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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9431**

ADMINISTRATIVE LAW JUDGE: D. MICHAEL CHAPPELL

IN THE MATTER OF:

ELEANOR MARTIN AND OSCAR CEBALLOS

APPELLANTS

**AUTHORITY'S SUPPORTING BRIEF AND PROPOSED FINDINGS OF
FACT, CONCLUSIONS OF LAW, AND ORDER**

The Horseracing Integrity and Safety Authority, pursuant to the briefing schedule provided by the Administrative Law Judge in the June 27, 2024 Order, submits the following Supporting Brief with its Proposed Findings of Fact and Conclusions of Law, and Order.

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AUTHORITY'S BRIEF IN SUPPORT OF ITS POSITION

The Horseracing Integrity and Safety Authority (the “Authority”) files this Brief in Response to Appellants’ Martin and Ceballos (collectively the “Appellants”) Notice of Appeal and Application for Review. The Authority requests the Federal Trade Commission (the “Commission”) uphold the Board of the Authority’s Decision on Appeal (the “Decision”) and affirm the Sunland Park stewards’ ruling.

Introduction

On February 18, 2024, jockey Oscar Ceballos committed a Class 2 violation of the Authority’s Rule 2280, Use of Riding Crop, when he struck his mount ALOTALUCK eleven times during the Sunland Park Derby. Mr. Ceballos and ALOTALUCK’s owner, Eleanor Martin, contend that safety concerns caused Mr. Ceballos to strike the horse eleven times. However, the stewards concluded, and the Board of the Authority agreed, that Mr. Ceballos struck the horse in an effort to achieve maximum placement in the Sunland Park Derby. The horse finished second in the race, earning \$85,360 in purse monies and points for eligibility in the Kentucky Derby.

In their Notice of Appeal and Application for Review, Appellants assert three grounds for appeal: the Sunland Park stewards and the Board of the Authority (the “Board”) incorrectly found Mr. Ceballos violated Rule 2280; the Board decision did not contain findings of fact; and the Board hearing lacked procedural protections set forth in the rules. Each basis of Appellants’ appeal fails for the reasons set forth herein.

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Mr. Ceballos Violated Rule 2280

Mr. Ceballos struck ALOTALUCK eleven times during the Sunland Park Derby on February 18, 2024.¹ Rule 2280 Use of Riding Crop (the “Crop Rule”) requires riders to use the crop professionally in a “manner consistent with maintaining focus and concentration of the Covered Horse for safety of Covered Horses and Riders, or for encouragement to achieve optimal performance.” Rule 2280(a). The Crop Rule, by defining the parameters of professional use of the riding crop, limits jockeys to striking a horse six times during a race. Rule 2280(b)(1). An exception to this limit occurs if a rider uses a strike to preserve the safety of the horse, rider, or other participants in the race. Rule 2280(b)(4).

In the Sunland Park Derby, Mr. Ceballos struck his mount an additional five times in excess of the limit of six strikes down the homestretch.² The evidence in the record clearly indicates that Mr. Ceballos struck ALOTALUCK in an effort to achieve maximum placement in the Sunland Park Derby and not for safety purposes.

At the Board hearing, New Mexico steward Larry Fontenot, trainer Ty Garrett, Mr. Ceballos, fellow jockey Scott Stevens, and New Mexico steward and former jockey Violet Smith all testified that ALOTALUCK veered to the outside rail.³ Appellants and the Authority agree that ALOTALUCK veered to the outside several times during the race including while coming down the homestretch at the end of the race. However, the race record is clear that ALOTALUCK was not in danger when he

¹ Appeal Book, Tab 21, Decision on Appeal, at 60.

² *Id.*; Appeal Book, Tab 3, Stewards Ruling – Oscar Ceballos.

³ Appeal Book, Tab 23, Joint Stipulation of Fact, at 66, 69, 72, 73, 74.

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veered from running a straight path. When ALOTALUCK began veering to the outside rail down the stretch, the horse was running free from traffic caused by other horses in the race.⁴ Mr. Ceballos even testified that “he and ALOTALUCK were not surrounded by other horses” down the stretch as he continued to strike ALOTALUCK.⁵

As the horse veered to the outside rail, clear of any other participants in the race, Mr. Ceballos signaled no indication of concern. He did not look behind him to observe the position of other horses,⁶ he did not pull up on the reins to slow the horse, and he did not move to the outside of the track to avoid the path of other horses trailing ALOTALUCK.

Moreover, the video footage reveals that when Mr. Ceballos made the excess strikes with the crop he had made no attempt down the stretch to steer ALOTALUCK with the reins to bring the horse back to a straight race path.⁷ Witness testimony also confirmed that Mr. Ceballos did not attempt to use the reins down the stretch after he cleared traffic.⁸ Mr. Ceballos explained that he did not use the reins at that time to steer the horse because the horse had previously not responded to the reins.⁹ Yet, contrary to Mr. Ceballos’ assertion, as evidenced on the video footage of the race, and as witness Violet Smith testified at the Board hearing, “down the stretch, Mr.

⁴ Appeal Book, Tab 20, Sunland Park Derby Race Footage at 1:28-1:51; Appeal Book, Tab 23, Joint Stipulation of Fact, at 73.

⁵ Appeal Book, Tab 23, Joint Stipulation of Fact, at 73.

⁶ *Id.*

⁷ Appeal Book, Tab 20, Sunland Park Derby Race Footage at 1:40-1:51.

⁸ Appeal Book, Tab 23, Joint Stipulation of Fact, at 66, 69, 72, 73, 74.

⁹ *Id.* at 72.

PUBLIC

Ceballos pulled the reins to direct the horse's head to the outside to try to get around another horse running in front of ALOTALUCK."¹⁰ The horse had responded at that time to the pull of the reins to allow Mr. Ceballos to guide him out of traffic to run an unobstructed finish of the race. Since the horse previously responded to the pull to the outside by Mr. Ceballos while in traffic, Mr. Ceballos cannot now claim he would have been able to safely attempt to use the reins again to steer ALOTALUCK down the stretch while running away from traffic. Mr. Ceballos chose to use the crop instead, which encouraged the horse to improve or maintain its position in the race, rather than attempt to use the reins to steer the horse down the stretch to the finish line.

