.6. On July 31, 2023, the Arbitrator held a preliminary conference with counsel pursuant to the applicable rules. *See, e.g.*, Rules 7290, 2347, 3347.

3.7. As memorialized in Scheduling Order No. 1, the Arbitrator set a provisional hearing for August 14, 2023, and a pre-hearing briefing schedule related thereto. *See generally* Sch. Order No. 1 (8/1/23) (ordering simultaneous briefing). Pursuant to the briefing schedule, the Parties timely filed Pre-Hearing Briefs related to the upcoming hearing.

3.8. On August 7, 2023, the Agency notified Trainer Lynch that it was charging her with violating Rule 3214(a) based on her alleged possession of Thyro-L. The Agency later charged Trainer Lynch with the Possession ADRV.

3.9. On August 11, 2023, Trainer Lynch, without objection, withdrew her request for a provisional hearing on the provisional suspension relating to the AAF. The Parties agreed to proceed to a hearing on the merits (herein referred to as the "Hearing") on both the Possession ADRV charge and the Presence ADRV charge.

3.10. On August 14, 2023, the Arbitrator held a second preliminary conference with counsel regarding scheduling and procedures related to the Hearing.

3.11. The Parties conferred, and during the second preliminary conference, agreed to a Hearing date of October 18, 2023, at 9:00 a.m. at Belmont Park in Elmont, New York, and other pre-hearing items as memorialized in Procedural Order No. 1.

3.12. In Procedural Order No. 1, dated August 14, 2023, the Arbitrator confirmed the Hearing date, time, and location; set forth a pre-hearing briefing schedule; and addressed and made rulings regarding various other pre-hearing matters, including a Pre-Hearing Briefing schedule consistent with the nature of the charges: (1) the Agency's Pre-Hearing Brief relating to the Possession ADRV was due by September 13, 2023; (2) Trainer Lynch's Pre-Hearing Brief relating to the Presence ADRV was due by September 13, 2023; and (3) the Parties' respective responses to the opposing Party's brief were due by October 4, 2023. *See, generally,* Proc. Order No. 1 (8/14/23).

3.13. On August 15, 2023, JAMS served the Parties with a Notice of Hearing confirming the hearing date, time, and location, as set forth in Procedural Order No. 1.

3.14. On September 5, 2023, upon agreement of the Parties, the location of the Hearing was changed to JAMS, 620 Eighth Avenue, 34th Floor, New York, New York 10018.

3.15. On September 8, 2023, the UIC Analytical Forensic Testing Laboratory in Chicago, Illinois, confirmed in the B Sample analysis that Altrenogest was present in the sample. (Stipulation ¶ 14.) The Agency thereafter formally charged Trainer Lynch for the Presence of a Banned Substance, namely Altrenogest, in violation of Rule 3212. (Stipulation ¶ 15.)

3.16. On September 11, 2023, the Arbitrator entered Amended Procedural Order No. 1 in order to allow the Agency to file a reply brief to Trainer Lynch's response brief relating to the Rule 7170 Possession ADRV charge by October 11, 2023.

3.17. On September 13, 2023, the Agency filed its Pre-Hearing Brief, Book of Evidence; and Book of Authorities, regarding the Possession ADRV.

3.18. On September 13, 2023, in a joint filing by the Parties, Trainer Lynch requested an extension of time until September 15, 2023, to file her Pre-Hearing Brief and materials regarding the Presence ADRV. There was no objection to the extension by the Agency.

3.19. On September 14, 2023, the Arbitrator granted Trainer Lynch's unopposed request for an extension of time until September 15, 2023, to file her Pre-Hearing Brief and materials regarding the Presence ARDV. The Arbitrator noted that all other submission deadlines remained unchanged.

3.20. On September 15, 2023, counsel for Trainer Lynch filed a letter stating that, on September 13 or 14, 2023, an Agency employee contacted Trainer Lynch; that Trainer Lynch felt intimidated and harassed by such contact; and that counsel, therefore, was unable to have the necessary

interaction with his client to complete the Pre-Hearing Brief by the extended deadline of September 15, 2023.

3.21. Counsel's letter further requested (1) an order prohibiting the Agency from contacting Trainer Lynch directly; and (2) a second extension of time in which to file Trainer Lynch's Pre-Hearing Brief and materials regarding the Presence ADRV.

3.22. Counsel for the Agency confirmed the contact made by an Agency employee, but contended that it was unrelated to the pending charges and did not violate any Rule.

3.23. On September 16, 2023, a Saturday, having reviewed the email correspondence of the Parties, the Arbitrator ruled as follows:

a. *First*, without drawing any conclusions regarding the nature of the contact between the Agency and Trainer Lynch, the Arbitrator allowed the Parties to raise the issue at the Hearing and directed the Agency and its employees to have no future direct contact with Trainer Lynch, but instead, direct all contact to her attorney in order to avoid any appearance of impropriety.

b. *Second*, noting that each Party had 21 days to file their respective Pre-Hearing Briefs, and that the Arbitrator had already granted Trainer Lynch an extension of time to file her Brief, the Arbitrator granted Trainer Lynch additional time to file her Pre-Hearing Brief until September 19, 2023, given the nature of the issue raised and counsel's statement that he was unable to confer with his client for two days.

3.24. On September 19, 2023, Trainer Lynch filed a "Hearing Brief,"[1] exhibits, and an expert report by Dr. Clara K. Fenger regarding the Presence ADRV.

3.25. On September 21, 2023, Trainer Lynch filed a "Hearing Brief"[2] regarding the Possession ADRV.

3.26. On October 3, 2023, the Arbitrator directed counsel for Trainer Lynch to re-file the exhibits to the Hearing Briefs in accordance with Amended Procedural Order No. 1, which required the

[1] The Arbitrator construes the above-referenced "Hearing Brief" as the "Pre-Hearing Brief" contemplated by Section 1(b) (i) of Amended Procedural Order No. 1. Although the electronic docket stated that the brief was filed on September 20, 2023, counsel certifies in the brief that it was served on opposing counsel on September 19, 2023. Accordingly, without objection, the Arbitrator accepted the filing as timely in accordance with the second extension of time granted to Trainer Lynch in which to file the brief.

[2] The Arbitrator construes the above-referenced "Hearing Brief" as the Response to the Pre-Hearing Brief contemplated by Section 1(b) (ii) of Amended Procedural Order No. 1.

Parties to mark their exhibits in a particular way to allow the Arbitrator to efficiently identify referenced exhibits; *i.e.*, Trainer Lynch to use letters, and the Agency to use numbers. *See* Am. Proc. Order No. 1, at Sec. 1 (d). Despite being required to mark exhibits with letters, and filing an index that referenced exhibits by letter, Trainer Lynch marked some of the accompanying exhibits with numbers and failed to affix any marking to others.

3.27. On October 4, 2023, the Agency filed its Responding Pre-Hearing Brief, Book of Evidence; and Book of Authorities regarding the Presence ADRV. Included in the Book of Evidence was the expert report of Dr. Cynthia Cole.

