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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9424**

ADMINISTRATIVE LAW JUDGE: D. MICHAEL CHAPPELL

IN THE MATTER OF:

DERRICK PARRAM

APPELLANT

AUTHORITY'S REPLY BRIEF

Comes now the Horseracing Integrity and Safety Authority (the "Authority") pursuant to the briefing schedule provided by the Administrative Law Judge after the March 1, 2024, evidentiary hearing held in this matter, and submits the following Reply Brief in response to Appellant's Brief and Proposed Order.

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Introduction

GIRLS LOVE ME tested positive for Dexamethasone and Trichlormethiazide after the claiming race on December 9, 2022. Upon the positive test for these prohibited substances, the Laurel Park stewards voided the claim of GIRLS LOVE ME pursuant to the Horseracing Integrity and Safety Authority (the “Authority”) Rule 2262(c)(5) (the “Void Claim Rule”). The stewards’ ruling appropriately applied the Void Claim Rule and the evidence in the record supports a finding that the claim of GIRLS LOVE ME was properly voided.

I. The Laurel Park Stewards Properly Applied the HISA Void Claim Rule

The Horseracing Integrity and Safety Act of 2020 (the “Act”) formed the Authority to implement a uniform set of safety and welfare regulations for all thoroughbred racing jurisdictions. To fulfill this mandate, the Authority promulgated regulations to create a Racetrack Safety Program, aimed at protecting the overall safety and welfare of thoroughbred racing participants, and an Anti-Doping and Medication Control (“ADMC”) Program, specifically designed to regulate substances administered to horses participating in thoroughbred racing. The two programs took effect at different times based on the Commission’s approval of each program. The Racetrack Safety Program preceded the ADMC program in its enactment on July 1, 2022.

The Void Claim Rule, part of the Racetrack Safety Program, created a new rule allowing stewards to void the claim of horses. Prior to the enactment of the Void

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Claim Rule, rules on claims varied across racing jurisdictions. The Void Claim Rule brings uniform criteria for stewards to use when evaluating claims. The rule states:

- (a) Title to a Horse which is claimed shall be vested in the successful claimant from the time the field has been dispatched from the starting gate and the Horse becomes a starter.
- ...
- (c) The claim **shall** be voided, and ownership of the Horse retained by the original Owner if:
 - (1) The Horse dies on the racing track;
 - (2) the Horse is euthanized before leaving the racing track;
 - (3) the Horse is vanned off of the racing track by discretion of the Regulatory Veterinarian;
 - (4) the Regulatory Veterinarian determines within 1 hour of the race that the Horse will be placed on the Veterinarians' List as Bled, physically distressed, medically compromised, unsound, or lame before the Horse is released to the successful claimant; or
 - (5) **the Horse has a positive test for a Prohibited Substance.**

HISA Rule 2262 (emphasis added). The Void Claim Rule clearly outlines each variable that results in the mandatory cancelling of the claim of a horse leaving no room for discretion in its application. This standardizes the enforcement of regulations on claims across racing jurisdictions.

Parram and the Authority stipulated that GIRLS LOVE ME tested positive for Dexamethasone and Trichlormethiazide after the race on December 9, 2022.¹ The Laurel Park stewards held a hearing with Parram on January 8, 2023, to adjudicate the violation of Maryland regulation COMAR 09.10.03.04 from the presence of the two substances in the horse's system. The Maryland violation disqualified GIRLS LOVE ME from the race and redistributed the purse. Parram waived his rights to counsel at the hearing and to a split sample tested by an independent laboratory.

¹ Appeal Book, Tab 5, Stipulation with Rulings at 20.

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Parram did not formally contest the positive test by requesting a split sample. Based on the laboratory results, the positive test for Dexamethasone and Trichlormethiazide required the Laurel Park stewards to void the claim of GIRLS LOVE ME on February 9, 2023, pursuant to HISA Rule 2262(c)(5).