As explanation for the horse veering to the outside, Mr. Ceballos asserted to the Sunland Park stewards and the Board that soreness in ALOTALUCK's right hind foot caused the horse to veer outside.¹¹ The other witnesses Appellants produced at the Board hearing similarly testified that soreness of the foot *could have* caused the horse to veer to the outside.¹² What is concerning in that testimony is that if Ceballos believed the horse was sore during the race and unresponsive, the proper response for the jockey would have been to pull up the horse, rather than strike it with the crop. *See* Decision on appeal at 7 ("Mr. Ceballos testified that the horse was 'off' during the race, and the Board is concerned that Mr. Ceballos continued to strike the horse with the crop if he thought the horse was in trouble").

¹⁰ *Id.* at 74.

¹¹ *Id.* at 72-73; Appeal Book, Tab 4, Recorded Stewards Hearing, at 4:27-5:10.

¹² Appeal Book, Tab 23, Joint Stipulation of Fact, at 69, 71, 72, 73.

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Any horse running in a Covered Race subject to the Authority's Rules would have been evaluated by a regulatory veterinarian *prior* to the race to ensure the horse was sound. Rule 2135(a)(1). Had a regulatory veterinarian determined ALOTALUCK to be unsound on the day of the race, the regulatory veterinarian would have scratched the horse from the race, and the horse would not have participated in the race. Rule 2135(a)(5). Further, trainer Ty Garrett testified at the Board hearing that he believed the horse was sound at the time of the Sunland Park Derby.¹³

Regardless of the cause of ALOTALUCK's drift to the outside rail, no evidence in the record indicates the horse's sore foot created a legitimate safety concern. After being pulled to the outside by Mr. Ceballos, ALOTALUCK cleared the race traffic. While in a clear running path, and unhindered by his perception of the horse's soreness, Mr. Ceballos continued striking ALOTALUCK to achieve maximum placement in the race. Mr. Ceballos chose to use the crop to spur ALOTALUCK on and steer the horse rather than attempt to use the reins to guide the horse. Mr. Ceballos also chose to continue racing the horse at full speed rather than slowing the horse to protect against any further foot injury during the race.

The purpose of the Crop Rule is to protect the wellbeing of horses participating in horseracing from unwarranted strikes. Since July 1, 2022, riders have ridden under the Crop Rule in all jurisdictions participating with the Authority. By using a crop professionally and consistent with the Authority's rules, jockeys can ride their mounts effectively and safely without exceeding the six-strike limit. Horseracing is

¹³ *Id.* at 69.

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an inherently dangerous activity that requires important attention to safety concerns. During races, hazardous circumstances such as collisions or other dangerous scenarios arise that require jockeys to react quickly to guide their horse away from harm. The Authority's Crop Rule contemplates these circumstances and allows jockeys an exception to the six-strike limit to avoid risks during a race.

No emergent situation existed for ALOTALUCK during the Sunland Park Derby. The horse veered to the outside rail several times in the race. When the horse arrived at the homestretch, Mr. Ceballos pulled on the outside rein to steer the horse clear from the field of other horses to allow the horse to run unobstructed. Mr. Ceballos, when free from traffic, ceased attempting to guide ALOTALUCK with the reins and instead struck the horse five additional times with his crop. Mr. Ceballos and ALOTALUCK were not in danger; rather, Mr. Ceballos made a strategic decision to continue striking the horse. Mr. Ceballos used the crop unprofessionally to guide the horse to maximum placement in the race – and ALOTALUCK finished second in the race.

The Sunland Park Derby occurred in February 2024, almost two years after the Crop Rule took effect. Mr. Ceballos was familiar with the Crop Rule at the time of the race. In fact, he had previously discussed the Crop Rule with Mr. Fontenot and had served as a Spanish language interpreter to fellow jockeys on behalf of New Mexico stewards to instruct other riders concerning the Crop Rule.¹⁴

¹⁴ *Id.* at 67.

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Mr. Ceballos violated the Crop Rule by using five excess crop strikes over the limit of six strikes during the race to spur ALOTALUCK to achieve maximum placement. This is a clear violation of the Crop Rule. The Sunland Park stewards found that Mr. Ceballos violated the Crop Rule. That decision was properly upheld by the Board.

The Board Issued Findings of Fact in its Decision on Appeal

Appellants also assert that the Board did not comply with Rule 8340 by not articulating findings of fact in its Decision on Appeal. Rule 8340 applies to initial hearings before the Board. This case is an appeal to the Board from a Stewards' Ruling so the correct Rule is Rule 8350. Regardless, the Board made the following findings:

There is no dispute that Mr. Ceballos struck ALOTALUCK 11 times during the race. The evidence established that seven of the eleven strikes were to the shoulder of the horse. There was no testimony that the strikes to the shoulder were taps on the shoulder with the crop while both hands were holding the reins and both hands were touching the base of the horse's neck, as permitted by Rule 2280(b)(4). The videotape of the race clearly shows that the horse was lugging out and also moving toward the rail at different points during the race. The videotape also shows that Mr. Ceballos was trying to properly position the horse in order to win the race.

The Board does not believe that Mr. Ceballos administered the shoulder strikes to ALOTALUCK for safety purposes, contrary to his testimony. The videotape shows that the horse was not running amid close traffic, and Mr. Ceballos was not looking behind him or otherwise manifesting signs that he was concerned about safety. In addition, Mr. Ceballos testified that the horse was "off" during the race, and the Board is concerned that Mr. Ceballos continued to strike the horse with the crop if he thought the horse was in trouble. The Board concludes that Mr. Ceballos struck the horse eleven times in an effort to win the race, five strikes in excess of the six strikes permitted under Rule 2280(b)(2).

