PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
Mark R. Meador

IN THE MATTER OF	
PHILIP SERPE,	**MATTER NO. D09441**
Appellant.	

MOTION FOR STAY OF SANCTION PENDING REVIEW

Philip Serpe, for more than 40 years and in over 8,000 races, has dedicated his life to training horses. Disregarding Serpe's dedication and record—and before the Commission itself has resolved anything—a private non-governmental agency, the Horseracing Integrity and Welfare Unit (HIWU), suspended Serpe from all horseracing activities for two years. This suspension for the (alleged) presence of a banned substance is under *sua sponte* review by the Commission, following an ALJ's decision to uphold HIWU's order. *Philip Serpe*, Matter No. 9441 (FTC Sept. 15, 2025) (Partial Stay Ord.). The ALJ added a $25,000 fine, which the Commission has stayed. *Id.* It should now stay the suspension as well. 16 C.F.R. § 1.148(b).

Serpe has contemporaneously moved to expand the issues on appeal to include, among others, whether this (private and administrative) adjudication must take place in an Article III court. If this claim is added and Serpe prevails, the result would be vacatur of this adjudication. *See Jarkesy v. SEC*, 132 F.4th 745, 746 (5th Cir. 2024). Because Serpe is likely to succeed on the merits of his Article III argument—and

satisfies the rest of §1.148(d)'s criteria—Serpe's two-year suspension should, like the proposed fine, be stayed while the Commission considers the Article III issue.[1]

ARGUMENT

1. Serpe is likely to succeed on his Article III claim. Article III prohibits Congress from "withdraw[ing] from judicial cognizance any matter which ... is the subject of a suit at the common law, or in equity." *SEC v. Jarkesy*, 603 U.S. 109, 132 (2024) (citation omitted). A narrow exception exists for "public rights" matters. *Id.* at 128 (citation omitted). Thus, any legal or equitable claim that does not concern a public right—like HIWU's claim against Serpe here—must be heard in an Article III court. *Id.* at 132; *see also Sun Valley Orchards, LLC v. U.S. Dep't of Lab.*, 148 F.4th 121, 128 (3d Cir. 2025).

HIWU's claim falls within Article III's *mandatory* common law and equity jurisdiction, *see Jarkesy*, 603 U.S. at 132, because it is analogous to four common law claims:

- Since its remedies include the imposition of a fine, the claim is an **action in debt**. *Tull v. United States*, 481 U.S. 412, 418–19 (1987).
- Like **fraud**, the banned-substance claim "target[s] … misrepresenting or concealing material facts." *Jarkesy*, 603 U.S. at 125.

[1] Because Serpe simultaneously seeks leave to brief his Article III argument, the seven days to move for a stay (16 C.F.R. § 1.148(b)(2)(ii)) should run from the date of any Commission order granting review of the issue rather than the Commission's original order granting review. This motion is thus timely.

- The claim is **contractual** in nature because trainers agree to follow HISA's rules in exchange for the ability to participate. HISA Rule 9000(g).
- The claim parallels **tortious interference** because it concerns alleged disturbance of competitors' reasonable expectations of fair competition. *See* Restatement (Second) of Torts § 912, cmt. f, illus. 16 (1979).

Additionally, the suspension is "inherently an equitable remedy"—an injunction requiring judicial power. *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 211 n.1 (2002).

Further, the claim does not fit within the narrow public rights "exception," as it has nothing to do with the six recognized categories of public rights: revenue collection, immigration, tariffs, public lands, Indian-tribal relations, and public benefits. *Jarkesy*, 603 U.S. at 128–30. Nor are claims for actions in debt, fraud, contract, and tortious interference "unknown to the common law." *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442, 461 (1977).[2]

Finally, Serpe did not waive his Article III claim. First, because the Authority may enforce its rules through civil litigation, 15 U.S.C. § 3054(j), agreement to HISA's rules does not foreclose the possibility of a jury trial. Second, any waiver was involuntary because Serpe was compelled by HISA to agree to the Authority's rules to continue his profession. 15 U.S.C. § 3054(d). He thus had no "bargaining power." *Nat'l Equip. Rental, Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977).

[2] Serpe preserves the argument that *Atlas Roofing* should be overruled.

2. The two-year suspension is irreparably harming Serpe because his injuries "cannot be undone through monetary remedies." *Ne. Fla. Chapter of Ass'n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990); 5 U.S.C. § 702 (limiting relief to that "other than money damages"). Serpe is being denied racing opportunities with horses that he has trained and would have continued to train, and he is losing customers and goodwill. *See* Ver. Compl. ¶ 90–91, *Serpe v. FTC*, No. 24-61939 (S.D. Fla. Oct. 17, 2024); *see Jackson v. NFL*, 802 F. Supp. 226, 230–31 (D. Minn. 1992); *BellSouth Telecomm., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 970 (11th Cir. 2005). Independently, the "deprivation of [Serpe's] constitutional right" to an Article III court "unquestionably constitutes irreparable injury." *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022) (citation omitted).

3. Because "our system does not permit agencies to act unlawfully," the Authority and the Commission will not be harmed by a stay. *Ala. Ass'n of Realtors v. DHHS*, 594 U.S. 758, 766 (2021). "If anything, the system is improved by" a stay in these circumstances. *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 191 (4th Cir. 2013). Moreover, allowing Serpe to participate in horseracing will pose no risk to other participants. In Serpe's 40-year training career—over 8,000 starts—not one of his horses tested positive for prohibited medication. Ver. Compl. ¶93. HIWU's single strict liability finding here—based on an unconstitutional search, the presumption of testing regularity, and the failure to consider all relevant circumstances—does not call that sterling record into question.

4. A stay would serve the public interest, which "favors protecting constitutional rights." *Leaders of a Beautiful Struggle v. Baltimore Police Dep't*, 2 F.4th 330, 346 (4th Cir. 2021).

CONCLUSION

The Commission should stay HIWU's two-year suspension pending the outcome of this case.

DATED: December 10, 2025.

Respectfully submitted,

/s/ Oliver J. Dunford

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR § 1.146(a) and 16 CFR § 4.4(b), I certify that on December 10, 2025, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of the filing. A courtesy copy will be sent via email to the following:

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