PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9450

ADMINISTRATIVE LAW JUDGE: **DANIA L. AYOUBI**

IN THE MATTER OF:

JENA ANTONUCCI **APPELLANT**

THE AUTHORITY'S RESPONSE TO APPELLANT'S AMENDED 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 May 11, 2026, via Administrative E-File System and by emailing a copy to the below listed. I further certify that no portion of the filing was drafted by generative artificial intelligence ("AI") and any language in the filing that was drafted by generative AI was checked for accuracy by human attorneys or paralegals using printed legal reporters or online databases.

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The Horseracing Integrity and Safety Authority, Inc. (the "**Authority**") files this Response to Appellant's Amended Application for Review ("**Amended Application**") of the Final Decision issued by the Internal Adjudication Panel (the "**IAP**") under the Anti-Doping and Medication Control ("**ADMC**") Program.

The Administrative Law Judge ("**ALJ**") should uphold the Final Decision and deny Appellant's request for an evidentiary hearing, as it is unnecessary to supplement or contest the record. The appeal should be limited to briefing and/or oral argument, as Appellant has failed to provide *any* supplemental evidence.[1] If the ALJ determines that an evidentiary hearing should be held, the Authority requests that it be permitted to submit evidence and witnesses on its behalf be permitted to testify, including in rebuttal.

First, Appellant has not shown sufficient grounds for an evidentiary hearing.

As with her initial Application, Appellant has not put forth *any* additional *evidence* in her Amended Application that she would proffer at an evidentiary hearing. Appellant's Amended Application fails to identify any *new* evidence which was not contemplated by the IAP. Appellant's Amended Application states that she "intends to provide evidence and/or testimony regarding prior cases where source was established under similar circumstances."[2] Appellant was *not* precluded by HIWU or the IAP from introducing additional evidence at the IAP hearing. More importantly, case law is *not evidence*, and Appellant, in fact, cited multiple cases at the IAP hearing and argued their application to her case.[3] Below, Appellant specifically pointed to *Gasquet* and *Roberts*,[4] the only cases directly referenced in Appellant's Amended Application.

[1] 16 C.F.R. §1.146(c)(2)-(3).
[2] Amended Application, p. 3.
[3] Appeal Book ("AB"), pp. 462-466 (Tab 16, Hearing Transcript).
[4] AB, p. 462 (Tab 16, Hearing Transcript).

Appellant also asserts she will contest "the interpretation of the law that formed the basis for the imposition of the Sanctions," which is clearly a legal issue to be determined by application of the evidence presented, not *new* evidence. Therefore, there is no additional evidence that Appellant was precluded from submitting below or seeks to submit before an ALJ. All relevant evidence is in the record and can be reassessed by the ALJ, as applicable. While Appellant claims she will "contest facts that the Arbitrator claimed she found," she is, in actuality, challenging the legal conclusions reached in the Final Decision, not the evidence presented below.

Second, the IAP correctly applied the relevant ADMC Program Rules (the "**Rules**"), burdens, and standards to the facts. The Horseracing Integrity & Welfare Unit ("**HIWU**") met its burden to the *comfortable satisfaction* of the IAP that Appellant violated Rule 3312 with respect to the Class B Controlled Medication that was detected in her Covered Horse's Sample.[5] While HIWU is "entitled to present rebuttal evidence,"[6] it is *not* required to do so. In the matter below, HIWU specifically denoted that its sole witness, Dr. Mary Scollay, was designated "for rebuttal purposes only."[7] After hearing the evidence presented by Appellant, HIWU elected not to call Dr. Scollay in rebuttal.[8]

The only significant difference between Appellant's Application for Review and her Amended Application is the insertion of the intent to argue "the significance of the failure of HIWU to call any expert witnesses during the hearing."[9] However, this is not an additional piece of evidence, but a legal argument. During the IAP hearing, Appellant's Counsel recognized that "HIWU hasn't really offered any alternative explanations. *I'm not saying they have a requirement*

[5] *See* Rule 3121(a).
[6] Rule 7250(a).
[7] AB, p. 296 (Tab 8, HIWU's Supplemental Written Submission – Dated February 10, 2026).
[8] AB, p. 450 (Tab 16, Hearing Transcript)
[9] Amended Application, p. 3.

to…"[10] It appears that now, on appeal, Appellant is attempting to impose a requirement on HIWU that does *not*, in fact, exist in the Rules. HIWU is not required to provide *any* explanation for how the substance ended up in the Sample at issue; that burden is expressly on Appellant as the Responsible Person.

Third, the Authority disputes that the sanctions imposed by the IAP were arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with the law. The conclusion of the IAP showed a "rational connection between facts and judgment."[11] "To find an abuse of discretion there must be a plain error, discretion exercised to an end not justified by the evidence, a judgment that is clearly against the logic and effect of the facts as are found."[12] Appellant cannot point to any such error.

In sum, Appellant has not identified any *supplemental* evidence which she was prohibited from submitting or which the IAP failed to consider. The appropriate legal standards were applied. Appellant has not identified *any* plain error or unjustified exercise of discretion by the IAP such that the Final Decision is "clearly against the logic and effect of the facts as [were] found."[13]

Therefore, the review should be limited to briefing and/or oral argument, and the Final Decision should be affirmed.

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[10] AB, p. 458 (Tab 16, Hearing Transcript) (emphasis added).
[11] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 56 (1983).
[12] *In the Matter of Dr. Scott Shell, DVM*, Administrative Law Judge Decision on Application for Review, Docket No. 9439 ("*Shell*"), at p. 14, *citing Nat'l Wildlife Fed'n. v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 798 (9th Cir. 2005) (internal quotation marks omitted).
[13] *Shell*, at pp. 13-14 (citations omitted).

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ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11th day of May, 2026.

/s/*Bryan H. Beauman*

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