PUBLIC

The Board also concludes that Mr. Ceballos did not use the crop to preserve the safety of horses and riders during the race.¹⁵

Rule 8350(i) requires the Board to issue a written decision, which was clearly done here with the Decision of Appeal - and one that did identify factual findings, conclusions of law, and the disposition of the matter including the penalty imposed.

The Board Afforded Appellants Full Procedural Rights Under Rule 8350

Appellants received all requisite rights and procedural protections in presenting their case to the Board. Appellants claim the Board precluded them from presenting a complete case because the Sunland Park stewards appeared at the hearing by videoconferencing rather than in-person. Rule 8350(e) specifically states, “At the discretion of the Board, the hearing may be conducted in person, or by means of an audio-visual videoconferencing system or a telephone audio system.” The April 16, 2024 hearing was conducted via Zoom videoconferencing. All participants to the hearing appeared from separate locations Zoom. Appellants’ and the Authority’s witnesses all testified via Zoom at the hearing. All witnesses were able to review the race footage and see hearing exhibits via screen sharing on the Zoom platform during the hearing. That process is no different than a hearing before the Administrative Law Judge at the Commission.

Additionally, Sunland Park stewards conducted a hearing with Mr. Ceballos at the track to review the race footage with him prior to issuing their ruling.¹⁶ Then, consistent with Rule 8350, Mr. Ceballos and Ms. Martin appealed the Sunland Park

¹⁵ Appeal Book, Tab 21, Decision on Appeal, at 60-61.

¹⁶ Appeal Book, Tab 3, Stewards Ruling – Oscar Ceballos.

PUBLIC

stewards' rulings to the Board. The Board conducted a full hearing on April 16, 2024. At the hearing, after cross-examining the Authority's witness, Steward Larry Fontenot, Appellants called and presented evidence on direct examination of trainer Ty Garrett, veterinarian Dr. Kara Theis, farrier Jody Roberts, and Mr. Ceballos as fact witnesses. Jockey Scott Stevens was permitted to testify as Appellants' expert witness on the topics of how a jockey might react when riding a horse with an injured hoof and how to steer the horse.¹⁷ Appellants also presented evidence that was taken into the record at the hearing.¹⁸

In accordance with Rule 8350, Appellants received a full and fair hearing before the Board, and the Board evaluated their appeal and issued a written decision.

Conclusion

Appellants only present the Commission with points of disagreement with the Decision relating to the weight the Board of the Authority gave testimony from witnesses and evidence presented at the April 16, 2024, hearing. The evidence establishes that Mr. Ceballos did not strike ALOTALUCK to preserve the safety of himself or other riders, but rather to achieve maximum placement in the Sunland Park Derby. Mr. Ceballos committed a Class 2 violation of the Crop Rule when he

¹⁷ Appeal Book, Tab 23, Joint Stipulation of Fact, at 73.

¹⁸ Appeal Book, Tab 15, Appellant Hearing Exhibit – Photo of ALOTALUCK Hoof on February 21; Appeal Book, Tab 16, Appellant Hearing Exhibit – Photo of ALOTALUCK Hoof on March 1 (1); Appeal Book, Tab 17, Appellant Hearing Exhibit – Photo of ALOTALUCK Hoof on March 1 (2); Appeal Book, Tab 18, Appellant Hearing Exhibit – Photo of Sunland Park Derby from the El Paso Times; Appeal Book, Tab 19, Appellant Hearing Exhibit – Photo of Photo Finish.

PUBLIC

struck ALOTALUCK eleven times during the Sunland Park Derby. As such, the ALJ should affirm the ruling of the Sunland Park stewards and the decision of the Board.

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AUTHORITY'S PROPOSED FINDINGS OF FACT

1. The Horseracing Integrity and Safety Authority (the "Authority") maintains its headquarters at 401 West Main Street, Suite 222, Lexington, Kentucky 40507.
2. The Authority was created by the Horseracing Integrity and Safety Act, 15 USC 57A § 3051 *et seq.*¹⁹
3. The Authority exists to develop and implement a racetrack safety program for covered horses, covered persons, and covered horseraces.
4. Sunland Park is a Racetrack, pursuant to the Authority's Rules, where Covered Horseraces are conducted.
5. Sunland Park maintains its racing operations at 1200 Futurity Drive, Sunland Park, New Mexico 88063.
6. ALOTALUCK is a Covered Horse, pursuant to the Authority's Rules.
7. Eleanor Martin is currently the owner of ALOTALUCK and was owner of ALOTALUCK on February 18, 2024.²⁰
8. Ty Garrett is currently the trainer of ALOTALUCK and was trainer of ALOTALUCK on February 18, 2024.²¹
9. Oscar Ceballos was rider of ALOTALUCK on February 18, 2024, at Sunland Park.²²

¹⁹ 15 U.S.C. § 3051 *et seq.*

²⁰ Appeal Book, Tab 5, Notice of Appeal & Request for Stay – Eleanor Martin at 10.

²¹ Appeal Book, Tab 2, Stewards Ruling – Eleanor Martin.

²² Appeal Book, Tab 3, Stewards Ruling – Oscar Ceballos.

PUBLIC

10. On February 18, 2024, ALOTALUCK raced at Sunland Park in race 9.²³
11. ALOTALUCK placed second in the Sunland Park Derby on February 18, 2024 (the “Sunland Park Derby”).²⁴
12. During the course of the race, Mr. Ceballos struck ALOTALUCK eleven times with the riding crop.²⁵
13. The Sunland Park stewards reviewed the race footage and observed Mr. Ceballos use the riding crop eleven times during the race.²⁶
14. The Sunland Park stewards conducted hearings with Mr. Ceballos and Mr. Garrett, in place of Ms. Martin, on February 22, 2022, in which the stewards reviewed the race with both Mr. Ceballos and Mr. Garrett.²⁷
15. The Sunland Park stewards issued Mr. Ceballos a ruling citing him for a Class 2 Violation of Rule 2280(b)(1) for striking the horse eleven times.²⁸
16. The Sunland Park stewards issued Ms. Martin a ruling citing her for a Class 2 Violation of Rule 2280(b)(1) for Mr. Ceballos striking the horse eleven times.²⁹

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Appeal Book, Tab 23, Joint Stipulation of Fact, at 57.