3.28. On October 4, 2023, Trainer Lynch re-filed properly labelled exhibits.

3.29. On October 5, 2023, in Procedural Order No. 2, the Arbitrator directed the Parties to file a Stipulation of Uncontested Facts ("Stipulation") and disclosure of all witnesses reasonably expected to be called by the Parties at the Hearing ("Witness Disclosure") by October 10, 2023. The Arbitrator reminded the Parties that Amended Procedural Order No. 1 required them to file these documents before filing their Pre-Hearing Briefs. *See* Am. Proc. Order No. 2, Secs. 2(a)-(b), (3)(a)-(b).

a. Stipulation: The Parties thereafter filed a Stipulation regarding the content in fifteen numbered paragraphs.

b. Witness Disclosure: On October 5, 2023, the Agency disclosed two witnesses—Gregory Pennock and Dr. Cynthia Cole—and on October 13, 2023, after the extended deadline required by the Order, Trainer Lynch disclosed Natalia Lynch; Dr. Clara Fenger; Petra Hartmann; Shaun Richards; and Gregory Pennock. The Agency objected to Trainer Lynch's disclosure of Ms. Hartmann and Mr. Richards concluding that, under the circumstances, allowing the untimely disclosure of the two witnesses would cause unfair prejudice to the Agency and adversely affect the fairness and efficiency of these proceedings. Observing that Trainer Lynch offered no explanation for the untimely disclosure or the nature of the expected testimony, the Arbitrator did not allow the untimely disclosure of those two witnesses.

3.30. On October 5, 2023, after the Arbitrator issued Procedural Order No. 2, the Agency filed a letter stating that counsel for Trainer Lynch had made "material changes" to at least one of the re-filed exhibits, and sought to address this issue with the Arbitrator.

3.31. On October 11, 2023, the Agency filed its Reply Pre-Hearing Brief regarding the Possession ADRV. This Reply Brief was the final Pre-Hearing Brief permitted by Amended Procedural Order No. 1.[3]

3.32. On October 13, 2023, Trainer Lynch requested leave to permit a member of the media, specifically Mr. Ray Paulick, to observe the Hearing. The Agency objected under Rule 7200, which provides as follows:

> Rule 7200. Participation. The Arbitral Body and Internal Adjudication Panel (and their respective members) shall maintain the confidentiality of the proceedings. . . . Hearings are not open to the media or the public. However, the arbitrator(s) or IAP member(s) may permit one or more third parties to attend the hearing.

3.33. The Arbitrator denied Trainer Lynch's request, reasoning that the Rule plainly states that hearings are not open to the media or the public, and thus, not open for attendance by Mr. Paulick. The Arbitrator further reasoned that even if the Arbitrator had discretion to allow the media to observe the Hearing, the Arbitrator would decline to exercise that discretion under the circumstances. Trainer Lynch made the request late (less than a week before the Hearing), and failed to tether any proffered policy rationale (e.g., protection against intimidation) to her situation. The Arbitrator notes that Trainer Lynch has been afforded due process in these proceedings, has been represented by counsel who was present at the Hearing, and the Final Decision will be made public.

3.34. The Parties appeared in-person for the Hearing on October 18, 2023, at JAMS, 620 Eighth Avenue, 34th Floor, New York, New York 10018. Although the Parties had anticipated a one-day Hearing, the Arbitrator extended the Hearing to a second day – Monday, October 23, 2023 – to allow the Parties a full and fair opportunity to present their case and closing arguments. The second day of the Hearing was conducted remotely via Zoom upon agreement of the Parties.

3.35. At the Hearing, as further reflected below, the Arbitrator admitted many exhibits,[4] and heard the testimony of four witnesses: Trainer Lynch; Gregory Pennock, an investigator employed by the Agency; Dr. Clara Fenger, an expert witness retained by Trainer Lynch; and Dr. Cynthia

[3] On October 13, 2023, Trainer Lynch filed a self-styled "Supplemental hearing Brief re: Possession and Daubert Standard Applicable to Expert Witnesses." The Arbitrator struck the brief as improper under Amended Procedural Order No. 1, but allowed Trainer Lynch to raise any legal and factual arguments contained in the brief at the Hearing, subject to the applicable Rules and procedures and any objections that the Arbitrator would resolve.

[4] The Arbitrator disallowed Trainer Lynch from submitting into evidence a transcript from the Florida Gaming Commission because, as explained on the record, the tendered document was not produced in accordance with the requirements of Amended Procedural Order No. 1 and, under the circumstances, allowing its introduction would be unduly prejudicial to the opposing party and undermine the fairness, efficiency, and integrity of this proceeding.

Cole, an expert witness retained by the Agency. Each party had a full and fair opportunity to examine or cross-examine each of the witnesses.

3.36. Prior to taking evidence at the Hearing, the Arbitrator addressed several outstanding matters on the record, including the following:

a. Exhibits. In response to the Agency's concern that counsel for Trainer Lynch inappropriately modified the re-filed exhibits, the Arbitrator ruled that the Agency would be allowed to make any objections regarding those exhibits during the Hearing.

b. Contact. In response to Trainer Lynch's concern about an employee of the Agency contacting her directly, the Arbitrator noted the prior ruling regarding the issue and the extensions of time afforded Trainer Lynch, and determined that, under the circumstances, any prejudice to Trainer Lynch resulting from the contact was at most *de minimis*.

3.37. During the Hearing, the Arbitrator reminded the Parties several times of the Arbitrator's neutral and unbiased role to preside over these proceedings pursuant to the applicable procedures and to make an unbiased decision in accordance with the evidence and applicable Rules. (*See, e.g.*, Tr. at 621 (Arbitrator: "I just want to reiterate to [counsel that] I'm here to listen to the evidence and make rulings. I have no emotional attachment to this case one way or the other, other than evaluating the facts and the evidence in this case."))

3.38. The Parties agreed, given the nature of this case, to allow the Arbitrator twenty-one days from the close of evidence to issue a Final Decision in accordance with Rule 7340.

3.39. The Arbitrator declared the evidence closed as of October 24, 2023, and the Parties at the Hearing agreed that the Final Decision was due on or before November 14, 2023.

3.40. Upon adjournment of the Hearing, and the closing of the evidence, the Arbitrator proceeded to draft this Final Decision, which was timely issued.

IV. JURISDICTION AND LEGAL STANDARDS

General Overview

4.1. The Horseracing Integrity and Safety Act of 2020, 15 U.S.C. §§ 3051-3060 (the "Act") recognizes the Horseracing Integrity and Safety Authority ("HISA"), a private non-profit organization for "purposes of developing and implementing a horseracing anti-doping medication

and control program and a racetrack safety program for covered horses, covered persons, and covered horseraces." 15 U.S.C § 3052(a). The program contemplated by the Act is commonly referred to as the "ADMC Program."

4.2. The ADMC Program, initially proposed by the Authority under the Act, was approved by the Federal Trade Commission on March 27, 2023, and implemented on May 22, 2023.

4.3. The ADMC Program sets out the applicable rules ("Rules") that govern this Arbitration and the jurisdictional grounds of the Panel over all participants. For example, Rule Series 1000 contains general provisions, including Rules relating to interpretation and definitions. Rule Series 3000 establishes the Equine Anti-Doping and Controlled Medication Protocol ("Protocol"). And Rule Series 7000 – Arbitration Procedures – establishes a disciplinary process for hearing and adjudicating violations of the rules and related offenses.