The Authority's Racetrack Safety Program was in effect on December 9, 2022; however, the ADMC Program had yet to become effective. This created a gap in the Racetrack Safety Program rules if the meaning of a regulation relied on the ADMC Program. The Void Claim Rule uses the ADMC Program's regulation of prohibited substances for its complete efficacy, and the rule would have no practical effect without a stopgap. The Authority provided official Guidance to resolve this vacuum on March 14, 2022, stating, "Accordingly, while State laws are preempted with respect to matters on which the FTC has approved and promulgated a final rule, State law will continue to regulate matters on which the FTC has not yet approved and promulgated a final rule."² State racing jurisdictions had long regulated substances administered to horses participating in thoroughbred racing. These state regulations stood in the regulatory gap until the entire system of the Authority's regulations took full effect.

Parram is correct in his overarching assertion that the Authority's aim is to create a program that ensures the safety, well-being, and integrity of thoroughbred horseracing for all participants. The uniform implementation of both the Racetrack Safety Program and the ADMC Program is critical to creating a level-playing field for

² 3/14/22 Guidance, HISA, <https://hisaus.org/regulations#3-14-22-guidance>.

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all horseracing participants across all racing jurisdictions. The Void Claim Rule removes discretion from stewards regarding claims in which a horse tests positive for prohibited substances, which creates uniform enforcement of voided claims. Based on the Guidance the Authority issued, Maryland state racing regulations provided the scope of prohibited substances in Maryland until the ADMC rules took effect. COMAR 09.10.03.04 prohibited the presence of Dexamethasone and Trichlormethiazide in a horse at the time of a race, and GIRLS LOVE ME tested positive for both substances after the December 9, 2022, race. The Laurel Park stewards appropriately applied the Authority's Void Claim Rule.

II. Parram Suffered No Prejudice Through the Course of the Proceedings

1. Delay did not prejudice Parram.

No delay in any proceeding at Laurel Park prejudiced Parram. The stewards held two hearings with Parram – the first on a Maryland prohibited substances violation and the second on the Authority's Void Claim Rule. These are unique matters arising from two separate regulatory programs, so the date on which either hearing occurred had no bearing on the other.

The January 8, 2023, hearing adjudicated the violation of a Maryland state regulation COMAR 09.10.03.04C, which required the stewards to disqualify GIRLS LOVE ME from the December 9, 2022, race and redistribute the purse monies.³ The

³ Appeal Book, Tab 5, Stipulations with Rulings at 24.

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second hearing on February 9, 2023, adjudicated the claim of GIRLS LOVE ME under HISA Rule 2262(c)5.⁴

Parram argues that he was unaware of the Void Claim Rule at the time of the January 8, 2023, hearing causing him to refuse a split sample contest to the laboratory results of GIRLS LOVE ME's test. This argument simply fails to excuse Parram from compliance with the Void Claim Rule. To participate in thoroughbred horseracing, Parram registered with the Authority as a Covered Person.⁵ To register as a Covered Person is to agree to be "subject to and comply with the rules, standards, and procedures of the Authority developed and approved under 15 U.S.C. 3054(c)." HISA Rule 9000(g). Parram assented to compliance with all the Authority's rules, including the Void Claim Rule, when he registered as a Covered Person with the Authority.

The mere four weeks between the two separate jurisdictions' hearings did not prejudice Parram. Parram was on notice of both Maryland and the Authority's regulations at all relevant times in this matter. Parram received notice for both the Maryland state hearing and the Authority's Void Claim Rule hearing. Parram waived his rights to counsel and his right to a split sample.

2. GIRLS LOVE ME racing under the claiming owners did not prejudice Parram.

Parram asserts that Ulman and Vieser should not have been able to enter GIRLS LOVE ME in any race until the laboratory results from the December 9, 2022,

⁴ *Id.* at 26.

