UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

ADMINISTRATIVE LAW JUDGE: D. MICHAEL CHAPPELL

IN THE MATTER OF: **DOCKET No. D09423**

NATALIA LYNCH, APPELLANT

STATEMENT OF CONTESTED FACTS AND SPECIFICATION OF ADDITIONAL EVIDENCE

I. Preliminary Statement

Pursuant to this Court's December 28, 2023 order, Appellant Natalia Lynch submits this brief summarizing the testimony and documents she intends to use to supplement the record and the rulings and factual findings by the Arbitrator below that she will thereby contest at the forthcoming evidentiary hearing.[1] At the hearing, Ms. Lynch will establish that the sanctions Appellee Horse Racing Integrity and Safety Authority ("HISA") seeks to impose on her must be set aside because they are the product of an incurably deficient process in which HISA repeatedly failed to abide by its own rules and applicable law and cannot be sustained on the record as supplemented in any event.

First, HISA cannot satisfy its burden to establish that a violation of either Anti-Doping and Medication Control ("ADMC") Rule 3212 ("Presence Charge") or ADMC Rule 3214(a) ("Possession Charge") has occurred, because HISA has failed from the inception to

[1] Three exhibits are attached to this brief. Exhibits A and B, respectively, list additional witness testimony and documentary evidence Ms. Lynch intends to introduce at the evidentiary hearing. Exhibit C sets forth a list of factual findings made by the Arbitrator below that Ms. Lynch intends to contest based on the supplemented record.

submit adequate analytical support for the B Sample test for the Presence Charge and A Sample test for the Possession Charge in derogation of its own rules and international standards that HISA expressly adopts. That incurable defect, on its own, requires dismissal of all charges and sanctions against Ms. Lynch.

Second, with respect to the Presence Charge, even if HISA could meet its burden to establish a violation, the supplemented record will show that any positive test should be attributed to likely sources of environmental contamination and that there was No Fault or Negligence, or No Significant Fault or Negligence, on the part of Ms. Lynch, therefore requiring that the underlying sanctions for Presence be set aside. Indeed, when corrected for obvious scientific errors, the "analysis" of HISA's own expert below confirms contamination as the most likely explanation.

Third, with respect to the Possession Charge, even if HISA could meet its burden to establish that a Banned Substance was present in the trunk of the car that was searched, the supplemented record will show that a finding of Possession cannot be made against Ms. Lynch, as Ms. Lynch was neither in actual or constructive Possession of the tub containing the alleged Banned Substance when it was unlawfully seized by HISA's investigators from the trunk of Ms. Lynch's mother's car.

Fourth, even if HISA could establish Possession under its rules and applicable law, the supplemented record will show that there were mitigating factors which warrant a finding of No Fault or Negligence, or No Significant Fault or Negligence, on the part of Ms. Lynch, thereby requiring a significantly reduced sanction against Ms. Lynch to bring those cases in line with the sanctions imposed in similar cases.

II. Summary of Proceedings to Date

On July 20, 2023, three investigators from the Horseracing Integrity & Welfare Unit ("HIWU"), HISA's private enforcement agency, served Ms. Lynch with an Equine Anti-Doping ("EAD") Notice alleging that a blood sample (the A Sample) from a Covered Horse Ms. Lynch trained, Motion to Strike, had tested positive for the Banned Substance Altrenogest after a race at Monmouth Park in Oceanport, New Jersey, on June 24, 2023. App. Bk. at 537-42. The EAD Notice imposed a provisional suspension on Ms. Lynch. *Id.* at 539-40. Although the Presence Charge concerned a trace amount of a legal drug commonly and regularly administered at racetracks around the country, and although this was Ms. Lynch's first ever violation, three investigators—including former FBI Agents Gregory Pennock and Naushaun "Shaun" Richards—personally served Ms. Lynch with a Charge Letter for Presence, despite there being no requirement whatsoever for personal service in the ADMC Rules. *See* ADMC Rule 3250(b) ("Notification to a Covered Person by the Agency, for all purposes of the Protocol, may be accomplished either through actual or constructive notice" where "[c]onstructive notice shall be deemed to have been given when the information in question is delivered by third-party courier or U.S. postal mail . . or by email or text message"). Following service of the Charge Letter, the three investigators then subjected Ms. Lynch to a coercive interrogation in a small room regarding the Presence Charge, following which they proceeded to conduct a wholly unwarranted search of her barn and an illegal and unauthorized search of her mother's car for a substance which she was legally entitled to possess. *Id.* at 467. On July 24, 2023, attorney John McPherson Hayes notified HIWU that Ms. Lynch had retained him as her counsel. *Id.* at 375-76.

On July 25, 2023, Ms. Lynch requested a provisional suspension hearing and requested analysis of another blood sample (the B Sample). *Id.* at 378-79. On July 28, 2023,

HIWU served Ms. Lynch with a separate EAD Notice alleging that HIWU found Ms. Lynch in possession of a Banned Substance (Levothyroxine, or "Thyro-L"). *Id.* at 409-14. HIWU imposed another provisional suspension on Ms. Lynch. *Id.* at 412-14. On July 28, 2023, Judicial Arbitration and Mediation Services, Inc. ("JAMS") confirmed the commencement of Arbitration and notified HIWU and Ms. Lynch of the appointment of Judge Bernetta D. Bush as the Arbitrator.[2] Under HISA's rules, the Arbitrator—a retired Circuit Court Judge for Cook County, Illinois who appears to have had absolutely no prior experience with horses or anti-doping regulations—was chosen to be the Arbitrator without any input from Ms. Lynch by JAMS, which in turn had selected the Arbitrator from a pool of arbitrators determined exclusively by HISA and HIWU—again without any input from Ms. Lynch.[3]

On August 7, 2023, HIWU served Ms. Lynch with a Charge Letter for Possession of a Banned Substance, alleging violation of HISA's ADMC Program (specifically, ADMC Rule 3214(a)). *Id.* At 421-30. In violation of ADMC Rule 3248(b), HISA failed to append the Laboratory Documentation Package for the A Sample to that Charge Letter. *Id*. On September 11, 2023, HIWU served Ms. Lynch with a Charge Letter for Presence (ADMC Rule 3212), alleging that the blood B Sample confirmed the Presence of Altrenogest in Ms. Lynch's horse. *Id.* at 450-59. In further violation of ADMC Rule 3248(b), HISA again failed to append the

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2 *See* Commencement of Arbitration and Notice of Appointment of Provisional Hearing Arbitrator (July 28, 2023) ("Arbitration Notice"). HISA appears to have omitted the Arbitration Notice from the Appeal Book it submitted for these proceedings. Should HISA not stipulate to the above facts, Ms. Lynch will introduce the Arbitration Notice at the forthcoming evidentiary hearing.

3 *See* ADMC Rule 7020 (directing that the "Arbitral Body [JAMS] will ordinarily assign a sole arbitrator to hear a case"); ADMC Rule 7030 ("The Arbitral Body shall have a pool of arbitrators consisting of a minimum of 5 members appointed by mutual agreement of the Authority [HISA] and the Agency [HIWU].").