4.4. Pursuant to its authority under the Act, the Authority entered into an agreement with the Horseracing Integrity & Welfare Unit (the "Agency") "to act as the anti-doping and medication control enforcement agency . . . for services consistent with the [ADMC Program]." 15 U.S.C § 3054(e)(1)(B).

Jurisdiction

4.5. Rule 3020 provides, in pertinent part, that the anti-doping rules set out in the ADMC Program apply to and are binding on violations by Covered Persons.

4.6. Covered Persons are defined under Rule 1020 as follows:

> (a) The Protocol applies to and is binding on: . . . (3) the following persons (each, a Covered Person): all Trainers, Owners, Breeders, Jockeys, Racetracks, Veterinarians, Persons licensed by a State Racing Commission, and the agents, assigns, and employees of such Persons; any other Persons required to be registered with the Authority; and any other horse support personnel who are engaged in the care, treatment, training, or racing of Covered Horses.

4.7. Pursuant to Section 3054 of the Act, "*Covered Persons*" must register with the Authority. However, they are bound by the Protocol by undertaking the activity (or activities) that make(s) them a Covered Person, whether or not they register with the Authority.

4.8. ADMC Program Rule 3030(a) further defines a "*Responsible Person*" to mean: "*the Trainer of the Covered Horse.*"

4.9. In this matter, there is no dispute that Trainer Lynch is a Trainer who is required to be - and is - registered with the HISA. As such, Trainer Lynch is both a "*Responsible Person*" and a "*Covered Person*" bound by and subject to the ADMC Program. There is no dispute that Motion to Strike is a "*Covered Horse*."

4.10. The Rule 7000 Series of the ADMC Program sets out the arbitration procedures governing a charged violation of the ADMC Program, providing as follows:

> Rule 7010. Applicability.
>
> The Arbitration Procedures set forth in this Rule 7000 Series shall apply to all adjudications arising out of the Rule 3000 Series.
>
> Rule 7020. Delegation of Duties.
>
> (a) Subject to Rule 3249, Anti-Doping Rule Violations arising out of the Rule 3000 Series and violations of Rule 3229 (together, ''EAD Violations'') shall be adjudicated by an independent arbitral body (the ''Arbitral Body'') in accordance with the Rule 3000 Series and these Arbitration Procedures. The Arbitral Body may also adjudicate any other matter referred to it under the Protocol, and any other matter that might arise from time to time under the Protocol that the Agency considers should be determined by the Arbitral Body.

4.11. Where the Agency issues a Charge Letter effecting charges on a Covered Person, arbitral proceedings are initiated pursuant to Arbitration Rule 7060:

> Rule 7060. Initiation by the Agency.
>
> (a) EAD Violations. Unless Rule 3249 applies, if the Agency charges a Covered Person with an EAD Violation, the Agency shall initiate proceedings with the Arbitral Body. If a Covered Person is charged with both an EAD Violation and an ECM or Other Violation, the procedures for EAD Violations apply. The parties to the proceeding shall be the Agency and the Covered Person(s) charged. The Owner and the Authority shall be invited to join in the proceedings as observers and, if accepted as such, receive copies of the filings in the case. In the context of EAD Violation cases, the Owner may be permitted to intervene and make written or oral submissions.

4.12. In this case, arbitration proceedings were commenced before JAMS, the designated arbitration provider. Trainer Lynch had notice of both charges against her. The Parties have fully

participated in this Arbitration without any objection to the Arbitrator's jurisdiction or the arbitrability of any issues raised in this arbitration, including all issues related to the Possession ADRV and the Presence ADRV.

4.13. The Arbitrator concludes, without objection, that the Arbitrator has jurisdiction over the two charges at issue in this matter.[5] *See* Rule 7090 (arbitrator has authority to rule on her jurisdiction; party must object to challenge jurisdiction).

V. RELEVANT LEGAL STANDARDS

This Arbitration involves two separate ADRV charges. As detailed above, it is undisputed that under the ADMC Program Trainer Lynch is a Covered Person and a Responsible Person, and that Motion to Strike is a Covered Horse. What follows is a summary of the relevant legal standard, but additional authority may be set out, where relevant, in connection with the legal discussion elsewhere in this Final Decision.

General Provisions

5.1. The burden of proof depends on the nature of the alleged ADRV. Rule 3121 provides as follows:

> Rule 3121. Burden and Standard of Proof.
>
> (a) The Agency shall have the burden of establishing that a violation of the Protocol has occurred to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability (i.e., a preponderance of the evidence) but less than clear and convincing evidence or proof beyond a reasonable doubt.
>
> (b) Where the Protocol places the burden of proof on a Covered Person to rebut a presumption or to establish specified facts or circumstances, the standard of proof shall be by a balance of probability (i.e., a preponderance of the evidence), except as provided in Rules 3122(c) and 3122(d)

[5] To the extent Trainer Lynch has raised any constitutional or other legal challenges to the ADMC Program, those challenges are beyond the scope of the Arbitration and not for the Arbitrator to decide. The Arbitrator conducted this proceeding pursuant to existing law and afforded each party a full and fair opportunity to present their case. It is of no moment that the Agency's designated expert, Dr. Cole, previously, in another venue, questioned the constitutionality of the ADMC Program because, again, the issue is beyond the scope of this Arbitrator, and regardless, Dr. Cole is not an expert in constitutional law or offered for that purpose (indeed, she is not a lawyer), so any opinion she might offer in that regard (and she did not) would not be entitled to much, if any, weight.

5.2. Regarding interpreting the Protocol, 3070 provides in pertinent part that:

> (b) Subject to Rule 3070(d), the Protocol shall be interpreted as an independent and autonomous text and not by reference to existing law or statutes. . . .
>
> (d) The World Anti-Doping Code and related International Standards, procedures, documents, and practices (WADA Code Program), the comments annotating provisions of the WADA Code Program, and any case law interpreting or applying any provisions, comments, or other aspects of the WADA Code Program, may be considered when adjudicating cases relating to the Protocol, where appropriate.

5.3. Rule 3040 sets out certain obligations of a trainer, such as Trainer Lynch, as both a Covered Person and a Responsible Person, in pertinent part as follows:

> Rule 3040. Core Responsibilities of Covered Persons.
>
> (a) Responsibilities of All Covered Persons.
>
> It is the personal responsibility of each Covered Person: (1) to be knowledgeable of and to comply with the Protocol and related rules at all times. All Covered Persons shall be bound by the Protocol and related rules, and any revisions thereto, from the date they go into effect, without further formality. It is the responsibility of all Covered Persons to familiarize themselves with the most up-to-date version of the Protocol and related rules and all revisions thereto; . . . .

5.4. Under Rule 3223, the consequences for a first anti-doping violation related to Rule 3212 (presence) or Rule 3214(a) (possession) include two years of ineligibility and a fine up to $25,000, or 25% of the purse (whichever is greater); and payment of some or all of the adjudication costs and the Agency's legal costs.