²⁷ Appeal Book, Tab 1, Notice of Stewards Hearing – Eleanor Martin; Appeal Book Tab 3, Stewards Ruling – Oscar Ceballos.

²⁸ Appeal Book, Tab 3, Stewards Ruling – Oscar Ceballos.

²⁹ Appeal Book, Tab 2, Stewards Ruling – Eleanor Martin.

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17. Ms. Martin filed a Notice of Appeal of the Sunland Park stewards' ruling with the Authority on February 24, 2024.³⁰
18. Mr. Ceballos filed a Notice of Appeal and Request for Stay Pending Appeal of the Sunland Park stewards' ruling with the Authority on February 29, 2024.³¹
19. The Authority granted Ms. Martin a stay of penalties on February 28, 2024.³²
20. The Authority granted Mr. Ceballos a stay of penalties on February 29, 2024.³³
21. The Authority conducted a Board hearing of the matter on April 16, 2024.³⁴
22. Sunland Park steward Larry Fontenot, trainer Ty Garrett, veterinarian Dr. Kara Theis, farrier Jody Roberts, and Mr. Ceballos appeared as fact witnesses for Appellants at the hearing. Jockey Scott Stevens appeared as an expert witness for Appellants at the hearing. The Authority presented rebuttal testimony from state steward and jockey Violet Smith at the hearing.³⁵

³⁰ Appeal Book, Tab 5, Notice of Appeal & Request for Stay – Eleanor Martin, at 10.

³¹ Appeal Book, Tab 6, Notice of Appeal & Request for Stay – Oscar Ceballos.

³² Appeal Book, Tab 7, Order on Request for Stay – Granted – Eleanor Martin.

³³ Appeal Book, Tab 8, Order on Request for Stay – Granted – Oscar Ceballos.

³⁴ Appeal Book, Tab 9, Notice of HISA Board Hearing – Eleanor Martin; Appeal Book, Tab 10, Notice of HISA Board Hearing – Oscar Ceballos.

³⁵ Appeal Book, Tab 23, Joint Stipulation of Fact, at 74-75.

PUBLIC

23. The Board reviewed the underlying record in the matter consisting of the Sunland Park stewards' rulings, an audio recording of the Sunland Park stewards' hearing with Mr. Ceballos and filed Notices of Appeal. At the hearing, the Board accepted hearing exhibits. The Authority presented two photographs taken by Steward Fontenot of ALOTALUCK's right hind foot, a video of ALOTALUCK jogging, and a statement from a Sunland Park regulatory veterinarian. Appellants presented two photographs of ALOTALUCK's right hind hoof taken on different dates, a photograph of the finish line in the race, and a photograph of the Sunland Park Derby race at the start of the race.³⁶
24. ALOTALUCK veered to the outside rail multiple times during the race.³⁷
25. Mr. Ceballos struck ALOTALUCK eleven times during the course of the race.³⁸
26. The Authority issued a written decision on appeal on April 26, 2024, upholding the Sunland Park stewards' rulings.³⁹
27. Ms. Martin and Mr. Ceballos filed an appeal with the Federal Trade Commission of the Authority's decision on May 8, 2024.⁴⁰

³⁶ Appeal Book, Tab 21, Decision on Appeal, at 56.

³⁷ *Id.* at 60.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Notice of Appeal and Application for Review filed by Appellants, In the Matter of Eleanor Martin and Oscar Ceballos, FTC No. D-9431, May 8, 2024.

PUBLIC

AUTHORITY'S PROPOSED CONCLUSIONS OF LAW

1. Jockey Oscar Ceballos struck ALOTALUCK eleven times during the Sunland Park Derby on February 18, 2024.
2. No underlying safety concern served as the basis for the strikes; instead strikes were made in an effort to encourage the horse to achieve optimal placing in the race.
3. No dispute existed between the parties that Mr. Ceballos struck ALOTALUCK eleven times during the course of the race.
4. The Sunland Park stewards did not consider any taps, Rule 2280(b)(2), or show or waive the crop, Rule 2280(b)(3), when counting the number of strikes Mr. Ceballos used during the race.⁴¹
5. ALOTALUCK veered to the outside rail multiple times during the course of the race.
6. Mr. Ceballos attempted to steer ALOTALUCK with the reins when ALOTALUCK veered to the outside rail at the beginning of the race.
7. Mr. Ceballos did not attempt to steer ALOTALUCK with reins down the stretch as ALOTALUCK veered to the outside rail.
8. Mr. Ceballos struck ALOTALUCK eleven times during the course of the race to achieve maximum placing during the course of the race.
9. Mr. Ceballos did not strike ALOTALUCK for safety purposes.

⁴¹ Citations to Rule 2280 are to the subsections in effect at the time of the Sunland Park Derby. The current rule governing taps is located at 2280(b)(4) and governing showing and waiving the crop is located at 2280(b)(5).

PUBLIC

10. The Sunland Park stewards appropriately applied Rule 2282(b)(1) and found that Mr. Ceballos had committed a Class 2 Violation of the Authority's crop rule.
11. The Sunland Park stewards appropriately applied Rule 2282(b)(2) and issued the following penalties in the ruling: a \$853.60 fine for the jockey or 20% of the purse, whichever is greater; a three-day suspension for the jockey; and a disqualification of purse earnings.

The ALJ finds Mr. Ceballos violated Rule 2280(b)(1) on February 18, 2024, in Race 9 at Sunland Park by striking his horse more than six times and imposes the following penalties: a \$853.60 fine; a three-day suspension for the jockey; and a disqualification of purse earnings.

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AUTHORITY'S PROPOSED ORDER

The undersigned Chief Administrative Law Judge (“ALJ”), having reviewed the entire record *de novo*, and having reviewed the parties’ submitted proposed findings of fact and conclusions of law, hereby makes the following findings of fact and conclusions of law.