Laboratory Document Package for the B Sample to the Charge Letter. *Id*. Ms. Lynch contested the alleged violations, and the parties entered into arbitration.

On or about September 13 and 14, 2023, Mr. Richards—one of the investigators HISA had dispatched earlier to conduct a coercive interrogation of Ms. Lynch and the ensuing illegal search of her mother's car—called Ms. Lynch multiple times about this matter, despite her being represented by counsel in the ongoing Arbitration. *Id.* at 315, 3595-3600. Mr. Hayes objected to HISA's conduct, noting that Ms. Lynch had felt "intimidated" and "harassed" by Mr. Richards—just as she had felt when HISA dispatched Mr. Richards and two other agents to bully her following gratuitous personal service of the Charge Letter. App. Bk. at 17-18. In receipt of Mr. Hayes's objection to this contact, HIWU's Senior Litigation Counsel had the temerity to defend this conduct and ***even threatened to charge Ms. Lynch with a further violation of its rules*** should Ms. Lynch choose not to continue to speak to Mr. Richards.[4] HISA's defense of yet more outrageous conduct by its agents—notwithstanding clear guidance to the contrary from the Rules of Professional Conduct[5]—is part and parcel of a pattern of conduct that should not be rewarded. On September 16, 2023, the Arbitrator directed HISA and its agents to have no further direct contact with Ms. Lynch. App. Bk. at 18, 2719:15-17.

On November 9, 2023, the Arbitrator found that Ms. Lynch violated ADMC Rule 3212 for the Presence of Altrenogest in the sample collected from Motion to Strike on June 24, 2023, and ADMC Rule 3214(a) for Possession of Banned Substance Thyro-L on July 20, 2023. App. Bk. at 43-45. The Arbitrator's decision imposed the maximum period of ineligibility and

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4 *See* App. Bk. at 316 (email from HISA Senior Litigation Counsel A. Farrell to J. Hayes (September 15, 2023)).

5 *See* ABA Model Rules of Professional Conduct 4.2 ("[A] lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyers in the matter, unless the lawyer has the consent of the other lawyer.").

financial penalty for each violation resulting in a total ban of 48 months, $50,000 in fines, and $5,000 in arbitration costs.[6] *Id.* Motion to Strike was also disqualified from the June 24, 2023 race, and $1,100 in winnings were ordered forfeited. *Id.*

Ms. Lynch terminated Mr. Hayes's representation of her prior to filing this appeal. Ms. Lynch subsequently retained the undersigned as her counsel.

On December 13, 2023, pursuant to 15 U.S.C. § 3058(b)(1)-(3) and 16 C.F.R. § 1.146(a), Ms. Lynch filed a Notice of Appeal and Application for Review of civil sanctions imposed by HISA ("Notice of Appeal") which included a request for the supplementation of the record, an assertion of contested facts, and a request for an evidentiary hearing. App. Bk. at 6-9. In an order dated December 28, 2023, Judge Chappell found that an evidentiary hearing in this matter "is warranted."[7] Order on Application for Review and Directing Briefing at 3. In advance of the evidentiary hearing, Judge Chappell ordered that Ms. Lynch file a brief: (i) identifying the witnesses whose testimony Ms. Lynch plans to use to supplement the record, along with "a summary of the expected testimony of each witness"; and (ii) identifying the documents with which Ms. Lynch plans to supplement the record, along with a "summary of

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[6] Ms. Lynch will also establish at the hearing that, under HISA's proposed revisions to these regulations, the Presence Charge would now be met with a 60-day suspension and $5,000 fine. Despite having provisionally suspended violations for other trainers sanctioned for the presence of Altrenogest in light of the proposed rule change, HISA sought the imposition of the maximum sanctions against Ms. Lynch in the Arbitration below and only recently, and belatedly, acknowledged that if HISA could establish Presence, Ms. Lynch's penalty would be reduced to 60 days and $5,000 under the rule soon to be in effect.

[7] Given the development of the record since she filed her Notice of Appeal and all of the deficiencies set forth below, Ms. Lynch believes that an extended hearing pursuant to 16 U.S.C. § 1.146(c)(5) would also be warranted in this matter and would welcome the opportunity to participate in such a hearing should the ALJ conclude that a hearing of that nature would be more appropriate in light of this submission. In the alternative, Ms. Lynch requests an enlargement of the time to be made available to her for a hearing to supplement the record under the provisions of 16 U.S.C. § 1.146(c)(4).

such exhibits, together with a demonstration as to how such exhibits are supplemental to the exhibits already in the evidentiary record below, the basis for admissibility, and how such exhibits are relevant to the reasons for challenging the sections." *Id.* Judge Chappell further directed Ms. Lynch to submit "a statement of the facts found by the Arbitrator that Appellant seeks to contest in the requested evidentiary hearing, together with a demonstration as to how such facts are material to the Decision." *Id.*[8]

In accordance with Judge Chappell's order, Ms. Lynch has summarized in this brief and the accompanying exhibits the additional witness testimony and documentary evidence she intends to introduce at the evidentiary hearing and the findings by the Arbitration that she intends to contest upon supplementation of the record. Ms. Lynch does so while expressly preserving all other issues that she raised in her Notice of Appeal, including objections to procedural and evidentiary rulings by the Arbitrator that prejudiced Ms. Lynch and the prejudice that Ms. Lynch suffered through ineffective assistance of her counsel for the Arbitration.[9]

III. HISA Bears the Burden of Establishing the Violations before the Administrative Law Judge

In these proceedings, HISA bears the burden of establishing a violation of ADMC Rules. *See* 16 C.F.R. 1.146(c)(6)(i) ("The burden of proof is on the Authority to show, by a

[8] Judge Chappell originally ordered that Appellant file this brief by January 12, 2024. On January 12, 2024, Judge Chappell granted the parties' joint motion for an extension of this deadline until February 12, 2024. On February 12, 2024, Judge Chappell granted the parties' Joint Motion for an extension of this deadline until March 1, 2024.

[9] The Arbitrator also held that "any constitutional or other legal challenges to the ADMC program" were "beyond the scope of the Arbitration and not for the Arbitrator to decide." App. Bk. at 24, n.5. Ms. Lynch expressly reserves the right to—and does intend to bring—a series of legal and constitutional challenges to the sanctions HISA seeks to impose on her. Ms. Lynch has not detailed those challenges herein, as they are beyond the scope of Judge Chappell's December 28, 2023 order. Ms. Lynch intends to raise these issues at the evidentiary hearing and is happy to provide further briefing or to be heard on those issues separately, as it may please the ALJ.

preponderance of the evidence, that the covered person has violated a rule issued by the Authority, but the proponent of any factual proposition is required to sustain the burden of proof with respect thereto".). The statute is clear that "the civil sanction shall be subject to de novo review by an administrative law judge." 15 U.S.C. § 3058(b)(1). Thus, the administrative law judge ("ALJ") "must review the Sanctions 'anew,' as though the issue had not been heard before, and no decision had previously been rendered." *Matter of Poole*, Decision at 4, FTC Docket No. 9417 (Nov. 13, 2023) (quoting *Freeman* v. *DirecTV, Inc.*, 457 F.3d 1001, 1004 (9th Cir. 2006)). This requires "an independent examination of the record," with "no deference owed to the determination made below." *Id.* (citations omitted). Faithful adherence to these principles is critical in this case where, as indicated in Ms. Lynch's Notice of Appeal, there were severe infirmities and defects in the way the proceedings were conducted below, including the Arbitrator's flawed evidentiary rulings, findings of fact, and application of the applicable law.