5.5. Rule 3227 also permits elevated consequences if the Agency establishes the existence of "aggregating circumstances." Rule 3227 states:

> Rule 3227. Aggravating Circumstances.
>
> (a) . . . if the Agency establishes that Aggravating Circumstances are present, the period of Ineligibility otherwise applicable shall be increased by up to 2 years, depending on the seriousness of the Aggravating Circumstances, unless the Covered Person establishes that he or she did not knowingly commit the [ADRV]. Where the period of Ineligibility is increased pursuant to this Rule, an additional

> fine of up to $10,000 or an additional 10% of the total purse (whichever is greater) may also be imposed.
>
> (b) Actions and circumstances constituting Aggravating Circumstances include:
>
> > (1) Administration of a Banned Substance or Use of a Banned Method that is detrimental to the health and welfare of the horse or is designed to deceive the betting public;
> >
> > (2) The presence in the Covered Horse's Sample of a combination of Banned Substance(s) and Controlled Medication Substance(s);
> >
> > (3) Prior violations under the Protocol; or
> >
> > (4) The Covered Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an [ADRV] or a Controlled Medication Rule Violation, for which the Covered Person has not been separately sanctioned for Tampering.
>
> (c) For the avoidance of doubt, the examples set out in Rule 3227(b) are not exhaustive and other similar circumstances or conduct may also be deemed to amount to Aggravating Circumstances that justify the imposition of a longer period of Ineligibility.

5.6. Where a Violation of the ADMC Program is established, the respondent may be entitled to a mitigation of the applicable consequences if the respondent establishes, on a balance of probabilities, that she acted with either No Fault or Negligence or No Significant Fault or Negligence.

5.7. Fault, in Rule 1020, is defined as:

> …any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Covered Person's degree of Fault include (but are not limited to) the Covered Person's experience and special considerations such as impairment, the degree of risk that should have been perceived by the Covered Person, and the level of care and investigation exercised by the Covered Person in relation to what should have been the perceived level of risk. With respect to supervision, factors to be taken into consideration are the degree to which the Covered Person conducted appropriate due diligence, educated, supervised, and monitored Covered Persons (including Veterinarians), employees,

personnel, agents, and other Persons involved in any way with the care, treatment, training, or racing of his or her Covered Horses, and created and maintained systems to ensure compliance with the Protocol. In assessing the Covered Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Covered Person's departure from the expected standard of behavior. Thus, for example, the fact that the Covered Person would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Covered Person or Covered Horse only has a short time left in a career, or the timing of the horseracing calendar, would not be relevant factors to be considered in reducing the period of Ineligibility based on degree of Fault.

5.8. "No Fault or Negligence" is governed by Rule 3224, which provides:

Rule 3224. Elimination of the Period of Ineligibility Where There Is No Fault or Negligence.

(a) If a Covered Person establishes in an individual case that he or she bears No Fault or Negligence for the Anti-Doping Rule Violation(s) charged, the otherwise applicable period of Ineligibility and other Consequences for such Covered Person shall be eliminated (except for those set out in Rule 3221(a) and Rule 3620). When the violation is of Rule 3212 (presence of a Banned Substance), the Covered Person must also establish how the Banned Substance entered the Covered Horse's system as a pre-condition to application of this Rule 3224(a). . . . [emphasis added]

(b) Rule 3224 only applies in exceptional circumstances. In particular, it will not apply where the Banned Substance found to be present in a Sample: (1) came from a mislabelled or contaminated supplement; or (2) was administered to the Covered Horse by veterinary or other support personnel without the knowledge of the Responsible Person.

(c) A finding that the Covered Person bears No Fault or Negligence for an Anti-Doping Rule Violation shall not affect the Consequences of that violation that apply to the Covered Horse (i.e., Ineligibility in accordance with Rule 3222(a) and Disqualification of results in accordance with Rule 3221).

5.9. "No Significant Fault or Negligence" is governed by Rule 3225, which provides:

Rule 3225. Reduction of the Period of Ineligibility Where There Is No Significant Fault or Negligence.

> Reductions under this Rule 3225 are mutually exclusive and not cumulative; *i.e.*, no more than one of them may be applied in a particular case.
>
> (a) General rule. Where the Covered Person establishes that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation in question, then (unless Rule 3225(b) or 3225(c) applies) the period of Ineligibility shall be fixed between 3 months and 2 years, depending on the Covered Person's degree of Fault.
>
> (b) Specified Substances. Where the Covered Person establishes that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation in question, and the violation involves only a Specified Substance, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and, at a maximum, 2 years of Ineligibility, depending on the Covered Person's degree of Fault.
>
> (c) Contaminated Products or other contaminant. Where the Covered Person establishes that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation in question and that the Banned Substance in question came from a Contaminated Product or from another form of contamination, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and, at a maximum, 2 years of Ineligibility, depending on the Covered Person's degree of Fault.

5.10. Under Rule 1020, "No Significant Fault or Negligence" means the Covered Person establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the Anti-Doping Rule Violation or Controlled Medication Rule Violation in question. For any violation of Rule 3212 or 3312, the Covered Person must also establish how the Prohibited Substance entered the Covered Horse's system in order to establish "No Significant Fault or Negligence."

Presence-Related Charge

5.11. The Agency claims that Trainer Lynch violated Rule 3212 regarding the presence of a Prohibited Substance in a Covered Horse.

5.12. The parties agree that the burden of proof pursuant to ADMC Rule 3121 applies to these matters.

5.13. ADMC Program Rule 3212(a) states the following:

> It is the personal and non-delegable duty of the Responsible Person to ensure that no Banned Substance is present in the body of his or her Covered Horse(s). The Responsible Person is therefore strictly liable for any Banned Substance, or its Metabolites or Markers found to be present in a Sample collected from his or her Covered Horse(s). Accordingly, it is not necessary to demonstrate intent, Fault, negligence, or knowing Use on the part of the Responsible Person in order to establish that the Responsible Person has committed a Rule 3212 Anti-Doping Rule Violation.

5.14. Under Rule 3212(b), "sufficient proof of a Rule 3212 Anti-Doping Violation is established by any of the following":

> (1) the presence of a Banned Substance or its Metabolites or Markers in the Covered Horse's A Sample where the Responsible Person waives analysis of the B Sample, and the B Sample is not analysed;
>
> (2) the Covered Horse's B Sample is analysed, and the analysis of the B Sample confirms the presence of the Banned Substance, or its Metabolites or Markers found in the A Sample; or
>
> (3) where, in exceptional circumstances, the Laboratory (on instruction from the Agency) further splits the A or B Sample into two parts in accordance with the Laboratory Standards, the analysis of the second part of the resulting split Sample confirms the presence of the same Banned Substance or its Metabolites or Markers as were found in the first part of the split Sample, or the Responsible Person waives analysis of the second part of the split Sample.

5.15. Rule 3212 goes on, in subsection (c), to state as follows:

> (c) The general rule is that the presence of any amount of a Banned Substance or its Metabolites or Markers in a Sample collected from a Covered Horse constitutes an Anti-Doping Rule Violation by the Responsible Person of that Covered Horse.

Possession-Related Charge

5.16. The Agency claims that Trainer Lynch violated Rule 3214(a) regarding the possession of a Banned Substance in a Covered Horse.

5.17. Rule 3214(a) provides as follows: "The following acts and omissions constitute Anti-Doping Rule Violations by the Covered Person(s) in question: . . . Possession of a Banned Substance or a Banned Method, unless there is a compelling justification for such Possession."