Introduction

On February 18, 2024, jockey Oscar Ceballos rode ALOTALUCK in the Sunland Park Derby at Sunland Park. The horse finished second in the race. After the race, the Sunland Park stewards reviewed the race and observed Mr. Ceballos exceeded the permitted number of strikes to ALOTALUCK during the race. The stewards conducted a hearing with Mr. Ceballos and found him to be in violation of Rule 2280 Use of Riding Crop. The stewards assessed written rulings to Mr. Ceballos and the owner of ALOTALUCK, Eleanor Martin. Both Mr. Ceballos and Ms. Martin appealed the rulings to the Board of the Authority (the “Board”). The Board conducted a hearing in this matter on April 16, 2024, and issued a written Decision on Appeal. Appellants appealed the Board’s decision to the ALJ.

Rule 2280 on Use of Riding Crop and Penalties

Rule 2280 Use of Riding Crop (“Crop Rule”) allows jockeys to use riding crops to encourage horses to achieve optimal performance in a race. Rule 2280(a). However, a jockey may only strike a horse six times during a race to achieve maximum placement. Rule 2280(b)(1). The Crop Rule does contain an exception, allowing a rider to use the crop to preserve the safety of other horses and jockeys. Rule 2280(b)(4).

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Any strike, not including a strike intended to preserve safety, over the limit of six strikes violates the Authority's Crop Rule. The Crop Rule includes a defined schedule of attendant sanctions. A jockey incurs a Class 2 violation of the Crop Rule by using four to nine strikes over the permitted six strikes during the race; resulting in a penalty of a \$500 fine or 20% of the purse earnings, whichever is greater, a three-day suspension, and a disqualification of the horse from the race and accompanying purse earnings.

The Sunland Park Stewards Correctly Applied the Crop Rule

Mr. Ceballos struck his mount, ALOTALUCK, eleven times during the course of the Sunland Park Derby. The evidence in the record does not indicate that Mr. Ceballos struck ALOTALUCK in an effort to preserve the safety of himself, ALOTALUCK, or other horses and riders. The Sunland Park stewards and the Authority's Board correctly found that Mr. Ceballos committed a Class 2 violation of the Crop Rule.

Immediately after the finish of the Sunland Park Derby, the Sunland Park stewards reviewed the race and observed that Mr. Ceballos used his crop to strike ALOTALUCK more than six times during the race.⁴² The stewards saw ALOTALUCK veer to the outside rail multiple times during the race, but they did not observe Mr. Ceballos use the reins to steer the horse once he was clear from traffic in the race.⁴³ The next day, the stewards conducted a hearing with Mr. Ceballos in which

⁴² Appeal Book, Tab 23, Joint Stipulation of Fact, at 66.

⁴³ *Id.*

PUBLIC

the stewards reviewed the Sunland Park Derby race footage and counted Mr. Ceballos' strikes with him.⁴⁴ During the hearing, Steward Larry Fontenot asked Mr. Ceballos if he had any safety concerns while riding the horse. Mr. Ceballos had not raised a safety concern prior to Mr. Fontenot's question about safety.⁴⁵ Mr. Ceballos responded that the horse was sore and veered to the outside rail while running, which prompted Mr. Ceballos to use strikes to steer the horse.

After the hearing, on February 21, 2024, the Sunland Park stewards examined ALOTALUCK's right hind foot with the New Mexico state regulatory veterinarian.⁴⁶ The New Mexico regulatory veterinarian assessed ALOTALUCK to be sound. On February 22, 2024, the Sunland Park stewards issued a stewards' ruling to Mr. Ceballos citing him for violating the Crop Rule by striking his mount "5 times over the limit" of six strikes.⁴⁷

Appellants appealed the Sunland Park stewards' ruling to the Authority's Board.⁴⁸ At the Board hearing, Mr. Fontenot testified that Mr. Ceballos struck ALOTALUCK eleven times during the course of the race, the horse was sound at the

⁴⁴ *Id.*

⁴⁵ *Id.*; Appeal Book, Tab 4, Recorded Stewards Hearing, at 4:27-5:10.

⁴⁶ Appeal Book, Tab 23, Joint Stipulation of Fact, at 67-68; Appeal Book, Tab 14, Authority Hearing Exhibit – Statement from Veterinarian Brandi O'Sullivan on February 21, at 43; Appeal Book Tab 11, Authority Hearing Exhibit – Photo of ALOTALUCK Hoof on February 21 (1); Appeal Book Tab 12, Authority Hearing Exhibit – Photo of ALOTALUCK Hoof on February 21 (2); Appeal Book Tab 13, Authority Hearing Exhibit – Video of ALOTALUCK Jogging with Regulatory Veterinarian on February 21.

⁴⁷ Appeal Book, Tab 3, Stewards Ruling – Oscar Ceballos.

⁴⁸ Appeal Book, Tab 5, Notice of Appeal & Request for Stay – Eleanor Martin; Appeal Book, Tab 6, Notice of Appeal & Request for Stay – Oscar Ceballos.

PUBLIC

time of the race, and Mr. Ceballos made no attempt to steer the horse with the reins but rather relied on crop strikes to steer the horse.⁴⁹ Mr. Ceballos testified that he “did not use the reins down the home stretch to steer the horse” and instead attempted to keep the horse running straight by striking the horse in excess of six times.⁵⁰ It is clear from the underlying record that Mr. Ceballos made contact with ALOTALUCK between four to nine strikes in excess of the six allowed strikes under the Crop Rule.

Mr. Ceballos Exceeded the Allowed Number of Strikes

Appellants have failed to present any evidence that Mr. Ceballos’ excess crop strikes were used for safety purposes. The record is clear (and the parties agree) that Mr. Ceballos struck ALOTALUCK eleven times during the course of the Sunland Park Derby. The video footage of the race indicates that Mr. Ceballos struck the horse seven times on the shoulder. No party asserted at any time that the shoulder strikes were taps pursuant to Rule 2280(b)(2).