Moreover, while the factual record in the Arbitration below will serve as the "initial record" before the ALJ, that record "will be supplemented by evidence presented" in the forthcoming hearing. 16 C.F.R. 1.146(c)(4). The ALJ's decision at the conclusion of these proceedings "must be based on a consideration of the whole record relevant to the issues decided and must be supported by reliable and probative evidence." 16 C.F.R. 1.146(d)(2). The regulations empower the ALJ to "(i) [a]ffirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction of [HISA]; and (ii) [m]ake any finding or conclusion that, in the judgment of the [ALJ], is proper and based on the record." 16 C.F.R. 1.146(d)(3).

For the reasons detailed herein, HISA will not be able to show that the sanctions against Ms. Lynch were imposed after affording Ms. Lynch due process, nor will HISA be able

to establish, as a substantive matter, that the sanctions HISA seeks to impose are supported by the facts and the law.

IV. The Sanctions Must Be Set Aside Because HISA Has Prejudiced Ms. Lynch by Repeatedly Failing To Act in Accordance with Its Own Rules

(a) In Derogation of Applicable Rules, HISA Failed To Provide Ms. Lynch the Laboratory Documentation Packages in Conjunction with Both Charges and Wrongly Refuses To Provide This Documentation to This Day

Ms. Lynch will establish that HISA failed to follow its own rules in pursuing the sanctions against her, thereby rendering HISA's efforts to prosecute her void from the outset.

In its Charge Letter for the Presence Offense, in violation of ADMC Rule 3248(b), HISA failed to provide Ms. Lynch with the full Laboratory Documentation Package for the B Sample. App. Bk. at 421-30. Ms. Lynch will also establish before the ALJ that, in further violation of ADMC Rule 3248(b), HISA has persisted in refusing to provide Ms. Lynch with the full Laboratory Documentation Package for the B Sample despite her repeated requests for it. *See* January 16, 2024 Email from J. Bunting to C. Boehning; January 24, 2024 Letter from A. Farrell to C. Boehning. Similarly, in its Charge Letter for the Possession Offense, HISA failed to furnish the Laboratory Documentation Package for the A Sample. App. Bk. at 450-59. And Ms. Lynch will establish before the ALJ that HISA again has refused to provide the full Laboratory Documentation Package for the A Sample despite Ms. Lynch's repeated requests for it. *See* January 16, 2024 Email from J. Bunting to C. Boehning; January 24, 2024 Letter from A. Farrell to C. Boehning.

By refusing to provide these Laboratory Documentation Packages, HISA has failed to abide by its own rules and standards. ADMC Rules require HISA to provide the A Sample Laboratory Documentation Package and B Sample Laboratory Documentation Package when it furnishes the Charge Letter to the Covered Person. In fact, ADMC Rule

3248(b) states unequivocally the "the Agency ***shall***" include in the Charge Letter, among other things, "a copy of the A Sample Laboratory Documentation Package and (if applicable and if requested) the B Sample Laboratory Documentation Package." ADMC Rule 3248(b) (emphasis added). And the ADMC Rules define "Laboratory Documentation Package" as the "material produced by a Laboratory upon reporting of an Adverse Analytical Finding … to support an analytical result such as an Adverse Analytical Finding … ." ADMC Rule 1020. In that same vein, HISA's Laboratory Guidelines require that in the case of an "Adverse Analytical Finding … the record shall include the data necessary to support the conclusions reported." ADMC Rule 6315(f).

Those requirements embody relevant provisions of the International Standard for Laboratories ("ISL") from the World Anti-Doping Agency's Code ("WADA," and the "WADC"), which the ADMC Rules expressly adopt by way of Rule 3070(d).[10] ISL 5.3.8.2 states that where an Adverse Analytical Finding is made, "the record ***shall*** include the data necessary to support the conclusions reported as set forth in and limited by [WADA's Technical Document on Laboratory Documentation Packages]" (emphasis added). ISL 5.3.8.2 also requires a laboratory to have "documented procedures to ensure that it maintains a record related to each *Sample* analyzed."

HISA has utterly and willfully failed to satisfy these requirements: HISA provided *no record* in support of Ms. Lynch's B Sample test for the Presence Charge and A Sample test for the Possession Charge either in the Charge Letters or subsequently, despite repeated requests that it do so. These failures require that the charges against Ms. Lynch be

[10] In fact, HISA has expressly acknowledged that its rules embrace the WADC in filings in other cases before this forum. *See* HISA Brief of Proposed Conclusions of Law and Order at 7, *Matter of Perez,* FTC Docket No. 9420 (Jan. 8, 2024).

dismissed and raise very serious questions about HISA's conduct. If HISA believed the data supported the charges, why did it fail to follow the rules when issuing the Charge Letters? And why has it continued to resist making these data available?[11]

(b) HISA's Failures To Provide the Full Laboratory Documentation Packages Have Severely Prejudiced Ms. Lynch

Ms. Lynch will establish further that HISA's repeated failures to provide the full Laboratory Documentation Packages have severely prejudiced her ability to defend herself both in the Arbitration and in the course of these proceedings. Ms. Lynch will introduce expert testimony from Dr. Steven A. Barker. Dr. Barker is a professor emeritus of comparative biomedical sciences at Louisiana State University School of Veterinary Medicine, where he also served as State Chemist and Director of the Equine Medication Surveillance Laboratory for the Louisiana State Racing Commission. Dr. Barker has extensive experience and expertise in