5.18. Such possession is a strict liability offense under Rule 3214(a), without regard to the respondent's knowledge or intent.

5.19. Under the Rule 1020:

> Possession means actual, physical possession, or constructive possession (which shall be found only if the Covered Person has exclusive control or intends to exercise exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists). If the Covered Person does not have exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists, constructive Possession shall only be found if the Covered Person knew about the presence of the Prohibited Substance or Prohibited Method and intended to exercise control over it. There shall be no Anti-Doping or Controlled Medication Rule violation based solely on Possession if, prior to receiving notification of any kind of any violation, the Covered Person has taken concrete action demonstrating that the Covered Person never intended to have possession and has renounced possession by explicitly declaring it to the Agency. Notwithstanding anything to the contrary in this definition, the act of purchasing (including by any electronic or other means) a Banned Substance or Banned Method constitutes Possession by the Covered Person who makes the purchase, whether or not the Banned Substance or Banned Method purchased is ever delivered to the Covered Person.

5.20. Put another way, under the Rules, possession is established, in the absence of a compelling justification for the Possession, in three circumstances:

> (a) By the act of purchasing (including by any electronic or other means) a Banned Substance or Banned Method, regardless of whether the Banned Substance or Banned Method purchased is ever delivered to the Covered Person;
>
> (b) Where a Covered Person has exclusive control or intends to exercise exclusive control of, or over, either (i) the substance or (ii) the premises where the substance is located; or

> (c) If the Covered Person does not have exclusive control over the substance or the premises where the substance is located, constructive possession will be established if the Covered Person knew of the presence of the substance and intended to exercise control over it.

5.21. The Rule's definition of Possession in the ADMC Program is materially identical to the definition of possession in the WADA (*see* Article 2.6).

VI. ANALYSIS

6.1. The analysis that follows treats the two charges at issue: the Presence ADRV and the Possession ADRV.

6.2. As discussed in more detail below, the Agency requests that the Arbitrator impose on Trainer Lynch, for each of the charged ADRVs, a fine of $25,000, a two-year suspension, and a requirement that she pay some of the costs of this Arbitration proceeding to be imposed consecutively. The Agency also requests that the Arbitrator impose an additional $10,000 fine, and up to a two-year additional suspension, as aggravating circumstances, pursuant to the applicable Rules discussed above.

A. The Presence ADRV

Claims and Contentions

6.3. In their Pre-Hearing Briefs and during the Hearing, the Parties presented various arguments regarding their respective positions in this Arbitration, including each Party's expert's opinion and testimony regarding environmental contamination and other issues. The below summarizes the Parties' basic positions.

6.4. The Agency claims that Trainer Lynch violated Rule 3212 based on the presence of Altrenogest in the Covered Horse on June 24, 2023, as confirmed by both A Sample and B Sample. Additionally, the Agency contends that, because Trainer Lynch is unable to meet the pre-condition of identifying how the Altrenogest entered the Covered Horse's system, she cannot establish the balance of probabilities allowing her to pursue no fault or no significant fault defenses regarding the violation. Based on Trainer Lynch's charged violation of Rule 3212, the Agency asks the Arbitrator to impose on Trainer Lynch a fine of $25,000, a two-year suspension, forfeiture of the race prize money, and a requirement that she pay some of the costs of this Arbitration proceeding, plus an additional fine and suspension, as discussed elsewhere, on account of aggravating circumstances.

6.5. Trainer Lynch does not challenge the laboratory results indicating the presence of Altrenogest in the Covered Horse on June 24, 2023. Instead, Trainer Lynch contends that the source of the Altrenogest was another horse, Mary Katherine, and thus, the presence was a result of environmental contamination. More specifically, and additionally, the basis of Trainer Lynch's claim is as follows:

a. The Agency failed to investigate the fact that other horses tested positive in the barn where the Covered Horse was housed.

b. For 13 days prior to racing at Monmouth, the Covered Horse was housed in a stall directly adjacent to Mary Katherine, a filly receiving Altrenogest daily for prescribed therapeutic purposes.

c. The Altrenogest was administered to Mary Katherine, which was also one of Trainer Lynch's horses, by a male trainer at Monmouth track, and that the Covered Horse tested positive for Altrenogest because the male trainer could have spilled a drop of the drug onto the Covered Horse's stall on a surface in common, such as a board dividing the two stalls, while administering the drug to Mary Katherine.

d. Mary Katherine was administered Altrenogest on the same day that Motion to Strike raced.

e. Trainer Lynch does not know how the Altrenogest became present in the Covered Horse's system.

f. Dr. Fenger, Trainer Lynch's expert, opines that the Covered Horse tested positive because of environmental contamination.

6.6. For these reasons, Trainer Lynch argues that she bears No Fault or Negligence or Significant Fault, and thus, should not suffer the consequences of the Presence ADRV.

Evaluation of Expert Testimony

6.7. The Parties rely heavily on their respective expert witnesses, as described herein.

6.8. Each Party offered an expert witness in support of their position on the Presence ADRV. As mentioned above, Trainer Lynch offered the expert opinion of Dr. Clara K. Fenger, and the Agency offered the expert opinion of Dr. Cynthia Cole.

6.9. Summary of the experts' opinions:

a. In her written report, materials, and testimony, Dr. Fenger provided the following opinion, as summarized:

-That "Altrenogest is routinely used and permitted for female horses under HISA regulations for the purpose of heat suppression";

-That "the blood level required for a therapeutic effect of heat suppression is about 20 to 30 ng/mL Altrenogest, as much as 174 times the blood level claimed to have been present in the blood of Motion to Strike at the time of the race;"

-That "the amount of Altrenogest required to cause 172.5 pg/mL level of Altrenogest in Motion to Strike would have been 0.023 mL, or less than a drop of Altrenogest oil";

-That the 0.023 "amount could readily have been splashed on a surface in common between the two horses";

-That racing Commissions commonly consider substances to result from inadvertent environmental contamination and, as such, do not consider presence of such substances in irrelevant circumstances to be violative of their regulations;

-That the zero tolerance substances like Altrenogest by humans in contact with racing horses places an unfair burden on horsemen;

-That it is the responsibility of the regulatory body to determine the relative significance of such low level identifications rather than relying on "zero tolerance."

Dr. Fenger concludes in her expert opinion that the presence of Altrenogest in the post-race sample of Motion to Strike was a result of environmental exposure; that the concentration was inconsequential; and that was outside of any possibility of control of Trainer Natalia Lynch.

b. In her written report, materials and testimony, Dr. Cole provided the following opinion, as summarized:

-That "Altrenogest is a synthetic progestin approved for use in horses for the purpose of suppressing estrus (i.e., the reoccurring period of sexual receptivity in female horses);

-That "Altrenogest is derived from neither 19-nor testosterone and is structurally similar to the anabolic androgenic steroid";

-That "studies have shown that Altrenogest may have positive impacts on lean muscle mass production in racehorses;

-That reports in the literature have shown that Altrenogest can decrease aggressive stallion behavior to create a more focused performance by the horse;

-That Altrenogest is generally administered as an oil based formulation administered directly into the horse's mouth or in a grain ration;

-That the pharmacokinetics for Altrenogest administered orally to geldings has been determined in the (Machnik study), and the key finding in that study, relating to this case is that Altrenogest is rapidly eliminated from the horse's body with a half-life of 3-4 hours;

-That the conclusion by Trainer Lynch's expert that a single drop (0.23) of Altrenogest could have spilled on the wall boards between the stall walls thereby exposing Motion to Strike to Altrenogest, resulting in the finding of 172.5 pg/mL detected in his post-race blood sample is highly unlikely;

-That "for the 172.5 /ml detected in Motion to Strike the drop determined by Lynch's expert Dr. Fenger would have had to be administered directly into the horse's mucous membranes or licked off a non-porous surface and administered immediately before the blood was collected";

-That the concentration of Altrenogest in Motion to Strike's blood sample could have resulted from a typical therapeutic dose of 24-36 hours before the race.