The race footage corroborates the Board hearing testimony of Mr. Fontenot, Mr. Garrett, Mr. Ceballos, Mr. Stevens, and Ms. Smith that ALOTALUCK veered to the outside rail multiple times during the course of the race.⁵¹ The footage also corroborates all witness’ testimony that Mr. Ceballos opted not to attempt to steer the horse with the reins down the stretch to prevent ALOTALUCK from veering to the outside. Based on the video footage of the race and Mr. Ceballos’ testimony at the

⁴⁹ Appeal Book, Tab 23, Joint Stipulation of Fact, at 65-68.

⁵⁰ *Id.* at 72.

⁵¹ *Id.* at 66, 69, 72, 73, 74.

PUBLIC

Board hearing, ALOTALUCK was not surrounded by other horses down the stretch and was not at risk of a collision.⁵² Mr. Ceballos also testified at the Board that he did not attempt to look behind him to observe the horses running around him.⁵³

Mr. Ceballos told Sunland Park stewards at the stewards' hearing that ALOTALUCK had a sore right hind hoof at the time of the race.⁵⁴ He also testified at the Board hearing that ALOTALUCK was sore during the race, which caused the horse to veer to the outside rail.⁵⁵ Other witnesses, including Mr. Garrett, Dr. Theis, Mr. Roberts, Mr. Stevens, and Mr. Ceballos all testified at that hearing that a sore hoof could have caused the horse to veer to the outside rail.⁵⁶ Yet, the persons responsible for ALOTALUCK, including trainer Ty Garrett, believed the horse to be sound and fit to race at the time of the Sunland Park Derby.⁵⁷ The New Mexico stewards and veterinarian also examined ALOTALUCK three days after the Sunland Park Derby on February 21, 2024, and believed the horse to be sound following the race.⁵⁸

⁵² Appeal Book, Tab 20, Sunland Park Derby Race Footage at 1:28-1:51; Appeal Book, Tab 23, Joint Stipulation of Fact, at 73.

⁵³ Appeal Book, Tab 23, Joint Stipulation of Fact, at 73.

⁵⁴ Appeal Book, Tab 4, Recorded Stewards Hearing, at 4:27-5:10.

⁵⁵ Appeal Book, Tab 23, Joint Stipulation of Fact, at 72-73.

⁵⁶ *Id.* at 66, 69, 72, 73, 74.

⁵⁷ *Id.* at 69.

⁵⁸ *Id.* at 67-69; Appeal Book, Tab 14, Authority Hearing Exhibit – Statement from Veterinarian Brandi O'Sullivan on February 21, at 43; Appeal Book Tab 11, Authority Hearing Exhibit – Photo of ALOTALUCK Hoof on February 21 (1); Appeal Book Tab 12, Authority Hearing Exhibit – Photo of ALOTALUCK Hoof on February 21 (2); Appeal Book Tab 13, Authority Hearing Exhibit – Video of ALOTALUCK Jogging with Regulatory Veterinarian on February 21.

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Despite Mr. Ceballos' explanation for the horse's behavior veering to the outside rail, Appellants fail to raise an argument that a legitimate concern for safety existed during the race. When ALOTALUCK veered to the outside rail down the homestretch of the track, ALOTALUCK was running free from any other race traffic. The course of the horse's path did not obstruct that of any horses running to the inside of ALOTALUCK. Moreover, Mr. Ceballos did not look around and did not display any other signs of concern that the horse was in trouble during the race. Despite having a sore hoof, Mr. Ceballos made no effort to ease the horse to a walk or remove the horse from traffic if the horse's hoof was causing a significant amount of pain. Rather, Mr. Ceballos continued to run the horse and strike the horse to achieve maximum placement. Mr. Ceballos never used the reins down the homestretch to steer the horse.

Appellants' assertion that the Crop Rule allows a jockey to use crop strikes without limit to steer a horse is a misunderstanding of the rule. The Crop Rule requires a rider to use the crop "in a professional manner consistent with maintaining focus and concentration of the Covered Horse for safety of Covered Horses and Riders, or for encouragement to achieve optimal performance." Rule 2280(a). In conformity with this professional use of the crop, the Authority has made provision that a rider may use a crop a maximum of six times during a race, Rule 2280(b)(2), and an exemption from this maximum number of crop strikes exists for a jockey to preserve the safety for all horses and riders in a race. Rule 2280(b)(4).

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It is logical that the use of the crop to preserve the safety of horses and riders, the exception to the six-strike limit during a race, would only apply in extreme circumstances. No such incident occurred with ALOTALUCK in the Sunland Park Derby. The horse veered several times to the outside rail. However, Mr. Ceballos, running free from traffic or other impediments down the homestretch, struck the horse a total of eleven times during the race. The record does not indicate that the horse or rider's safety was in danger down the stretch to require five additional crop strikes. Mr. Ceballos opted not to use the reins to attempt to steer ALOTALUCK but rather steered the horse exclusively through crop strikes.

Based on the underlying record, Mr. Ceballos used eleven crop strikes on ALOTALUCK during the Sunland Park Derby to achieve maximum placement during the race, and not to avoid an unsafe situation. Mr. Ceballos' eleven strikes to the horse were intended to spur the horse to reach its maximum placement in the Sunland Park Derby. To that end, Mr. Ceballos was successful. ALOTALUCK came in second in the Sunland Park Derby. Therefore, the Sunland Park stewards appropriately applied the crop rule and ruled that Mr. Ceballos violated the Crop Rule.

The Board Complied with the Requirements of Rule 8350

The Board articulated findings of fact in its Decision on Appeal. In its Decision on Appeal, the Board found:

There is no dispute that Mr. Ceballos struck ALOTALUCK 11 times during the race. The evidence established that seven of the eleven strikes were to the shoulder of the horse. There was no testimony that the strikes to the shoulder were taps on the shoulder with the crop while

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both hands were holding the reins and both hands were touching the base of the horse's neck, as permitted by Rule 2280(b)(4). The videotape of the race clearly shows that the horse was lugging out and also moving toward the rail at different points during the race. The videotape also shows that Mr. Ceballos was trying to properly position the horse in order to win the race.

