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

In the Matter of	)	
	)	
Joseph Peacock and Oscar Ceballos,	)	Docket No. 9415
	)	
Appellants.	)	
	)	

**APPELLANTS’ RESPONSE IN OPPOSITION TO THE AUTHORITY’S  
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Pursuant to 16 CFR 1.146(c)(4)(i)(C) and the Administrative Law Judge’s scheduling order made orally at the evidentiary hearing held on July 13, 2023, Appellants Joseph Peacock (“Peacock”) and Oscar Ceballos (“Ceballos”) (together, “Appellants”) hereby submit their response in opposition to the Proposed Findings of Fact and Conclusions of Law submitted by the Horseracing Integrity and Safety Authority (“Authority”).

**I. Argument**

**A. The race videos do not show eleven strikes. They certainly do not “clearly show” eleven strikes.**

The Authority would have the ALJ find that “[t]he video footage of the race clearly shows that Ceballos committed eleven strikes in the race.” Authority Brief, 20. That would be extreme, particularly in light of the *de novo* review required here. Not even the Authority’s Board, in its written decision, was willing to go that far. In fact, the Board conceded that the case was “factually difficult” and it “did not reach a view on how it would have decided the matter in a *de novo* setting.” Appellants’ Exhibit 4 (italicization added). The Board’s decision that the Stewards’ Ruling was not

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“clearly erroneous” is a far cry from the Authority’s proposed finding, on a *de novo* basis, that the race videos “clearly show” that Ceballos struck Sheriff Brown eleven times.

Due to the poor quality of the race videos, it cannot be definitively determined when Ceballos actually contacted Sheriff Brown. There is no dispute that Ceballos struck Sheriff Brown in the hindquarters three times. As witnesses testified, arm movements consistent with other attempts to contact Sheriff Brown can be observed, but there is no clear evidence that eleven separate strikes were committed. Indeed, each witness counted a different number of strikes. For example, Ceballos and Jeff Williams, who watched the race videos and have extensive experience as racing jockeys, counted eight and ten total contacts, respectively. Transcript, p. 118, ln. 1-6, p. 169, ln. 8-20, p. 195, ln. 11-15.<sup>1</sup>

Further undermining the Authority’s assertion that there is “clear” evidence of eleven strikes, there is no written evidence identifying the time in the race when the Stewards purportedly observed a strike. Steward Larry Fontenot (“Fontenot”) testified that the Stewards did not “keep a written record of the locations on the horse [or] during the running of the race when the strikes took place.” *Id.*, p. 80, ln. 23 – p. 81, ln. 1. “No notations were made with respect to the number of strikes,” such as when the strikes occurred during the race. *See id.*, p. 81, ln. 3-6. The Stewards relied exclusively on the poor-quality race videos. *Id.*, p. 81, ln. 1 (“No. Because we got it on the video. We go back to the video and watch it.”). With the Authority having the burden of proving a rule violation, the race videos are insufficient for a conclusion, on a *de novo* basis, that Ceballos committed eleven strikes. *See id.*, p. 42, ln. 19-24 (Authority’s counsel agreed that “HISA has the burden of proof to show that there was a violation of the rule.”).

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<sup>1</sup> Notably, although he testified he contacted Sheriff Brown five times on the shoulder, while watching the video in slow motion during the evidentiary hearing and counting his strikes aloud, Ceballos counted only three hits or touches to the shoulder. Transcript, p. 135, ln. 11-24.

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To summarize, there is evidence in the record that Ceballos struck Sheriff Brown on the hindquarters three times and contacted the horse on the shoulder between five and eight times. But only Fontenot testified that Ceballos committed eight strikes in addition to the three strikes to the hindquarters. The substantial *weight* of the evidence—including the testimony of Williams, an independent accredited steward—is that Ceballos hit Sheriff Brown on the shoulder between five and seven times. The Authority’s assertion that the race videos “clearly show” eleven strikes strains credulity. And, in any event, Ceballos’ hits to Sheriff Brown’s shoulder were for safety reasons that should not have counted.

**B. The Authority’s proposed finding that all counted strikes were to “encourage the horse to achieve optimal placing” is illogical.**

Similar to its proposed finding that there is clear evidence of eleven strikes, the Authority absurdly proposes that all of the strikes were to encourage the horse to achieve optimal placing. Authority Brief, 6. Such a finding is illogical. While the evidence shows that Ceballos struck Sheriff Brown three times in the hindquarters, the other counted hits were on the shoulder, or were flags or waves of the riding crop that did not contact Sheriff Brown. As three witnesses testified, a jockey would not hit a horse on the shoulder to make him go forward. Transcript, p. 117, ln. 20-22, p. 190, ln. 22 – p. 191, ln. 1, p. 220, ln. 25 – p. 221, ln. 8. “You hit him on the shoulder to keep him from going one way or the other.” *Id.*, p. 221, ln. 7-8. Moreover, at least some of the hits to the shoulder occurred after Sheriff Brown took the lead. *Id.*, p. 192, ln. 1-2, p. 197, ln. 17-23, p. 199, ln. 4-6. The horse had already achieved optimal placing position and was on its way to winning the race.