> -That the presence of a banned substance is a violation according to the regulations with no mention of the necessity of a qualifying amount.
>
> Dr. Cole concludes that it is unlikely that the estimated concentration of 172.5 pg/ml of Altrenogest in Motion to Strike's blood resulted from contamination, and that the laboratory standards under ADMC Program require only qualitative not quantitative analysis to be performed for the purpose of detecting the Presence of Banned Substances.

6.10. In CAS 2016/A/4803, the CAS Panel set out some of the factors that an arbitrator should consider in determining the value or acceptance of expert evidence:

> a. The expert's duty is not to represent the interests of the party calling him or her but rather, to express his or her views honestly and as fully as necessary for the purpose of the case. An expert should provide independent, impartial assistance to the Panel. An expert should not be an advocate for any party;
>
> b. The Panel cannot completely disregard any expert evidence which is otherwise admissible or before it; rather, the Panel must pay regard to the content of the expert evidence, but it is not bound by it, or required blindly to follow it;
>
> c. The expert opinion should be comprehensible and lead to conclusions that are rationally based, with reasoning explained; the process of inference that leads to the conclusions must be stated or revealed in a way that enables conclusions to be tested and a judgment made about their reliability;
>
> d. In order to prevent deception or mistake and to allow the possibility of effective response, there must be a demonstrable objective procedure for reaching the expert opinion so that qualified persons can either duplicate the result or criticise the means by which it was reached, drawing their own conclusions from the underlying facts;
>
> e. The value of expert evidence depends upon the authority, experience and qualifications of the expert and, above all, upon the extent to which his or her evidence carries conviction;

> f. In cases where experts differ, the Panel will apply logic and common sense in deciding which view is to be preferred, or which parts of the evidence are to be accepted.
>
> The Arbitrator has considered these factors in assessing the experts' testimony tendered in this matter.

6.11 Although the Arbitrator discusses each expert individually below, the Arbitrator notes at the outset that Dr. Cole's pertinent credentials, based upon the criteria for evaluating an expert's testimony cited above, as opposed to those of Dr. Fenger, add to the persuasive value of Dr. Cole's testimony relative to Dr. Fenger's credentials, which are lacking in relation to the issues in this matter.

DR. FENGER

6.12. Having reviewed Dr. Fenger's expert materials, and having heard her testimony considered within the entirety of the record, the Arbitrator finds Dr. Fenger's opinion unpersuasive and accords it with minimal, if any, weight. Dr. Fenger, as her credentials indicate, is not well-qualified to offer expert opinion on the pertinent issues with regard to presence.

6.13. Dr. Fenger provided conflicting statements on cross-examination about her reason for no longer working for the Kentucky Horse Racing Commission. In her testimony in the *Dominguez* case, Dr. Fenger stated that she left the employ of the Commission because the Commission told her that it would be a conflict for her to continue working for them as a regulatory veterinarian on the thoroughbred side. In her testimony in this case, however, she contradicted that statement and said that she left on her own accord, not at the direction of the Commission. (Tr. at 384-85.)

6.14. Dr. Fenger purported to rely on studies in her testimony at the Hearing that are not referenced in her report. (Tr. at 289-99, 402-04, 419.)

6.15. Dr. Fenger stated in her report that the federal government recognized Altrenogest as a known toxin in humans. In her testimony at the Hearing, she stated that her statement in her report was incorrect, and rather, that this known toxin is found in water samples 4% of the time. But the expert failed to provide the report she is relying on to support this statement. (Tr. at 414-17.)

6.16. Dr. Fenger testified that when Altrenogest is administered it can splash around and get into hair and on the stall walls. However, she provided no scientific or otherwise meaningful evidence to support her statement. (Tr. at 331, 426-28.)

6.17. Dr. Fenger has a long-standing and ongoing relationship with the Horsemen, which substantially detracts from her impartiality, and thus, the persuasive value of any substantive testimony she might otherwise offer. A similar determination regarding Dr. Fenger's qualifications was made in *Dominguez*.

DR. COLE

6.18. Having reviewed Dr. Cole's expert materials, and having heard her testimony considered within the entirety of the record, the Arbitrator finds Dr. Cole's opinion highly persuasive and credible.

6.19. Dr. Cole is particularly well-qualified to offer expert opinion on the pertinent issues in this matter regarding presence.

6.20. Trainer Lynch's attempt to show that Dr. Cole lacks independence and has a bias towards the Agency fails. Dr. Cole testified that she did not like the new rules governing horse racing. True, although Dr. Cole testified that the ADMC Program affected her laboratory, that she tried to convince the Agency to fund her laboratory, and that she has concerns about the ADMC Program, Dr. Cole's testimony was credible, and these issues did not detract from it.

6.21. This evidence pointed to by Trainer Lynch in attacking the witness, at most, tends to show that Dr. Cole had professional concerns about the Agency and, regardless, she would not offer testimony to support the Agency unless she believed the evidence supported her opinion. Indeed, in response to a question about whether information relating to other horses where the Covered Horse was housed testing positive would have affected her opinion, Dr. Cole testified that her opinion was based on the information as indicated in her report and that she stood by her report.

6.22. Dr. Cole's opinion was reliance based on the nature of the opinion and supporting evidence and her basis to offer such an opinion. Dr. Cole considered the range of possibilities relating to the source of the banned drug, including environmental contamination, and arrived at her opinion based on the evidence.

The Agency Has Established Presence

6.23. The burden is on the Agency to establish a violation of Rule 3212 to the comfortable satisfaction of the panel. As described above, Rule 3212(a) sets forth a strict liability of a Covered Person, like Trainer Lynch, to ensure that no banned substances are present in a Covered Horse. Here, it is undisputed that both the A Sample and confirmatory B Sample resulted in an AAF for Altrenogest, a banned substance. *See* Rule 3122(c) ("Laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the Laboratory Standards."). The

amount of the substance is of little moment, *see* Rule 3212(c) ("any amount"), and the undisputed record establishes the presence violation.

Trainer Lynch Failed to Meet Her Burden to Avoid the Presence ADRV or Any Reduced Consequences Stemming from the Presence ADRV

6.24. Because the Agency has met its burden to establish an ADRV under Rule 3212, the Arbitrator next considers whether Trainer Lynch is entitled to a reduction in sanctions under Rules 3224 or 3225 as set forth above. As a threshold matter, the Arbitrator finds that Trainer Lynch has failed to show, by the balance of the probability, "how the prohibited substance entered the Covered Horse's system," and specifically, that it entered, as she claims, by way of environmental contamination.