[11] To the extent that HISA seeks to rely on ADMC Rule 3122(d), which provides that "Departures from any other Standards or any provisions of the Protocol shall not invalidate analytical results or other evidence of a violation, and shall not constitute a defense to a charge of such violation; provided, however, that if the Covered Person establishes that a departure from any other Standards or any provisions of the Protocol could reasonably have caused the Adverse Analytical Finding or other factual basis for the violation charged, the Agency shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or other factual basis for the violation", we note that this Rule cannot possibly apply when HISA has utterly failed to provide the requisite "analytical results" to support the violation. To find otherwise would render meaningless this provision as well as other provisions of the ADMC Protocol which require HISA to furnish the data necessary to support the violation to satisfy its burden. *See, e.g.*, ADMC Rule 3248(b) (the "Charge Letter" shall "enclose[ ] a copy of the A Sample Laboratory Documentation Package and (if applicable and if requested) the B Sample Laboratory Documentation Package"); ADMC Rule 1010 ("Laboratory Documentation Package. . . means the physical or electronic material produced by a Laboratory upon reporting of an Adverse Analytical Finding or as requested by the Agency to support an analytical result such as an Adverse Analytical Finding"); ADMC Rule 6315(f) ("In the case of an Adverse Analytical Finding. . . the record shall include the data necessary to support the conclusions reported"). Moreover, if the ALJ were to adopt such a broad construction of the Rule, Rule 3122(d) would be unlawful, because it would be inconsistent with the authorizing statute, which states that the rules "*shall* provide for adequate due process." 15 U.S.C. § 3057(c)(3) (emphasis added).

analytical chemistry, drug metabolism, and pharmacology and has published over 100 peer-reviewed articles on these topics. Dr. Barker will testify, among other things, that the documentation HISA has failed to furnish is necessary to interpret the underlying results and that, absent that documentation, HISA cannot establish that a violation has occurred at all.

Dr. Barker will also testify that, in his experience, labs—including labs that HISA has elected to use in this case—have not always followed ISO standards as required by HISA's applicable rules and Laboratory Guidelines (*see, e.g.*, ADMC Rules 6100, 6130, and 6301) and that he is aware of significant flaws in the consistency of testing across the labs retained by HISA. This lack of consistency is all the more concerning because HISA itself has touted the benefits of uniformity: "[f]or the first time, labs across the country will be testing for the same substances at the same levels."[12] Dr. Barker will testify that HISA's failure to abide by its own standards and mission calls into question the validity of the underlying results.

(c) The Prejudice to Ms. Lynch Can Only Be Remedied by Setting Aside the Underlying Sanctions with Prejudice

Finally on this point, Ms. Lynch will establish that the only appropriate remedy for curing the prejudice HISA's misconduct has caused her is immediate dismissal with prejudice of the underlying sanctions. HISA's rules requiring that this documentation be provided could not be clearer and yet HISA failed to provide the documentation when required under its own rules and has persisted in refusing to provide this documentation today.

While Ms. Lynch plans to subpoena this documentation, she has no guarantee that HISA's intransigence will end anytime soon. Ms. Lynch has very real concerns about whether the data even exists and what HISA's motivations are for failing to comply with its own rules

[12] HISA, *HISA Q&A: The ADMC Program*, Press Release, Mar. 8, 2023, https://hisaus.org/news/hisa-qa-the-admc-program.

and widely recognized international standards. If HISA at last decides to provide the documentation or is ordered to do so in this proceeding, receiving the documentation almost eight months into Ms. Lynch serving this unlawful sanction cannot cure the prejudice against her. In light of this repeated breach, the only appropriate remedy is dismissal of the underlying sanctions with prejudice.[13]

Ms. Lynch will show that an anti-doping agency's failure to abide by testing transparency requirements is sufficient to invalidate the underlying sanctions. For example, in CAS 2009/A/1752 *Vadim Devyatovskiy* v. *International Olympic Committee*, the Court of Arbitration for Sport ("CAS") overturned sanctions imposed by the International Amateur Athletic Federation ("IAAF"). The CAS held that the IAAF failed to establish, to the Panel's "comfortable satisfaction"—the same standard that applies to HISA under ADMC Rule 3121(a)—that an anti-doping rule violation had been committed because ISL 5.2.6.1 (now, 5.3.8.2) had not been met. As the CAS Panel made clear, "[d]oping is an offence which requires the application of strict rules. If an athlete is to be sanctioned solely on the basis of the provable presence of a prohibited substance in his [or her] body, it is his or her *fundamental right* to know that the … Testing Authority . . . has strictly observed the mandatory safeguards. . . . Strict application of the rules is the *quid pro quo* for the imposition of a regime of strict liability for doping offenses." CAS 2009/A/1752 at ¶¶ 252-53 (emphases added). This is even more true here where a fundamental Congressional purpose of establishing HISA was to ensure uniformity nationwide. *See* 15 U.S.C. 3055(b)(3), 3055(c)(1)(A)(ii) ("in developing the horseracing anti-

[13] Should the ALJ decline to dismiss the charges with prejudice, Ms. Lynch seeks in the alternative that the ALJ draw an adverse inference against HISA for failure to furnish the required documentation and therefore conclude upon drawing that inference that the record as supplemented cannot sustain either violation.

doping and medication control program, [HISA] shall take into consideration the following: Rules, standards, procedures, and protocols regulating medication and treatment methods for covered horses and covered races should be uniform and uniformly administered nationally."). But HISA itself must concede that its existing lab network fails this requirement at every level and HISA's failure to follow its own rules to conceal this fact cannot be rewarded.

V. The Sanctions for Presence of Altrenogest Cannot Be Upheld

While the procedural deficiencies outlined above suffice to vitiate the underlying sanctions, Ms. Lynch will also establish that the record as supplemented through the forthcoming evidentiary hearing cannot sustain the underlying sanction for Presence of Altrenogest.

(a) HISA Will Not Be Able To Sustain the Finding That Altrenogest Was Present in the Covered Horse

As discussed above (*supra* Section IV), Ms. Lynch will show through Dr. Barker's testimony that the documentary evidence HISA has furnished to date is insufficient to support a conclusion that Altrenogest was present in Motion to Strike. Moreover, Ms. Lynch will object to any effort by HISA to seek to rely on the testing documentation it has provided to date for failing to comply with HISA's own procedural rules. *See* 16 C.F.R. § 1.146(c)(5)(iv) (stating that the "final factual record," in addition to including "[a]ny new facts adduced at the hearing and found by the Administrative Law Judge" may only include "facts found by [HISA] that, in the determination of the Administrative Law Judge, were found in a process that was consistent with 15 U.S.C. 3057(c), [HISA]'s Rule Series 8300 and adequate due process").

Ms. Lynch will further seek to bar admission of the documentation HISA introduced during the arbitral proceedings as inadmissible hearsay unless HISA calls the laboratory technicians who actually performed the underlying tests to testify at the hearing. *See* 16 C.F.R. § 1.146(c)(6)(ii) (allowing admission of hearsay in these proceedings only if it bears

"satisfactory indicia of reliability."); *see also Bullcoming* v. *New Mexico*, 564 U.S. 647, 658-65 (2011) (requiring the "certifying analyst's in court testimony" for forensic evidence to satisfy the requirements of the Confrontation Clause).

(b) Should Presence of Altrenogest Be Found, Ms. Lynch Will Establish That Any Such Presence Was the Result of Environmental Contamination

Even if the ALJ should uphold the finding of Presence of Altrenogest upon review of the full record as supplemented, Ms. Lynch will establish at the forthcoming evidentiary hearing that any such Presence was the result of environmental contamination.

i. Additional Factual Evidence Regarding the Likelihood of Environment Contamination

In addition to Dr. Barker's analysis, Ms. Lynch will introduce additional evidence that establishes that there was a high likelihood of environmental contamination thereby supporting a finding of No Fault or Negligence (ADMC Rule 3224) or No Significant Fault or Negligence (Rule 3225) and the elimination or reduction of the sanctions brought against Ms. Lynch.