The Board does not believe that Mr. Ceballos administered the shoulder strikes to ALOTALUCK for safety purposes, contrary to his testimony. The videotape shows that the horse was not running amid close traffic, and Mr. Ceballos was not looking behind him or otherwise manifesting signs that he was concerned about safety. In addition, Mr. Ceballos testified that the horse was "off" during the race, and the Board is concerned that Mr. Ceballos continued to strike the horse with the crop if he through the horse was in trouble. The Board concludes that Mr. Ceballos struck the horse eleven times in an effort to win the race, five strikes in excess of the six strikes permitted under Rule 2280(b)(2). The Board also concludes that Mr. Ceballos did not use the crop to preserve the safety of horses and riders during the race.⁵⁹

The above finding clearly satisfies the requirement in Rule 8350 that the Board issue a written decision. No violation of Rule 8350 occurred relating to written findings of fact.

Next, the Board allowed a full presentation of evidence from both Appellants and the Authority at its hearing. The Board hearing on April 16, 2024, occurred via videoconferencing. All participants in the hearing – Appellants, representatives of the Authority, counsel for Appellants and the Authority, the Board, and witnesses – appeared at the hearing via Zoom. All witnesses testified via Zoom and were able to review race video footage and see all other exhibits via screensharing on Zoom. As such, the videoconferencing did not limit Appellants' ability to present a full case.

⁵⁹ Appeal Book, Tab 21, Decision on Appeal, at 60-61.

PUBLIC

Additionally, Mr. Fontenot testified about the procedure he and the other stewards at Sunland Park used to evaluate races, review the race for potential violations, and hold hearings with jockeys if a race violation occurred.⁶⁰ Mr. Fontenot and the other Sunland Park stewards held a hearing with Mr. Ceballos to review the race footage before issuing their ruling.⁶¹ Then, upon issuing rulings to Mr. Ceballos and Ms. Martin, both parties were able to appeal to the Board and participate in a hearing. Appellants called five witnesses: trainer Ty Garrett, Dr. Kara Theis, Jody Roberts, and Mr. Ceballos to testify as fact witnesses at the Board hearing. Jockey Scott Stevens was permitted to testify as Appellants' expert witness at the hearing on the topics of how a jockey might react when riding a horse with an injured hoof and how to steer the horse.⁶² Appellants also presented three photographs of ALOTALUCK's right hind hoof, a photograph of the Sunland Park Derby taken for the El Paso Times, and a photograph of the start of the race as additional evidence at the hearing. Appellants received a full and fair hearing at the Board consistent with the requirements of Rule 8350 and were provided with a complete opportunity to present their case to the Board. The Board evaluated Appellants' appeal and issued a written decision.

⁶⁰ Appeal Book, Tab 23, Joint Stipulation of Fact, at 66-67.

⁶¹ *Id.*

⁶² *Id.* at 73.

PUBLIC

Findings of Fact

1. The Horseracing Integrity and Safety Authority (the “Authority”) maintains its headquarters at 401 West Main Street, Suite 222, Lexington, Kentucky 40507.
2. The Authority was created by the Horseracing Integrity and Safety Act, 15 USC 57A § 3051 *et seq.*⁶³
3. The Authority exists to develop and implement a racetrack safety program for covered horses, covered persons, and covered horseraces.
4. Sunland Park is a Racetrack, pursuant to the Authority’s Rules, where Covered Horseraces are conducted.
5. Sunland Park maintains its racing operations at 1200 Futurity Drive, Sunland Park, New Mexico 88063.
6. ALOTALUCK is a Covered Horse, pursuant to the Authority’s Rules.
7. Eleanor Martin is currently the owner of ALOTALUCK and was owner of ALOTALUCK on February 18, 2024.⁶⁴
8. Ty Garrett is currently the trainer of ALOTALUCK and was trainer of ALOTALUCK on February 18, 2024.⁶⁵
9. Oscar Ceballos was rider of ALOTALUCK on February 18, 2024, at Sunland Park.⁶⁶

⁶³ 15 U.S.C. § 3051 *et seq.*

⁶⁴ Appeal Book, Tab 5, Notice of Appeal & Request for Stay – Eleanor Martin.

⁶⁵ Appeal Book, Tab 2, Stewards Ruling – Eleanor Martin.

⁶⁶ Appeal Book, Tab 3, Stewards Ruling – Oscar Ceballos.

PUBLIC

10. On February 18, 2024, ALOTALUCK raced at Sunland Park in race 9.⁶⁷
11. ALOTALUCK placed second in the Sunland Park Derby on February 18, 2024 (the “Sunland Park Derby”).⁶⁸
12. During the course of the race, Mr. Ceballos struck ALOTALUCK eleven times with the riding crop.⁶⁹
13. The Sunland Park stewards reviewed the race footage and observed Mr. Ceballos use the riding crop eleven times during the race.⁷⁰
14. The Sunland Park stewards conducted hearings with Mr. Ceballos and Mr. Garrett, in place of Ms. Martin, on February 22, 2022, in which the stewards reviewed the race with both Mr. Ceballos and Mr. Garrett.⁷¹
15. The Sunland Park stewards issued Mr. Ceballos a ruling citing him for a Class 2 Violation of Rule 2280(b)(1) for striking the horse eleven times.⁷²
16. The Sunland Park stewards issued Ms. Martin a ruling citing her for a Class 2 Violation of Rule 2280(b)(1) for Mr. Ceballos striking the horse eleven times.⁷³

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Appeal Book, Tab 23, Joint Stipulation of Fact, at 57.

⁷¹ Appeal Book, Tab 1, Notice of Stewards Hearing – Eleanor Martin; Appeal Book Tab 3, Stewards Ruling – Oscar Ceballos.

⁷² Appeal Book, Tab 3, Stewards Ruling – Oscar Ceballos.

⁷³ Appeal Book, Tab 2, Stewards Ruling – Eleanor Martin.