6.25. The Rules expressly place the burden on the Covered Person to establish how the prohibited substance entered the horse's system. Trainer Lynch's argument that the Agency, not her, should have investigated how the drug was found in the Covered Horse's system fails. Indeed, once an A Sample, as confirmed by the B Sample, shows the presence of a banned substance in the horse's system, the burden shifts to the Covered Person to prove the source.

6.26. Trainer Lynch proffers that the source was cross-contamination as a result of the drug lawfully being administered to a filly, Mary Katherine, supposedly housed in the stall next to the Covered Horse, and that the drug was administered to Mary Katherine on the day of the Covered Horse's race at Monmouth. But the uncontested evidence provided by Gregory Pennock, an investigator for the Agency whose testimony the Arbitrator credits as consistent with the record and not disputed with competent evidence, establishes that Mary Katherine was several – five to seven – stalls away from the Covered Horse, and that Mary Katherine had not been administered Altrenogest for five days before the day the sample was collected from the Covered Horse. The record establishes that Altrenogest is administered orally and would have to be administered directly into the horse's mouth for contamination to occur, and that the amount detected in the sample is consistent with ingestion within 24 hours.

6.27. Taken as a whole, Trainer Lynch has presented mere speculation, rather than competent evidence, regarding the source of the Altrenogest in the Covered Horse on June 24, 2023.

6.28. Trainer Lynch relies on another decision of this Arbitral Body – *HIWU v. VanMeter* – but that case is neither binding nor supportive of her position in this case.

6.29. The present matter is readily distinguishable from the *VanMeter* case that Trainer Lynch relies on. In *VanMeter*, the pony in question had been housed in the *same* stall with a horse that had been legally receiving the banned substance. The expert testimony in that case established,

based upon actual studies and scientific evidence, that the banned substance isoxsuprine could trigger a positive sample from environmental contamination within the horse stall; that it was a powder and the powder would sometimes get onto the wood or hay in the stall; and that one horse occupying the stall of another horse that had been treated with that substance could test positive for that substance. The experts credibly testified, and the Arbitrator so found, that the probability of environmental contamination was high in this instance because, among things, the horse was a cribber, meaning it would chew on the wood in the stall.

6.30. These facts are a far cry from the present case. At bottom, the only evidence in this case of environmental contamination is that the Covered Horse was housed in the same barn as the horse Mary Katherine, which had been administered Altrenogest. But contrary to Trainer Lynch's unsupported arguments, the evidence establishes that the Covered Horse and Mary Katherine were housed at least five stalls away from each other, and that Mary Katherine had not been administered Altrenogest for many days before the sample collected from the Covered Horse.

6.31. In connection with attempting to skirt liability, Trainer Lynch appears to have made many misrepresentations or inconsistent statements of fact which detract from the overall credibility of her testimony. Critically, Trainer Lynch submitted an incorrect verification: she verified that Mary Katherine had 13 administrations of Altrenogest between June 12 and 24, 2023, and that Mary Katherine was housed next to the Covered Horse. But Trainer Lynch testified that her verification was wrong. Instead, according to Trainer Lynch, the last administration of Altrenogest to Mary Katherine was on June 19, 2023. The record evidence, as explicated by the credible testimony of Mr. Pennock, shows that the horses were many stalls apart, and Trainer Lynch testified that the horses rarely changed stalls.

6.32. More specifically, regarding the Rules, the Arbitrator finds that Trainer Lynch bears significant fault for the presence of Altrenogest. This is not a case of simple negligence. Not only has Trainer Lynch failed to show any benign manner in which the substance entered the Covered Horse (a critical failure), but even if she had, Trainer Lynch had (and breached) a clear and unmistakable duty to protect the Covered Horse from any cross-contamination and otherwise comply with the Rules. No evidence presented mitigates the responsibility placed on Trainer Lynch by the Rules she is charged with disobeying. Trainer Lynch's experience militates in favor of finding her at fault given her knowledge and experience.

B. The Possession ADRV

Claims and Contentions

6.33. Separate from the Presence ADRV, the Agency claims that Trainer Lynch violated Rule 3214(a) based on her possession of the banned substance Thyro-L on July 20, 2023. Based on Trainer Lynch's charged violation of Rule 3212, the Agency asks the Arbitrator to impose a fine of $25,000, a two-year suspension, and a requirement that Trainer Lynch pay some of the costs of this Arbitration proceeding, plus an additional fine and suspension, as discussed elsewhere, on account of aggravating circumstances.

6.34. Trainer Lynch admits that she was told before the implementation of the ADMC Program that Thyro-L was specifically banned under the new rules, and that all trainers should undertake a spring cleaning of all medications in their barns before the implementation of the ADMC Program. Trainer Lynch testified that she did do a spring cleaning pursuant to the notice and removed Thyro-L from her barn, but the evidence established that she failed to oversee its disposal.

6.35. Trainer Lynch admits that she was in possession of Thyro-L (Tr. at 620), and offers arguments in mitigation. For example, Trainer Lynch argues that she attempted to discard the Thyro-L once it became illegal by giving it to her mother, and that she did not know that the drug had remained in her mother's vehicle until the day the Agency found it. Trainer Lynch also points out that Thyro-L was legal and commonly used until May 22, 2023, only weeks before the Agency located it in the vehicle she drove to the racetrack.

6.36. According to Trainer Lynch, her possession was merely "constructive," not intentional, because she "wasn't trying to cheat." The Covered Horse never tested positive for Thyro-L, and there is no evidence that Trainer Lynch was attempting to dope "currently running horses." (Tr. at 617-618.) Put another way, Trainer Lynch contends that there is no evidence that she attempted to dope, or did "dope," any horse with Thyro-L, which means that the maximum penalty is inappropriate. Trainer Lynch acknowledges "nominal negligence," and believes the penalty should be on the "low end."

The Agency Has Established Possession

6.37. It is undisputed that Trainer Lynch was in possession of Thyro-L. *See, e.g.,* Rules 3214(a) and 1020 ("Possession"). Although Trainer Lynch at times characterized her possession as "constructive," it is undisputed that she drove a vehicle into the parking lot of the racetrack that contained Thyro-L, and that when confronted with a search of the vehicle, she admitted as much. This falls squarely within the ambit of the Rules prohibiting certain substances.

Trainer Lynch Failed to Meet Her Burden to Avoid the Presence ADRV or Any Reduced Consequences Stemming from the Presence ADRV

6.38. Trainer Lynch offers many arguments to escape liability or mitigate the consequences of her unlawful possession, but none are persuasive such that she can carry her burden.

6.39. On July 20, 2023, HIWU investigator conducted a search of Trainer Lynch's vehicle she drove to the racetrack at Belmont Park in Elmont NY, where she was temporarily stabling her horses. During the search, Investigator Pennock located a brown box containing several items in the trunk of the car. In the box was a white tub, some green pills, a scoop, a white syringe and a loose grey powder. Investigator Pennock informed Trainer Lynch that the items would be seized and tested. In response, Trainer Lynch informed the investigator that the substances were Thyro-L and Levamisole. There have been no issues raised regarding the appropriateness of the search.