Ms. Lynch will introduce witness testimony by Dr. Mari J. Good. Dr. Good is an experienced and well-respected veterinarian at Melbourne Animal Hospital in Florida, who treated Ms. Lynch's horses, including Motion to Strike and the filly Mary Katherine, the horse that had been lawfully administered Altrenogest, in the relevant time period. Dr. Good will testify, with the support of documentary evidence, that Mary Katherine was prescribed a daily administration of Altrenogest in the lead-up to Motion to Strike's race at Monmouth on June 24, 2023.

Dr. Good's testimony will be corroborated by testimony from Stacey McKinney, Ms. Lynch's hot-walker at Belmont Park.[14] Ms. McKinney will testify regarding the administration of Altrenogest to Mary Katherine and that Motion to Strike was stalled next to Mary Katherine in the lead-up to Motion to Strike's race at Monmouth on June 24, 2023.[15] Ms. McKinney will also testify regarding possible sources of environmental contamination in the barn. Ms. Lynch will further establish through testimony of both Dr. Good and Ms. McKinney that Motion to Strike, a gelding, did not exhibit stallion-like behavior, which would have made him particularly difficult to train or handle.[16]

Ms. Lynch will also establish at the forthcoming hearing that there was another potential source of environmental contamination for Motion to Strike, which HISA and the Arbitrator improperly foreclosed Ms. Lynch from raising during the Arbitration. As Ms. Lynch attempted to submit below (App. Bk. at 3079:11-18, 3080:17-3081:4, Motion to Strike was shipped to trainer Bruno Tessore's barn at Monmouth Park on the morning of the race on June 24, 2023, and was saddled by Mr. Tessore.[17] Ms. Lynch will establish at the evidentiary hearing

[14] The Arbitrator below accepted as "evidence" pictures and a video of the barn at Belmont from October 2023 after Ms. Lynch had moved out of the barn, long after Ms. Lynch's provisional suspension, and long after the events in question to conclude that Motion to Strike was not stalled near the filly Mary Katherine. App. Bk. at 653-96. The actual evidence we will include in the supplemental record exposes the error in this finding.

[15] To that end, Ms. Lynch also intends to introduce claiming records and video footage that will undermine the narrative HISA advanced below regarding when and where Motion to Strike was stalled.

[16] Ms. Lynch will establish through testimony by Dr. Good and Dr. Barker that there are no performance-enhancing benefits to administering Altrenogest and no other reason to administer the substance to a well-behaved gelding like Motion to Strike.

[17] The Arbitration hearing transcript contains a series of erroneous references to a "Mr. Tessitore," in lieu of Mr. Tessore.

that Mr. Tessore was subsequently charged by HISA for the *same* violation (ADMC Rule 3212) involving the *same* substance (Altrenogest) found in a horse stabled at Mr. Tessore's barn.[18]

Consistent with HISA's mission to adjudicate cases fairly, HISA and HIWU should have furnished this crucial information to Ms. Lynch in advance of the Arbitration and they had a duty to introduce this information at the hearing itself given its significance to the case. And there can be no doubt that this information was within their custody and control, as HIWU itself had ordered the testing and brought the charge against Mr. Tessore.[19]

Yet despite knowing they were in possession of exculpatory evidence, HISA and HIWU chose *not* to furnish this relevant evidence to Ms. Lynch or the Arbitrator in the proceedings below. Even worse, HISA and HIWU withheld this relevant evidence from their own expert Dr. Cole and nonetheless offered opinions from Dr. Cole in the Arbitration regarding the likelihood of environmental contamination. *See* App. Bk. at 3276:18-23 (when asked if she was "at any time told that a trainer by the name of Bruno Tessitore [*sic*] had received a notice of a positive test for Altrenogest at Monmouth", Dr. Cole answered "No, I was not."). And on the cross-examination of Ms. Lynch, HIWU's representative, James Bunting, did not afford Ms. Lynch the opportunity to speak to her knowledge of the fact that Mr. Tessore was provisionally suspended for Presence of Altrenogest in one of his horses when she attempted to do so on cross-examination. *See* App. Bk. at 2887:22-2888:10.[20] Upon Ms. Lynch establishing

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[18] Through discovery in advance of the evidentiary hearing, Ms. Lynch plans to subpoena additional information from HISA, and will also seek records from Monmouth Park, and veterinary records from the horses stalled in Mr. Tessore's barn from the relevant time period.

[19] HISA, *HISA Pending ADMC* Violations, Aug. 8, 2023, https://www.hiwu.org/cases/pending?terms=altrenogest.

[20] When Ms. Lynch was asked if she could think of other potential sources of contamination, she referred to a "Bruno Tessore [receiving a] Regumate [brand name for Altrenogest] positive." When Ms. Lynch attempted to testify further regarding this, Mr. Bunting abruptly

these facts at the forthcoming evidentiary hearing, the ALJ should conclude that HISA's actions on this score constitute a pattern of willful conduct that violated its duty of candor to the Arbitrator below and its cardinal obligation to ensure fair adjudication of cases. *See* ADMC Rule 3010(f)(7) (charging HISA with a duty of "fair adjudication" of the charges it seeks to impose). The ALJ should not countenance such misconduct, and the underlying charges should therefore also be dismissed with prejudice on this basis.

ii. Additional Expert Analysis regarding the Likelihood of Environmental Contamination

Ms. Lynch will also offer additional expert analysis regarding the likelihood of environmental contamination. Based on the facts in the record below and as supplemented, Ms. Lynch will establish through expert testimony of Dr. Barker that the totality of the evidence suggests that the most probable explanation for a positive test was environmental contamination.

Dr. Barker will also offer testimony generally refuting Dr. Cole's analysis in the proceeding below, establishing that her conclusions were not reliable and should be disregarded. Among other deficiencies, Dr. Barker will explain that Dr. Cole's observation regarding half-life time and detection limits of Altrenogest was demonstrably incorrect. Dr. Barker will show that Dr. Cole misrepresented the study that she cited, causing a basic scientific error that resulted in her offering demonstrably false opinions to the Arbitrator.[21]

Dr. Barker will also testify that Dr. Cole erred by relying on the performance enhancement of Altrenogest in stallions (not geldings like Motion to Strike). Dr. Barker, who has researched and written extensively on environmental contamination, will testify that the

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cut her off: "Well, that's kind of --"; "so we'll come back to that. But let's – let's just move from --." App. Bk. at 2888:2-7.

[21] The undersigned apprised HISA of this Dr. Cole's scientific error weeks ago, but HISA, regrettably, has taken no steps to correct or withdraw Dr. Cole's testimony.

dosage level of Altrenogest would need to be significantly higher than the levels at issue in this case to materially affect behavior in horses.