⁵ Covered Person is defined as, "all Trainers, Owners...who are engaged in the care, training or racing of Covered Horses." HISA Rule 2010.

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race came back. Parram bases his argument on COMAR 09.10.01.07(H)(1), which made claims in Maryland irrevocable after the horse starts in a race under the new ownership. However, the Authority's Void Claim Rule preempted previous Maryland regulations. The Horseracing Integrity and Safety Act states, "The rules of the Authority promulgated in accordance with this chapter shall preempt any provision of State law or regulation..." 15 U.S.C. § 3054(b). The Void Claim Rule, in full effect at all relevant times in this matter, preempted Maryland regulation. The rule applies to claims even after the horse starts under a new owner. GIRLS LOVE ME tested positive for a prohibited substance under the ownership of Parram, which required the Laurel Park stewards to void the claim regardless that the horse had raced under its new owners.

3. A third-party protest did not prejudice Parram.

The Authority protected Parram's legal and constitutional rights throughout each step of the void claim proceedings. The Authority does not have a rule for objections,⁶ and has not preempted Maryland regulation regarding objections. Parram is correct in his assertion that COMAR Section 09.10.35(I) requires individuals to lodge an objection within 48 hours from the incident. However, claiming owners Ulman and Vieser did not learn of GIRLS LOVE ME's positive test for prohibited substances until "the farm owner looked up the horse's history after it

⁶ The Authority has promulgated an objection rule that would allow individuals 72 hours to lodge a protest with the Authority. This rule is awaiting approval from the Commission before it takes effect. *Rule 8000 Series Proposed Amendments*, HISA, https://bphisaweb.wpenline.com/wp-content/uploads/2023/08/Rule-8000-Series-Proposed-Amendments.distr_redline.8.28.2023.pdf; Hearing Transcript at 28.

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died. There is no published ruling by the Maryland Racing Commission.”⁷ Trainer Dale Capuano, employed by Ulman and Vieser, lodged a protest with the Laurel Park stewards within 48 hours of the horse’s death and learning of the positive test.⁸ It would have been impossible for Capuano to protest the lack of a Void Claim Ruling after the positive test for prohibited substances on or within 48 hours of January 6, 2023, because he had no knowledge of the positive test until on or after the horse died on January 29, 2023.⁹ The Authority has not done a “jig-saw/cherry-picking approach” to enforcing applicable regulations. The Laurel Park stewards applied both the Authority’s rules and Maryland rules properly and practically. Capuano’s protest was timely based on the date he learned of GIRLS LOVE ME’s positive test for prohibited substances.

III. The Authority Did Not Violate Parram’s Constitutional or Legal Rights

Parram asserts various legal and constitutional violations in his submission to the Commission. At no point were Parram’s constitutional rights violated.

1. Due Process

Parram received sufficient procedural due process for both hearings at Laurel Park: the Maryland state prohibited substances hearing and the Authority’s Void Claim Rule hearing. For the Maryland-specific regulatory hearing, Parram received notice of the following before the hearing: the positive test for Dexamethasone and

⁷ Appeal Book, Tab 8, Statement of Louis Ulman and Walter Vieser, II at 39.

⁸ Appeal Book, Tab 5, Stipulation with Rulings Attached at 22.

⁹ *Id.* The Authority also offers a clarification to its *Proposed Findings of Fact and Conclusions of Law and Proposed Order* it filed with the Commission on April 2, 2024. In Proposed Finding of Fact 17, the Authority stated GIRLS LOVE ME had surgery on January 20, 2023 and died. To clarify, the record in this matter has always been undisputed that the horse underwent surgery on January 20, 2023 and subsequently died on January 29, 2023.

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Trichlormethiazide, his right to a split sample prior to the hearing, and his right to representation by counsel.¹⁰ Parram waived both his right to a split sample and right to counsel.¹¹ Similarly, for the hearing on the Authority's Void Claim Rule, Parram received "several days" notice¹² of the hearing on voiding the claim of GIRLS LOVE ME and his right to representation by counsel.¹³ He again waived his right to representation by counsel.¹⁴ Parram waived the procedural rights afforded to him, which does not constitute a violation of his procedural due process rights.

