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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9452**

ADMINISTRATIVE LAW JUDGE:

HON. JAY L. HIMES

IN THE MATTER OF:

VANCE CHILDERS

APPELLANT

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 this Authority’s Response to Appellant’s Application for Review is being served on June 4, 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 legal databases.

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The Horseracing Integrity and Safety Authority, Inc. (“**Authority**”) files this Response to Appellant’s Application for Review of the Final Decision of Arbitrator Bernard Taylor (“**Arbitrator**”) under the Anti-Doping and Medication Control (“**ADMC**”) Program (“**Decision**”). The Administrative Law Judge (“**ALJ**”) should uphold the Decision and the sanctions imposed, subject to the modification below. Pursuant to 16 CFR §1.146(c)(2)-(3), the appeal should be limited to briefing and/or oral argument; however, if the ALJ orders an evidentiary hearing, the Authority requests that it be permitted to submit evidence and call witnesses on its behalf.

First, regarding the Rule 3212 Presence charge for Appellant’s Covered Horse, Childersattack, the Authority concedes that the period of Ineligibility (“**POI**”) imposed by the Arbitrator should be modified based upon the ALJ’s recent decision in the *McCrosky*.¹ The ALJ concluded that “Childersattack received a testosterone injection before racing at Fairmount Park in October 2024, which *resulted in* the positive testosterone result,” and that the “probable inference” was that Appellant’s veterinarian “tr[ie]d to cover this up.”² Substantially the same evidence underlying that conclusion was presented to the Arbitrator here.³ Accordingly, Appellant has established on a balance of probability that the source of Testosterone present in Childersattack’s sample was Dr. McCrosky’s injection. The facts of this violation are therefore comparable to the Presence violation for Tigger Attack and warrant a ten-month POI, as found by the Arbitrator for that horse.⁴

¹ *In the Matter of Dr. Donald McCrosky* (“*McCrosky*”), FTC Docket No. 9448 (June 2, 2026).

² *McCrosky*, pp. 38-39 (emphasis added).

³ Decision, paras. 2.2.10-2.2.20, 2.4, 2.5, 7.49. The Arbitrator found that, although Dr. McCrosky’s actions “raise[d] suspicions” that he administered the Testosterone to other Covered Horses, Appellant’s assertion that he injected Childersattack was “speculative,” including because Dr. McCrosky did not admit having done so. (Decision, para. 7.55).

⁴ Decision, paras. 7.33-7.43. The Authority notes and apologizes that the Notice of Sanctions inadvertently switched the names of Appellant’s two Covered Horses. Paragraph 2 of the Notice should refer to Childersattack and paragraph 3 to Tigger Attack.

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Second, regarding the Rule 3214(a) Possession charge, the twelve-month POI imposed on Appellant is consistent with ALJ jurisprudence.⁵ Appellant’s reliance on *HIWU v. Greiner* is misplaced. The Authority believes that the decision in *Greiner* resulted from both an “abuse of discretion” by the arbitrator and is “otherwise not in accordance with the law,”⁶ and, in fact, would have appealed this decision if the Authority had the right to do so. For example, the arbitrator ignored relevant evidence and made much of the “fact” that product at issue was sold at a tack shop at the Racetrack, even though the Covered Person’s evidence showed that the product was bought at Chewy.com, and where the only evidence was the testimony of one defense witness.⁷ More importantly, the arbitrator’s analysis is inconsistent with prior ALJ decisions with respect to the objective element of Fault, which explain that the “objective element describes what standard of care could have been expected from a reasonable person in the athlete’s situation.”⁸ The *Greiner* decision also disregards Rule 3040(a)(1), which provides that Covered Persons must “be knowledgeable of and to comply with the Protocol and related rules at all times” and “[i]t is the responsibility of all Covered Persons to familiarize themselves with the most up-to-date version of the Protocol and related rules and all revisions.” Here, the Arbitrator’s imposition of a twelve-month POI reflects a proper application of the *Cilic* framework, including identifying objectively reasonable steps that Appellant failed to take.⁹

⁵ Or, perhaps more lenient—in *In the Matter of Jeffrey Poole*, FTC Docket No. 9417, pp. 10-11 (November 13, 2023), the ALJ affirmed a 22-month Possession POI on a Trainer who took no steps to ensure that the Banned Substance was disposed of after the ADMC Program began and who had no “wrongful intent.”

⁶ 16 CFR §1.146(b)(3).

⁷ *HIWU v. Grenier*, JAMS Case No. 1501001175, para. 7.28 (May 7, 2026).

⁸ *In the Matter of Dr. Scott Shell, DVM*, FTC Docket No. 9439, p. 61 (March 6, 2025). See also *In the Matter of Eusebio Juarez-Ruffino*, FTC Docket No. 9444, pp. 46-47 (April 28, 2026); *In the Matter of Dr. Larry Overly, DVM*, (“Overly”) FTC Docket No. 9443, pp. 74-77 (January 27, 2026).

⁹ Decision, paras. 7.11-7.18.

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Third, Appellant argues on appeal, for the first time, that the three POIs imposed on him should not be served consecutively and/or that the overall sanction should be reduced on grounds of proportionality. Pursuant to 16 CFR §1.146(a)(1), Appellant is barred from doing so. He has not shown “good cause” for failing to raise consecutive sanctioning or proportionality in the arbitration below.¹⁰

In any event, Rule 3228(c)(1) authorizes consecutive POIs for multiple Presence violations.¹¹ Further, “[p]roportionality is not a dealt wild card that enables individual case discretion to trump the ADMC Program’s specific Rules”;¹² rather the principle “is a case law-derived exception [and] should not become the norm.”¹³ There is no basis to reduce the sanction here on grounds of proportionality.

Lastly, Appellant’s request that the ALJ “stay the Decision pending disposition of the Appeal” must be rejected outright. Appellant failed to comply with 16 CFR §1.148(c) and (d), which require that he provide the reasons for the stay by addressing the four factors relevant to the test for a stay and the “facts relied upon.”¹⁴ Appellant has merely submitted a one-line request with *no* substantiation.

The Authority submits that the three violations charged should be upheld and the sanctions affirmed, except that the POI imposed should be modified to 32 months (from 46).

¹⁰ [In the Matter of Jonathan Wong](#), FTC Docket No. 9426, p. 10 (April 22, 2024); [In the Matter of Jim Iree Lewis](#), FTC Docket No. 9434, p. 14 (October 17, 2024).

¹¹ [Overly](#), pp. 87-89. See also [HIWU v. Taylor](#), JAMS Case No. 1501000596, paras. 7.17-7.20 (July 2, 2024).

¹² [McCrosky](#), p. 70.

¹³ [Overly](#), p. 64.

¹⁴ [McCrosky](#), [Order on Application for Review and Stay of Sanctions](#), pp. 12-13 (March 31, 2026).

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ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4^h day of June, 2026.

/s/Bryan H. Beauman

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