Ms. Lynch will also offer expert testimony from Dr. Kristine H. Wammer. Dr. Wammer is a Professor of Chemistry and Associate Dean of the College of Arts and Sciences at the University of St. Thomas. Dr. Wammer's research focuses on the chemical and microbiological processes that affect the persistence of organic contaminants in the environment. She has studied Altrenogest and its survival under different environmental conditions and published work on this topic. Dr. Wammer will testify that Altrenogest can survive for an extended period of time in environments with limited exposure to sunlight like the barn at issue here.[22]

(c) Ms. Lynch Will Further Establish That She Does Not Bear Fault for Any Presence of Altrenogest

Finally, Ms. Lynch will establish at the forthcoming evidentiary hearing that she does not bear any Fault or Negligence, or Significant Fault or Negligence, for the alleged Presence of Altrenogest in Motion to Strike. The record as supplemented will establish that the alleged amount of Altrenogest in Motion to Strike's system was minuscule, that the substance was not used to enhance Motion to Strike's performance, and that Motion to Strike's performance was not enhanced.

Ms. Lynch will further establish through testimony from Dr. Good and Ms. McKinney that Ms. Lynch took excellent care of her horses.

[22] As set forth in Exhibit A, to the extent HISA intends to rely on any analysis by Dr. Cole or any conclusions derived therefrom in seeking to sustain the sanctions against Ms. Lynch, Ms. Lynch plans to insist that HISA call Dr. Cole to testify at the hearing, so she can be cross-examined. Should HISA be permitted to rely on any testimony from Dr. Cole without offering her live testimony at the hearing, Ms. Lynch plans to call Dr. Cole as an adverse witness for purposes of impeachment.

Ms. Lynch will establish through witness testimony that she exercised due care with her horses, and that she did not know that there was a risk for Motion to Strike being contaminated with Altrenogest.

The record as supplemented will make clear that the sanctions imposed on Ms. Lynch impose an unprecedented and excessive period of ineligibility and financial penalty for the alleged violation, which far outstrips the sanctions HISA has imposed in other environmental contamination cases. *See, e.g., HIWU* v. *Lauer*, HIWU Case Resolution without a Hearing/Final Decision (Dec. 15, 2023) (trainer sanctioned for two and a half months and a $2,600 fine because his groom had a prescription for the banned substance Metformin and contaminated a Covered Horse); *HIWU* v. *Reid*, HIWU Case Resolution without a Hearing/Final Decision (Nov. 10, 2023) (sanction of four months of ineligibility and a $4,125 fine deemed "appropriate" when hay eaten by a Covered Horse was contaminated with human urine containing a Banned Substance).

VI. The Sanctions for Possession of Thyro-L Cannot Be Upheld

While the procedural deficiencies outlined in Section IV suffice to vitiate the sanction for the Possession Charge, Ms. Lynch will also establish that the record as supplemented through the forthcoming evidentiary hearing cannot sustain the underlying sanction for Possession of Thyro-L in any event.

(a) HISA Will Not Be Able To Sustain the Finding That the Tub Located in the Trunk of the Car Ms. Lynch Drove to Belmont Contained a Banned Substance

First, Ms. Lynch will establish the evidence adduced in support of the Possession Charge is inadmissible because it was seized beyond the scope of HIWU's authority and was an abuse of its powers under the ADMC Rules. We will introduce the testimony of Ms. Lynch's mother, Kimberly Rae Genner, to establish that the car which was searched and in which the

alleged Banned Substance Thyro-L was located in the trunk, as well as the clothes and shoes in the trunk of the car, belonged to Ms. Genner and not Ms. Lynch. In light of this testimony, we will establish that HIWU lacked authority to search Ms. Genner's car under its own rules because it was not a "racetrack facilit[y]" or an "other place[ ] of business" of Ms. Lynch. ADMC Rule 8400(a)(1)(i). Indeed, even if the car had been Ms. Lynch's car, the search would not have been authorized by that same rule. Moreover, we will rebut any assertion by HISA that Ms. Lynch consented to the search because any "consent" could not be freely given in circumstances where Ms. Lynch was operating under the investigators' misrepresentation that they had the right to search her mother's car. *See, e.g., United States* v. *Frye*, 826 F. App'x 19, 21 (2d Cir. 2020) ("[W]hen a prosecutor seeks to rely upon consent to justify the lawfulness of a search, he has the burden of proving that the consent was, in fact, freely and voluntarily given); *see also Bumper* v. *North Carolina*, 391 U.S. 543, 548-50 (1968) (holding that, [w]here there is coercion there cannot be consent," and thereby suppressing evidence from an unlawful search and overturning the underlying conviction).

HISA's outlandish decision to dispatch a trio of investigators, including two former FBI agents, to interrogate a trainer with a clean record about a Presence violation for a legal substance was made even more troubling when that band of investigators decided to initiate a search of Ms. Lynch's barn and then her mother's car. As we will establish at the forthcoming hearing, those searches had no legitimate predicate and the fruits of those searches therefore should not be considered. After all, Ms. Lynch was being questioned regarding a Presence violation for a substance which Ms. Lynch was *legally entitled to possess*, because it was being administered to a filly in her barn that had received a prescription to that end from Dr. Good.

Second, as set forth above with respect to the Presence Charge, Ms. Lynch will contend that the documentation provided in relation to the Possession Charge is insufficient to sustain the Possession sanction. Because HISA failed to furnish the A Sample Laboratory Documentation Package for the Possession Charge with the Charge Letter as required by the ADMC Rules, the documentation it has provided should not be considered by the ALJ. *See* 16 C.F.R. § 1.146(c)(5)(iv,) (stating that the "final factual record," in addition to including "[a]ny new facts adduced at the hearing and found by the Administrative Law Judge," may only include "facts found by the Authority that, in the determination of the Administrative Law Judge, were found in a process that was consistent with 15 U.S.C. 3057(c), the Authority's Rule Series 8300, and adequate due process.").

As with the Presence Charge, Ms. Lynch will also object to any effort by HISA to seek to rely on the inadequate documentation for the Possession Charge as deficient under its own rules and as inadmissible hearsay. Ms. Lynch will contend that HISA must offer testimony from the technicians who performed each procedure and introduce the full Laboratory Documentation Package through their testimony as the law and HISA's own regulations require.

To the extent the ALJ is willing to consider the documentation furnished below over Ms. Lynch's objections, Dr. Barker will offer testimony regarding why that documentation is not sufficiently reliable to support a conclusion that there was a Banned Substances present in the trunk of Ms. Lynch's mother's car.

(b) HISA Will Not Be Able To Sustain the Finding That Ms. Lynch Was in Possession within the Meaning of the ADMC Rules

Additionally, HISA will not be able to establish that Ms. Lynch was in Possession of a Banned Substance because the record upon supplementation will not be able to support a finding of Possession as defined by the ADMC Rules.

