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

ADMINISTRATIVE LAW JUDGE: HON. DANIA L. AYOUBI

IN THE MATTER OF:
JENA ANTONUCCI, APPELLANT

APPELLANT'S SUPPORTING BRIEF

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Jena Antonucci ("Appellant") submits this legal brief in support of her Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order.

I. INTRODUCTION

The Horseracing Integrity & Welfare Unit ("**HIWU**"), acting for the Horseracing Integrity & Safety Authority ("**HISA**"), charged Appellant with Anti-Doping Medication Control ("**ADMC**") Program Rule ("Rule") 3312, Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Post-Race Sample.

IAP Member Anne Mitchell's ("**IAP Member**") Decision[1] improperly found that Appellant failed to meet her burden of proof of establishing the source of the Controlled Medication, despite the fact that HIWU conceded this point in written submissions. Given HIWU's written concession that Appellant had provided evidence of the likely source of 3-Hydroxylidocaine, Appellant was not even required to submit evidence on this issue, and the IAP Member's finding renders the Decision fatally flawed.

Furthermore, despite not being required to prove the source of the Controlled Medication given HIWU's concession on this point, Appellant nevertheless met her burden of proof of establishing that the source of the Controlled Medication was more likely than not transfer from a Racing Support Staff Member ("**RSSM**") [2], who was using lidocaine cream at the time,[3] by a "balance of probabilities." **Rule 1020.**

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[1] **Appellate Book ("AB") Tab 15**, March 30, 2026 ("Decision"), **p. 357-363; Proposed Conclusion of Law ("PCL") 8-9.**

[2] The RSSM is an independent contractor who has worked with Appellant's race day staff on occasion.

[3] On June 14, 2025, following Race 4 at Gulfstream Park in Hallandale Beach, Florida, blood sample #B200011290 was collected from Bee A Queen. The blood sample was found to contain 0.119 ng/ml of 3-hydroxylidocaine, a metabolite of Lidocaine, a Class B Controlled Medication Substance. **Decision, AB, p. 359**.

Additionally, under Rule 3224, the Sanction imposed is arbitrary, capricious and contrary to the Rules. The IAP Member erred in finding that Appellant did not establish "No Fault or Negligence" and, thus, did not set aside the consequences, by unreasonably ignoring Appellant's credible testimony as to the precautions she takes to ensure her horses do not come into contact with prohibited substances and the distinct differences between her employees as compared to contract workers like the RSSM, and the relative contact and control she can exert over each (**Rule 1010**). The IAP Member wrongly concluded that Appellant did not establish that she bore "No Fault or Negligence" because she "never questioned her racing support staff member concerning his massage therapist's methods or drug usage." **PCL 10-13.**

Alternatively, under Rule 3225, the Sanction is arbitrary and capricious and contrary to law for all the same reasons identified with respect to the No Fault or Negligence analysis. **Rule 1010**; **Decision, AB, p. 360; PCL 15-18.**

II. STANDARD OF REVIEW

Appellant seeks a *de novo* review. *See* 15 U.S.C. § 3058(b)(2)(A) and 16 C.F.R. § 1.146(b).

In a review conducted under 15 U.S.C. § 3058(b)(2)(A):

"the administrative law judge shall determine whether—

(i) a person has engaged in such acts or practices, or has omitted such acts or practices, as the Authority has found the person to have engaged in or omitted;
(ii) such acts, practices, or omissions are in violation of this chapter or the antidoping and medication control or racetrack safety rules approved by the Commission; or
(iii) the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Pursuant to 16 C.F.R. § 1.146(b)(2)-(3), the ALJ's determination under 15 U.S.C. § 3058(b)(2)(A)(ii)-(iii) must be made *de novo*.

III. THE SOURCE OF THE CONTROLLED SUBSTANCE WAS ESTABLISHED BOTH BY HIWU'S CONCESSION AND BY THE EVIDENCE PRESENTED BY APPELLANT

Appellant established, by a balance of probability, that the source of the Controlled

Substance was more likely than not the result of inadvertent transfer from the RSSM, who was being treated with lidocaine at the time of the positive test.

A. The Applicable Burden of Proof With Respect to Proof of Source

Pursuant to HISA ADMC Rule 3121, which places the burden of proof upon the Covered Person charged, the standard of proof – when it rests with a Covered Person – shall be by a balance of probability. For a Covered Person to be able to prove "No Fault or Negligence," he or she must first establish how the prohibited substance entered the horse's system, even if not definitively under the rules. **PCL 3-4**.