2. Collateral Estoppel, Res Judicata, Election of Remedies

The Maryland violation for a positive test for prohibited substances and the Authority's enforcement of the Void Claim Rule constitute two distinct causes of action. The first hearing, disqualifying GIRLS LOVE ME from the December 9, 2022, race and redistributing purse monies, arose under a Maryland state regulation COMAR 09.10.03.04(C). The adjudication of the Void Claim Rule at the second hearing applied to the Authority's regulation HISA Rule 2262(c)(5). These are distinct, severable causes of action. The adjudication of the Maryland violation was limited to Maryland regulations. The adjudication of the Authority's rules was limited to the distinct cause of action under the Void Claim Rule. The hearings were not duplicative; they were separate hearings on matters arising under two regulatory jurisdictions.

¹⁰ *Id.* at 24; Hearing Transcript 44-46.

¹¹ *Id.*

¹² *Appellant's Brief*, April 2, 2024, at 19.

¹³ Appeal Book, Tab 5, Stipulation with Attache Rulings at 26; Hearing Transcript 44-46.

¹⁴ *Id.*

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3. Laches

Parram's assertion of laches is inapplicable to this matter. The Authority and the Laurel Park stewards did not unreasonably delay any proceedings involving Mr. Parram. The brief period between the testing of GIRLS LOVE ME's blood to the adjudication of the Void Claim Rule at the February 9, 2023, hearing did not prejudice Mr. Parram.

4. Equitable Estoppel

All Covered Persons assent to abide the Authority's rules upon registration with the Authority. Parram registered as a Covered Person and was on notice that the Authority's regulations apply to all racing activities. The Void Claim Rule applies to Parram as a Covered Person and the doctrine of equitable estoppel cannot bar the Authority from enforcing the rule to which Parram assented upon registration.

5. Impossibility

The death of GIRLS LOVE ME is an unfortunate occurrence. However, the death of the horse does not preclude the Laurel Park stewards from enforcing the Authority's Void Claim Rule. While in the care of Parram, GIRLS LOVE ME tested positive for two prohibited substances. The consequence of this positive test is that the claim of the horse is voided.

Conclusion

Parram assumed the risk of participating in thoroughbred horseracing. He was aware of Maryland Racing Commission regulations and, as a registered Covered Person with the Authority, the Authority's regulations. Yet, despite his knowledge

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and assent to comply with the regulations of both jurisdictions, he violated Maryland prohibited substances regulations and the Authority's Void Claim Rule. Under Parram's care and ownership, GIRLS LOVE ME tested positive for Dexamethasone and Trichlormethiazide. Parram violated the Void Claim Rule. The resulting consequence is not due to "the conduct of all parties in this case but Mr. Parram,"¹⁵ as Parram has claimed, but rather due to the positive test for prohibited substances GIRLS LOVE ME incurred while racing under Parram's ownership. The Laurel Park stewards properly voided the claim of GIRLS LOVE ME pursuant to HISA Rule 2262(c)(5).

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¹⁵ *Appellant's Brief*, April 2, 2024, at 16.

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Proposed Findings of Fact and Conclusions of Law and Proposed Order is being served on April 12, 2024, via Administrative E-File System and by emailing a copy to:

Hon. D. Michael Chappell
Chief Administrative Law Judge
Office of Administrative Law Judges
Federal Trade Commission
600 Pennsylvania Ave. NW
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via e-mail to Oalj@ftc.gov

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A copy of this submission is also being provided via email as a courtesy to the claiming owners of GIRLS LOVE ME:

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Walter Vieser II, walt.vieser@redarchsolutions.com

/s/ Bryan Beauman
Enforcement Counsel