Rule 1010 of the ADMC defines possession as follows:

> "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."

The supplemented record will establish that Ms. Lynch was not in actual Possession within the meaning of the ADMC Rules, because Ms. Lynch did not have exclusive control over the alleged Thyro-L. Instead, the alleged Thyro-L was located in the trunk of Ms. Genner's car, and Ms. Genner's testimony will show that Ms. Lynch was not in exclusive control of that car. Ms. Genner's testimony will also establish that Ms. Lynch did not have any intention to exercise exclusive control over the tub containing the alleged trace amount of Thyro-L because she had already given the tub to Ms. Genner to discard, had relinquished all control over the tub, and had no knowledge that the tub was located in the trunk of Ms. Genner's car.

The supplemented record will also establish that Ms. Lynch was also not in constructive possession of the alleged Thyro-L. Ms. Genner's testimony will again show that Ms. Lynch did not have knowledge that the alleged Thyro-L was in the trunk of Ms. Genner's car and, even if Ms. Lynch did know of its presence, she had no intention to exercise control over it because her intention had been to dispose of it. Ms. Genner will also testify that the photographic evidence taken by HISA's investigators of the trunk of the car depicts items belonging to Ms. Genner, not Ms. Lynch, and therefore does not support a finding of knowledge on the part of Ms. Lynch that the tub was in the trunk of the car, contrary to HISA's assertions.

Ms. Lynch will further contest any conclusion that she failed to properly dispose of the alleged Thyro-L. App. Bk. at 43. To that end, Ms. Lynch intends to introduce testimony and documentary evidence concerning the timing and clean out of the barn during which the Thyro-L was discarded.

In supplementing the record, Ms. Lynch will also demonstrate that any finding of fact made by the Arbitrator in reliance on statements made by HISA Investigator Gregory Pennock, who conducted the search of Ms. Lynch's mother's car, cannot withstand scrutiny. Ms. Lynch will identify various contradictions with respect to Mr. Pennock's testimony that will establish that his testimony was not credible and cannot form the basis for any conclusions drawn by the ALJ. Ms. Lynch also reserves the right to call HISA Investigator Richards, who was present for the search of Ms. Lynch's car and whom Ms. Lynch was improperly prevented from calling in the Arbitration. App. Bk. at 60-61.

(c) Should Possession Be Found, Ms. Lynch Will Further Establish That She Bears No Fault or Negligence, or No Significant Fault or Negligence

Finally, Ms. Lynch will establish at the forthcoming evidentiary hearing that she bears No Fault or Negligence (ADMC Rule 3224), or No Significant Fault or Negligence (ADMC Rule 3225) for the Possession of Thyro-L, if the ALJ should uphold the finding of Possession upon review of the full record as supplemented. The record, as supplemented, will establish that Ms. Lynch did not administer Thyro-L to a Covered Horse once Thyro-L became a Banned Substance, and that she took appropriate steps to dispose of the alleged Thyro-L from her barn.

(d) The Sanctions Were Arbitrary, Capricious, an Abuse of Discretion, and Otherwise Not in Accordance with Law

We will also argue that the sanctions HISA seeks to impose on Ms. Lynch are arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law. 15 U.S.C. 3058(b)(2)(A)(iii). We will establish through the testimony of Dr. Barker that the amount of alleged Thyro-L identified in a tub in the trunk of Ms. Genner's car was barely enough for three therapeutic doses for a single horse, which also supports Ms. Lynch's contention that she had no intent to possess the substance. Thus, HISA's decision nonetheless to sanction Ms. Lynch with the maximum fine and period of ineligibility for an ADMC Rule 3214(a) violation was grossly disproportionate to any level of fault that could possibly be attributed to Ms. Lynch.

Ms. Lynch will also show through the record as supplemented that, even if a violation of ADMC Rule 3214(a) were found, the maximum sanctions HISA seeks to impose cannot be sustained, because mitigating factors warrant a significantly reduced sentence. The record as supplemented will show that Ms. Lynch had not used it on a Covered Horse after it became a Banned Substance. Moreover, the sanctions HISA has imposed on Ms. Lynch also far outstrip the sanctions HISA has imposed in other Thyro-L Possession cases. *See HIWU* v. *Perez*, Decision at 8.1, JAMS Case No. 1501000589 (Oct. 9, 2023) (imposing a 14-month suspension and $5,000 fine for possession of Thyro-L on a veterinarian, despite a finding that he, unlike Ms. Lynch, had made no attempt to discard the Thyro-L); *HIWU* v. *Poole*, Decision at 8.1, JAMS Case No. 1501000576 (Aug. 8, 2023) (imposing a 22-month suspension and $10,000 fine for possession of Thyro-L despite a finding that the accused had made no attempt to discard the Thyro-L).

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Ms. Lynch, like all who participate in and love the sport that HISA and HIWU were meant to protect, shares in the desire for a uniform playing field and uniform testing standards. But, as we have outlined above and will establish further at the forthcoming evidentiary hearing, HISA and HIWU have pursued Ms. Lynch with a win-at-all-costs vengeance that cannot withstand scrutiny: they have disregarded their own rules, at least recklessly introduced false fact and expert testimony, and otherwise conducted themselves in a manner that is entirely at odds with the duties of any responsible regulator and their statutory mandate to afford athletes due process. To be sure, Ms. Lynch has chosen to be a trainer in a regulated industry, but she did not forfeit her fundamental rights when HISA and HIWU appeared on the scene. All desire a safe, clean sport. But that goal and basic respect for human dignity and rights should not—and must not—be in conflict.

VII. Conclusion

For all of the foregoing reasons, the sanctions levied against Ms. Lynch should be set aside and the underlying charges should be dismissed with prejudice.

Dated: March 1, 2024

Respectfully submitted,

/s/ Grant S. May

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EXHIBIT A
LIST OF WITNESSES APPELLANT INTENDS TO CALL

At the evidentiary hearing, Ms. Lynch intends to supplement the record with testimony from the following witnesses. While this reflects Ms. Lynch's intent as of filing this brief, discovery in this matter is ongoing and, as detailed in the brief (*see supra* at 9-14), has been frustrated by HISA's refusal to provide Ms. Lynch with documents to which she is entitled under HISA's own Rules. Ms. Lynch therefore reserves the right to amend this list.

1. Fact Witness Testimony of Natalia Lynch
   See supra at 5, 19-21, 23-24 for a summary of what Ms. Lynch's testimony will establish.
2. Fact Witness Testimony of Dr. Mari J. Good
   See supra at 15-16, 19, 21 for a summary of what Dr. Good's testimony will establish.
3. Fact Witness Testimony of Stacey McKinney
   See supra at 16, 19 for a summary of what Ms. McKinney's testimony will establish.
4. Fact Witness Testimony of Kimberly Rae Genner
   See supra at 20, 23-24 for a summary of what Ms. Genner's testimony will establish.
5. Expert Testimony of Dr. Steven A. Barker
   See supra at 11-12, 14, 18, 22, 25 for a summary of what Dr. Barker's testimony will establish.
6. Expert Testimony of Dr. Kristine H. Wammer
   See supra at 19 for a summary of what Dr. Wammer's testimony will establish.