**C. The evidence shows that Sheriff Brown lugged in. Lugging in is not an “emergent theory” concocted by Appellants.**

To distract from the fact that the Stewards were so shallow and conclusory in their insufficient consideration of the issue of strikes for safety reasons, the Authority contends that

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Appellants devised an “emergent theory” that Ceballos struck Sheriff Brown to stop the horse from lugging in. Authority Brief, 14-15. Lugging in is not merely Appellants’ theory; rather, it is the “bad habit” that Sheriff Brown has exhibited “almost every time [he has] ever run,” including in the prior race in which Ceballos rode him. *See* Transcript, p. 225, ln. 15 – p. 227, ln. 2. Unlike the number of actual hits with the riding crop, the race videos plainly show that Sheriff Brown lugged in toward the inside of the track through the final stretch of the race. *See* Appellants’ Exhibits 5 & 6. Every witness except Larry Fontenot testified that Ceballos’ hits to Sheriff Brown’s shoulder were to prevent the horse from lugging in. *See* Transcript, p. 146, ln. 8-14, p. 192, ln. 18 – p. 193, ln. 7., p. 201, ln. 16 – p. 202, ln. 5, p. 253, ln. 1-12.

Peacock was not “the first party to raise the argument [of lugging in].” Authority Brief, 14. Ceballos testified that when he spoke with Fontenot after the race, he said he hit Sheriff Brown on the shoulder because the horse was “lugging in.” Transcript, p. 136, ln. 5 – p. 137, ln. 22. And even if Peacock were the first person to raise the argument through his notice of appeal, the Authority later consulted Williams for his opinion and Williams likewise agreed with Peacock that Ceballos hit Sheriff Brown on the shoulder “as his effort to keep that horse off from the inside horse.” *Id.*, p. 202, ln. 2-5. At no point in these proceedings has the Authority denied that it sought Williams’ opinion or addressed why it did not call Williams to testify at the Board hearing.

**D. Williams is imminently credible. The Authority’s attempt to discredit him is inconsistent with the Authority’s prior reliance on him.**

It is disappointing, but no surprise, that the Authority tries to use its proposed findings of fact and conclusions of law to discredit Williams. Presumably, the Authority was dissatisfied that Williams viewed Ceballos’ conduct during the race divergent to the Stewards’ Ruling. Now that Williams’ testimony is part of the record, the Authority suggests that Williams’ “friendship” with trainer Todd Fincher renders him not credible.

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Williams' credibility, however, is established by the Authority's own reliance on Williams for his opinion. It was the Authority—not the Appellants—who first involved Williams in this case. The Authority consulted Williams for his opinion about the Stewards' Ruling and application of Rule 2280 to the subject race, as the Authority had done with Williams for other races. *See id.*, p. 190, ln. 1-18.

Additionally, Williams' credibility is established by his own esteemed qualifications. Williams has extensive experience as a steward and racing jockey. He is currently serving as a steward in Colorado, has been a steward since 2013, and is accredited. *Id.*, p. 173, ln. 7-21, p. 174, ln. 1-6. Williams has served as a steward *for the Authority* at two racetracks. *Id.*, p. 187, ln. 1-4. He has served as a state steward in two states. *Id.*, p. 173, ln. 22-25. He served on the board of directors for the Jockeys' Guild. *Id.*, p. 175, ln. 2-3. He has served as an expert witness in three or four cases. *Id.*, p. 175, ln. 3-5. As Williams testified, he “would never let friendship cloud [his] opinion” about adjudication of a race—“not for [Fincher] or anybody else.” *Id.*, p. 213, ln. 24 – p. 214, ln. 8.

Finally, in suggesting that Appellants sought Williams because “they didn't know a lot of other stewards,” the Authority is disingenuous. Authority Brief, 15. The Authority omits Williams' testimony that he thought “[his being called as a witness] had something to do with the fact that [he's] been doing a lot of HISA work since HISA came on board.” Transcript, p. 214, ln. 23-25. Williams is, of course, correct—Appellants presented Williams not because they did not know any other stewards, but rather because of Williams' familiarity and involvement with the subject race. Indeed, whose testimony would be better than the person whose opinion the Authority has repeatedly sought, including with regard to the *Stewards' Ruling in this case*.

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## **II. Conclusion**

The ALJ should adopt the findings of fact and conclusions of law submitted by Appellants. In doing so, the ALJ should reverse the Board's decision affirming the Stewards' Ruling, reverse and vacate the Stewards' Ruling as to Appellants, and reinstate Sheriff Brown to his first-place finish in the subject race.

Respectfully submitted,

/s/ Nolan M. Jackson

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**CERTIFICATE OF SERVICE**

Pursuant to 16 CFR 4.2(c)(1)(i), a copy of the forgoing is being filed electronic through the Federal Trade Commission's electronic filing system (AEFS) this 24th day of August, 2023, with courtesy copies being served via email upon the following:

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