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17. Ms. Martin filed a Notice of Appeal of the Sunland Park stewards' ruling with the Authority on February 24, 2024.⁷⁴
18. Mr. Ceballos filed a Notice of Appeal and Request for Stay Pending Appeal of the Sunland Park stewards' ruling with the Authority on February 29, 2024.⁷⁵
19. The Authority granted Ms. Martin a stay of penalties on February 28, 2024.⁷⁶
20. The Authority granted Mr. Ceballos a stay of penalties on February 29, 2024.⁷⁷
21. The Authority conducted a Board hearing of the matter on April 16, 2024.⁷⁸
22. Sunland Park steward Larry Fontenot, trainer Ty Garrett, veterinarian Dr. Kara Theis, farrier Jody Roberts, and Mr. Ceballos appeared as fact witnesses for Appellants at the hearing. Jockey Scott Stevens appeared as an expert witness for Appellants at the hearing. The Authority presented rebuttal testimony from state steward and jockey Violet Smith at the hearing.⁷⁹

⁷⁴ Appeal Book, Tab 5, Notice of Appeal & Request for Stay – Eleanor Martin.

⁷⁵ Appeal Book, Tab 6, Notice of Appeal & Request for Stay – Oscar Ceballos.

⁷⁶ Appeal Book, Tab 7, Order on Request for Stay – Granted – Eleanor Martin.

⁷⁷ Appeal Book, Tab 8, Order on Request for Stay – Granted – Oscar Ceballos.

⁷⁸ Appeal Book, Tab 9, Notice of HISA Board Hearing – Eleanor Martin; Appeal Book, Tab 10, Notice of HISA Board Hearing – Oscar Ceballos.

⁷⁹ Appeal Book, Tab 23, Joint Stipulation of Fact, at 74-75.

PUBLIC

23. The Board reviewed the underlying record in the matter consisting of the Sunland Park stewards' rulings, an audio recording of the Sunland Park stewards' hearing with Mr. Ceballos and filed Notices of Appeal. At the hearing, the Board accepted hearing exhibits. The Authority presented two photographs taken by Steward Fontenot of ALOTALUCK's right hind foot, a video of ALOTALUCK jogging, and a statement from a Sunland Park regulatory veterinarian. Appellants presented two photographs of ALOTALUCK's right hind hoof taken on different dates, a photograph of the finish line in the race, and a photograph of the Sunland Park Derby race at the start of the race.⁸⁰
24. ALOTALUCK veered to the outside rail multiple times during the race.⁸¹
25. Mr. Ceballos struck ALOTALUCK eleven times during the course of the race.⁸²
26. The Authority issued a written decision on appeal on April 26, 2024, upholding the Sunland Park stewards' rulings.⁸³
27. Ms. Martin and Mr. Ceballos filed an appeal with the Federal Trade Commission of the Authority's decision on May 8, 2024.⁸⁴

⁸⁰ Appeal Book, Tab 21, Decision on Appeal, at 56.

⁸¹ *Id.* at 60.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Notice of Appeal and Application for Review filed by Appellants, In the Matter of Eleanor Martin and Oscar Ceballos, FTC No. D-9431, May 8, 2024.

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Conclusions of Law

1. Jockey Oscar Ceballos struck ALOTALUCK eleven times during the Sunland Park Derby on February 18, 2024.
2. No underlying safety concern served as the basis for the strikes; instead the strikes were made in an effort to encourage the horse to achieve optimal placing in the race.
3. No dispute existed between the parties that Mr. Ceballos struck ALOTALUCK eleven times during the course of the race.
4. The Sunland Park stewards did not consider any taps, Rule 2280(b)(2), or “flags,” Rule 2280(b)(3), when counting the number of strikes Mr. Ceballos used during the race.
5. ALOTALUCK veered to the outside rail multiple times during the course of the race.
6. Mr. Ceballos attempted to steer ALOTALUCK with the reins when ALOTALUCK veered to the outside rail at the beginning of the race.
7. Mr. Ceballos did not attempt to steer ALOTALUCK with reins down the stretch as ALOTALUCK veered to the outside rail.
8. Mr. Ceballos struck ALOTALUCK eleven times during the course of the race to achieve maximum placing during the course of the race.
9. Mr. Ceballos did not strike ALOTALUCK for safety purposes.

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10. The Sunland Park stewards appropriately applied Rule 2282(b)(1) and found that Mr. Ceballos had committed a Class 2 Violation of the Authority's crop rule.
11. The Sunland Park stewards appropriately applied Rule 2282(b)(2) and issued the following penalties in the ruling: a \$853.60 fine for the jockey or 20% of the purse, whichever is greater; a three-day suspension for the jockey; and a disqualification of purse earnings.

The ALJ finds Mr. Ceballos violated Rule 2280(b)(1) on February 18, 2024, in Race 9 at Sunland Park by striking his horse more than six times and imposes the following penalties: a \$853.60 fine; a three-day suspension for the jockey; and a disqualification of purse earnings.

Conclusion

The video footage of the race clearly shows that Mr. Ceballos committed eleven strikes in the race, not for safety purposes, but for the purpose of encouraging ALOTALUCK to achieve maximum placement in the race. The Sunland Park stewards' ruling properly applied the Crop Rule and found Mr. Ceballos committed a Class 2 violation of the Crop Rule and appropriately applied the attendant sanctions.

Based on the foregoing findings of fact and conclusions of law, it is hereby **ORDERED AND ADJUDGED** as follows:

The Commission hereby **AFFIRMS** the stewards' rulings and **UPHOLDS** the attendant penalties as the record supports the Sunland Park stewards' findings in the February 22, 2024, rulings issued to Mr. Ceballos and Ms. Martin, and the April 26, 2024, Board Decision on Appeal.

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Entered this _____ day of _____, 2024.

D. Michael Chappell
Chief Administrative Law Judge

Respectfully submitted,

STURGILL, TURNER, BARKER &
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/s/ Bryan Beauman _____

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Response is being served on August 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
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via e-mail to Oalj@ftc.gov

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