To the extent that HISA plans to rely on live testimony from any of the below individuals at the forthcoming hearing, Ms. Lynch intends to cross-examine each of these individuals. To the extent HISA does not plan to call any of these individuals, Ms. Lynch intends to call them and, following a meet and confer with opposing counsel, intends to move for issuance of subpoenas *ad testificandum* for each of the below:

1. Gregory Pennock
2. Naushaun "Shaun" Richards
3. Dr. Cynthia Cole
4. John and Janes Does (laboratory technicians who performed the testing on the samples HISA used in support of charges against Ms. Lynch)[23]

[23] For the reasons set forth in this brief (*see supra* at 9-15), Ms. Lynch will object to any effort by HISA to rely on laboratory analysis without live testimony from the individuals who performed the underlying analysis. Should HISA be permitted to rely on that analysis in any way, Ms. Lynch intends to call those individuals as adverse witnesses. The identities of those individuals has not yet been ascertained because HISA has stonewalled discovery into the testing undertaken in Ms. Lynch's case (*see supra* at 9-11).

EXHIBIT B
LIST OF DOCUMENTARY EVIDENCE APPELLANT INTENDS TO OFFER

At the evidentiary hearing, Ms. Lynch intends to supplement the record with the following documentary evidence all of which is properly admissible because it is "relevant, material and reliable" and also properly considered, where applicable, for impeaching HISA's witnesses. 16 C.F.R. 1.1146(c)(6)(ii). While this reflects Ms. Lynch's intent as of filing this brief, discovery in this matter is ongoing and, as detailed in the brief (*see supra* at 9-14), has been frustrated by HISA's refusal to provide Ms. Lynch with documents to which she is entitled under HISA's own rules. Ms. Lynch therefore reserves the right to amend this list.

1. Laboratory Documentation Package of Split B Sample for the Presence Charge[24]
   See supra at 11-12, 14-15 for a summary of what this Laboratory Documentation Package could establish and how Ms. Lynch has been prejudiced by HISA's repeated refusals to furnish it.

2. Laboratory Documentation Package of Split A Sample for the Possession Charge[25]
   See supra at 11-12, 22 for a summary of what this Laboratory Documentation Package could establish and how Ms. Lynch has been prejudiced by HISA's repeated refusals to furnish it.

3. Claiming Records of the Horse "Provision" dated June 15, 2023
   See supra at 16 for a summary of what the Claiming Records will establish.

4. Video of Ms. Lynch's Barn at Belmont Park from July 8, 2023
   See supra at 16 for a summary of what this video will establish.

5. January 16, 2024 Email from J. Bunting to C. Boehning
   See supra at 9 for a summary of what this correspondence with establish.

6. January 24, 2024 Letter from A. Farrell to C. Boehning
   See supra at 9 for a summary of what this correspondence with establish.

[24] As discussed *supra* at 4-5, 9, HISA failed to furnish this document either in the Charge Letter or in response to subsequent requests. Ms. Lynch plans to seek to compel production of this document in advance of the evidentiary hearing.

[25] As discussed *supra* at 4-5, 9, HISA failed to furnish this document either in the Charge Letter or in response to subsequent requests. Ms. Lynch plans to seek to compel production of this document in advance of the evidentiary hearing.

7. HISA, HISA Q&A: The ADMC Program, Press Release, Mar. 8, 2023, https://hisaus.org/news/hisa-qa-the-admc-program
See supra at 12 for a summary of what this press release will establish.

EXHIBIT C
LIST OF FACTS AND FINDINGS BY THE ARBITRATOR THAT MS. LYNCH INTENDS TO CONTEST

Upon supplementation of the record through the evidentiary hearing, Ms. Lynch intends to contest the following findings of fact, which are set forth in the Arbitrator's decision, and thereby also disputes any conclusions of law derived therefrom. While this reflects Ms. Lynch's intent as of filing this brief, discovery in this matter is ongoing and, as detailed in the brief (*see supra* at 9-14), has been frustrated by HISA's refusal to provide Ms. Lynch with documents to which she is entitled under HISA's own Rules. Ms. Lynch therefore reserves the right to amend this list.

1. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch was provided with a full and fair opportunity to present her case. App. Bk. at 24, n.5.

With respect to the Presence Allegations:

2. Ms. Lynch will contest the Arbitrator's finding that Dr. Cole's testimony was relevant, persuasive, or credible and will contest any findings made by the Arbitrator in reliance on Dr. Cole's testimony. App. Bk. at 37-39, 44.
3. Ms. Lynch will also contest the Arbitrator's erroneous rejection of Dr. Fenger's expert opinion and Dr. Fenger's finding that the alleged Presence of Altrenogest in the Covered Horse was the result of environmental contamination. App. Bk. at 36-37.
4. Ms. Lynch will contest the Arbitrator's finding that Motion to Strike was not stalled next to the filly Mary Katherine, and that the horses were stalled many stalls away from one another. App. Bk. at 38-39.

5. Ms. Lynch will contest the Arbitrator's finding that Altrenogest had not been administered to Mary Katherine for five days before the day the sample was collected from Motion to Strike. App. Bk. at 38-39.

6. Ms. Lynch will contest the Arbitrator's finding that the amount of Altrenogest detected in Motion to Strike's blood sample is consistent with ingestion within 24 hours. App. Bk. at 38.

7. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch's verification that Mary Katherine had 13 administrations of Altrenogest between June 12 and 24, 2023 was incorrect. App. Bk. at 39.

With respect to the Possession Allegations:

8. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch was "in possession of the banned Thyro-L." App. Bk. at 40, 42.

9. Ms. Lynch will contest the Arbitrator's finding that the vehicle was Ms. Lynch's vehicle. App. Bk. at 42.

10. Ms. Lynch will contest any factual predicates supportive of a conclusion that the tub allegedly containing Thyro-L was lawfully seized and that any evidence stemming therefrom can be properly considered. App. Bk. at 41.

11. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch cleaned out her barn in March 2023. App. Bk. at 41.

12. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch handed her mother the cardboard box which is depicted in the pictures captured by Mr. Pennock. App. Bk. at 41-42.

13. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch was not able to offer credible evidence to support her claim that she disposed of the alleged Thyro-L by giving it to her mother to dispose of. App. Bk. at 41-42.

14. Ms. Lynch will contest the Arbitrator's finding that Ms. Lynch failed to properly dispose of the alleged Thyro-L. App. Bk. at 40, 42-43.

15. Ms. Lynch will contest any findings of fact made by the Arbitrator in reliance, in whole or in part, on the testimony of Mr. Pennock. App. Bk. at 41-43.

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2024, pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), I caused the foregoing to be filed and served as follows:

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