6.40. When confronted with the contents of the trunk, Trainer Lynch stated that she did not know that the Thyro-L was in the car, because the car belonged to her mother, and she was only driving it because she lost the keys to her car. She stated that in March she had cleaned out her barn pursuant to notice that Thyro-L was now a banned substance, and when she found some in the barn she placed it, along with the other items found in the trunk as a result of the search, in a tub, put the tub in a box, and gave the box to her mother for disposal. She stated that the car she was driving belonged to mother and had not been used since her mother's hospitalization from April 4, 2023, until May 18, 2023, and her convalescence, during which time she did not leave the house. She stated she lost her keys at the racetrack the day before she used her mother's car to go to Belmont, and that she had not previously used the car.

6.41. On cross-examination, when presented with evidence regarding the dates on the box and the tub inside, Trainer Lynch was not able to offer credible evidence to support her original claim of giving the Thyro-L to her mother in March for disposal.

a. She stated that she didn't know the Thyro-L was in the car. However, when the car trunk was opened, she identified the substance in the container as Thyro-L.

b. She stated that in March, pursuant to notice that Thyro-L was now determined to be a banned substance, she cleaned her barn and put the Thyro-L in a container, placed the container in a box, and on March 14, 2023, gave it to her mother for disposal.

c. On cross-examination, however, it was established that the bucket labelled Sucralfate in which the Thyro-L was placed had a prescription date

of April 5, 2023, and the box in which the bucket labelled Sucralfate was found had a tracking number, which verified that the box was delivered on July 15, 2023.

d. The testimony of Trainer Lynch of having given the box containing the banned substance of Thyro-L to her mother for disposal in March is contradicted by the evidence establishing that the tub containing the Thyro-L was not available until April 5, 2023, and the box in which the container was placed was not available until July 15, 2023.

e. Trainer Lynch asserts that she meets the standard of no significant fault or negligence and should be given a reduced penalty because she did not know the Thyro-L was in the trunk of her mother's car. However, Rule 3040 details the care and responsibility of a Covered Person, and establishes that Trainer Lynch was not in compliance with this Rule by her failure to supervise disposal of the banned substance after removing it from her barn and it later having been found in the car she drove to Belmont.

6.42. Trainer Lynch's argument, that possession of Thyro–L was previously legal in New York, is irrelevant, because under the new law, Thyro-L is designated as a banned substance which is illegal for Trainers to possess.

6.43. The Arbitrator notes the Agency provided evidence that Trainer Lynch was attempting to evade or impede the search of her vehicle, but the record is inconclusive on that point, and so the Arbitrator makes no finding either way.

6.44. Although the Arbitrator does not impose any sort of negative inference whatsoever by the absence of evidence, the Arbitrator notes that Trainer Lynch inexplicably did not call perhaps the most knowledgeable witness in support of her case: her mother. The evidence Trainer Lynch did present, however, cannot overcome the fact that she was in possession of the banned Thyro-L.

6.45. The Arbitrator notes several concerns about the veracity of Trainer Lynch's testimony, which call into question her credibility and detract from her ability to show any entitlement to mitigation of any sanction:

a. Trainer Lynch's testimony regarding her lack of knowledge regarding the presence of Thyro-L in her vehicle;

b. The contradictory testimony regarding when she handled the Thyro-L and when she gave it to her mother;

c. Her failure to oversee the proper disposal of the Thyro-L.

6.46. The Arbitrator further notes that the Agency introduced evidence that suggested that Trainer Lynch had been in possession of her mother's automobile longer than one day. The evidence included clothing in the car and other personal items that could have belonged to Trainer Lynch which would indicate use of the automobile longer than one day, and would suggest that she was familiar with all of the contents in the car. However, this evidence is inclusive, and so the Arbitrator will likewise make no finding.

C. Imposition of Consequences

6.47. Because the Agency met its burden to establish both a Presence ADRV and a Possession ADVR, and Trainer Lynch failed to meet her burden to negate or mitigate either charge, the Arbitrator shall impose the consequences set forth in Rule 3223, specifically, as to each ADRV, two years of ineligibility and a fine up to $25,000.

6.48. The Agency seeks disqualification of the results of Motion to Strike from the June 24, 2023, race, and a forfeiture of the prize money for that race.

6.49. The Agency also seeks an assessment of some portion of the costs of the arbitration. While the assessment of some portion of costs appears to be mandatory given the conjunctive language used in Rule 3223(b), the amount of the contribution toward the arbitration costs appears to be purely discretionary with the Arbitrator. Under the circumstances, considering the specific facts and circumstances of the case, the substantial consequences imposed, and the purpose of the regulatory scheme as applied here, the Arbitrator imposes an assessment of $5,000 toward the costs of the arbitration, split evenly between the two ADRVs at issue.

6.50. The Arbitrator declines, in the Arbitrator's discretion and consistent with the intent and spirit of the Rules and the ADMC Program, to engage in fee-shifting for any legal costs. The Arbitrator concludes the consequences so ordered are sufficient, adequate, and appropriate given the circumstances and nature of the ADRVs in this case.

6.51. The Arbitrator similarly declines to order aggravated consequences for several reasons. The Agency did not make any formal request for aggravated consequences until the end of the Hearing, making imposition of such penalties unfair to Trainer Lynch. Further, the Arbitrator believes that the consequences so imposed are sufficient, adequate and appropriate given the circumstances and nature of the ADRVs in this case.

All other arguments by the parties have been considered and rejected.

VII. AWARD

7.1 Based on the foregoing facts, legal analysis, and conclusions of fact, the Arbitrator renders the following decision:

a. Trainer Lynch is found to have committed her first Presence ADRV, as described above. As a result, Trainer Lynch shall:

i. Be fined $25,000 to be paid to the Agency by the end of the period of Ineligibility described below;

ii. Be suspended for a period of Ineligibility of twenty-four (24) months, commencing July 20, 2023, the effective date of her provisional suspension, and ending on July 20, 2025;

iii. Be assessed $2,500 for part of the costs of this Arbitration to be paid to the Agency by the end of the period of Ineligibility described above; and

iv. Disqualification of the results that Motion to Strike obtained as a result of the June 24, 2023, race and forfeiture of the prize money of $1,100, which must be repaid to the Race Organizer.

b. Trainer Lynch is found to have committed her first Possession ADRV, as described above. As a result, Trainer Lynch shall :

i. Be fined $25,000 to be paid to the Agency by the end of the period of Ineligibility described below;

ii. Be suspended for a period of Ineligibility of twenty-four (24) months, commencing July 20, 2025, when the prior period of Ineligibility expires, and ending on July 20, 2027;

iii. Be assessed $2,500 for part of the costs of this Arbitration to be paid to the Agency by the end of the period of Ineligibility described above.

c. The consequences ordered in Sections 7.1 (a) and (b), respectively, shall be imposed consecutively, and not concurrently.

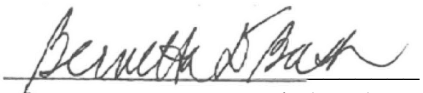
d. Except as provided above, each Party shall bear its own costs and fees.

e. There will be public disclosure of these findings in accordance with the ADMC rules.

f. This Decision shall be in full and final resolution of all claims and counterclaims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

IT IS SO ORDERED AND AWARDED.

Dated: November 9, 2023



Hon. Bernetta D. Bush (Ret.)
Arbitrator