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**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
FTC DOCKET NO. D-9441**

**ADMINISTRATIVE LAW JUDGE:**

**JAY L. HIMES**

**IN THE MATTER OF:**

**PHILIP SERPE**

**APPELLANT**

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**THE AUTHORITY'S RESPONSE TO APPELLANT'S APPLICATION FOR REVIEW**

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**CERTIFICATE OF SERVICE**

Pursuant to 16 CFR §1.146(a) and 16 CFR §4.4(b), a copy of the Authority's Response is being served on July 25, 2025, via Administrative E-File System and by emailing a copy to:

Hon. Administrative Law Judge Jay L. Himes  
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The Horseracing Integrity and Safety Authority, Inc. (the “Authority”) files this Response to Appellant’s Application for Review of the Sanctions imposed pursuant to the Final Decision of July 9, 2025 by Arbitral Body member Jeffrey G. Benz (the “Arbitrator”) under the Authority’s Anti-Doping and Medication Control (“ADMC”) Program (the “Decision”). As an initial matter, the requirements of the ADMC Program Rules (the “Rules”), including Rule 7260, were appropriately followed by both the Horseracing Integrity & Welfare Unit (“HIWU”) and the Arbitrator below.

In his Application for Review (the “Application”), the Appellant specifically states that he does not seek to supplement the record, and he does not state that he seeks to contest any portion of the record. The Authority also does not seek to contest or supplement the record below. As a result, there are no disputes of material fact. The Authority also requests that the Administrative Law Judge (“ALJ”) elect to hear oral argument on the purely legal issues raised in the Application.

As to those legal issues, the Decision and the Consequences imposed therein are not arbitrary, capricious, an abuse of discretion, prejudicial, the result of a conflict of interest, or otherwise not in accordance with the law. As the Authority will explain in briefing before the ALJ, the Rules do not require HIWU to seek, or the Arbitrator to impose, a fine. Contrary to Appellant’s assertion that there is a “mandatory minimum fine required under Rule 3223(b),” Application at pg. 1, that Rule places an upper limit only by providing that a “Fine of *up to* \$25,000 or 25% of the total purse (whichever is greater)” applies to a first-time violation for the presence of a Banned Substance (emphasis added). *See In the Matter of Scott Shell, DVM*, Docket No. 9439, ALJ Decision on Application for Review, p. 61 (March 6, 2025) (“The amount of the fine is discretionary[.]”). That Rule has no floor, including a fine of \$0, in contrast to other sanctions for which the same Rule specifies a “minimum.” *See* Rule 3223(b) (specifying a “Minimum of 4

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years up to lifetime Ineligibility” for “Trafficking or Attempted Trafficking”). The discretion afforded with respect to monetary fines also contrasts with other sanctions that are “automatic” under the Rules, such as the “Disqualification of the results of the Covered Horse” and attendant “forfeit[ure]” and “redistribut[ion]” of prize money, which result “[a]utomatic[ally]” from a “[v]iolation that arises from a Post-Race Sample.” Rule 3221; *see also, e.g.*, Rule 3231 (“A mandatory part of each sanction shall include automatic Public Disclosure[.]”).

The Consequences imposed by the Arbitrator against Appellant are the “final civil sanction imposed by the Authority,” “with respect to” which the ALJ conducts its *de novo* review. 15 U.S.C. § 3058(b)(2). Because it is undisputed that those Consequences constitute equitable relief only, the ALJ proceedings do not implicate “the Seventh Amendment’s jury trial guarantee.” Application at pg. 2; *see Securities & Exch. Comm’n v. Jarkesy*, 603 U.S. 109, 122-25 (2024) (distinguishing “legal” and “equitable” monetary relief and explaining the latter does not “implicate[] the Seventh Amendment”); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 719 (1999) (“It is settled law that the Seventh Amendment does not apply” to “suits seeking only injunctive relief” or other forms of “equitable relief.”). Accordingly, to the extent HISA even contemplates that an Appellant may challenge the *absence* of a particular sanction against him, the Decision should be “affirm[ed].” 15 U.S.C. §3058(3)(A)(ii); 16 CFR § 1.146(d)(3)(i).

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 25th day of July, 2025.

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/s/Bryan H. Beauman

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