Given that the HISA ADMC was modeled after the WADA Code, analysis of what is required under the WADA Code to meet this burden is instructive. With regard to the source of the prohibited substance, for a tribunal to be satisfied that a way of ingestion is demonstrated on a balance of probability "simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred". See *ITF v. Gasquet* (CAS 2009/A/1926), AAB Tab 1, p. 25-28, ¶¶ 5.8-5.26; *WADA v. Roberts* (CAS 2017/A/5296), AAB, Tab 2, p. 46-62, ¶¶ 50-56**.** In other words, a Covered Person need only demonstrate that one specific way of ingestion is marginally more likely than not to have occurred. **PCL 5**.

The Covered Person's burden is not to furnish definitive proof of source, but to establish such proof on a balance of probabilities. In *ITF v. Gasquet* (CAS 2009/A/1926)[4] at par. 5.9, the Panel stated as follows:

> "it is the Panel's understanding that, in case it is offered several alternative explanations for the ingestion of the prohibited substance, but it is satisfied that one of them is more likely than not to have occurred, the Player has met the required standard of proof regarding the means of ingestion of the prohibited substance. In that case, it remains irrelevant that there may also be other possibilities of ingestion, as long as they are considered by the Panel to be less likely to have occurred. In other words, for the Panel to be satisfied that a

[4] Appellant's Book of Authorities ("AAB"), Tab 1, p. 25.

> means of ingestion is demonstrated on a balance of probability simply means, in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The Player thus only needs to show that one specific way of ingestion is marginally more likely than not to have occurred."

The Panel in Gasquet then analyzed various possible sources: "deliberate ingestion, deliberate spiking or accidental contamination of a drink, accidental contamination by touching contaminated surfaces or people, accidental contamination by breathing in cocaine dust, or accidental contamination by kissing Pamela after she had ingested cocaine."[5] It ruled out deliberate ingestion, based in large part on the agreement of the parties.[6] After considering remaining possibilities, the Panel concluded that the most likely was accidental contamination by kissing Pamela after she ingested cocaine.[7]

B. HIWU'S Concession That Appellant Provided Evidence Of The Likely Source Of 3-Hydroxylidocaine In Bee A Queen's Sample Rendered Further Evidence On This Issue Unnecessary

IAP Member Anne Mitchell's ("**IAP Member**") Decision improperly found that Appellant failed to meet her burden of proof of establishing the source of the Controlled Medication Substance, despite the fact that HIWU conceded this point in its written submissions.[8] Given HIWU's written concession that Appellant had provided evidence of the likely source of 3-Hydroxylidocaine in Bee a Queen's Sample, Appellant was not even required to submit evidence on this issue, and the IAP Member's finding renders the Decision fatally flawed. *Western World Ins. Co. v. Stack Oil Inc.*, 922 F.2d 118, 122 (2d Cir. 1990) ("[A] formal judicial admission is conclusive against [party throughout] an action."); *Bellefonte Re Ins. Co. v. Argonaut Ins. Co.*, 757

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[5] Id. at par. 5.10.
[6] Id. at par. 5.11.
[7] See also, *FIH v. Comerma* (FIH Judicial Commission 17 July 2008), **AAB, p. 67, ¶7.15** ["We are satisfied on the balance of probabilities that Comerma has established that the MDMA entered her system by the involuntary ingestion of MDMA in food or drink at the dinner on 17 April. It follows that this was not due to any fault or negligence on her part."]
[8] AB, p. 33.

F.2d 523, 528 (2d Cir. 1985) ("A party's assertion of fact in a pleading is a judicial admission by which it is normally bound throughout the course of the proceeding.").

C. Appellant Established That the Source of the Controlled Substance in the Covered Horse's June 14, 2025 Sample Was More Likely Than Not Inadvertent Transfer From the RSSM

Even if HIWU's concession regarding the source of the 3-Hydroxylidocaine did not render further evidence on this point unnecessary, Appellant has nonetheless established that the source of the Controlled Substance was more likely than not inadvertent transfer from the RSSM, who was being treated with lidocaine at the time of the positive test:[9]

1. The RSSM had contact with the Covered Horse on June 14, 2025, including riding the horse. **(PFF 17(a)).**

2. In the days leading up to June 12, 2025, he hit a gate while riding a horse and had some pain as a result. To ease the pain, he had appointments with his massage therapist on June 13 and June 14, 2025, during which the massage therapist applied Healthwise Lidocaine Cream to both of his legs. **PFF 24(a).**

3. The RSSM stated that he also applied the Healthwise Lidocaine Cream to his own legs once each day during this same two-day period, and that he did not wash his hands after applying the cream. **PFF 24(b).**

4. The RSSM stated he is certain that there was contact between his hands and the Covered Horse's face between June 13 and June 14, 2025. **PFF 24(c).**

5. Another horse who had contact with the RSSM for trainer John Vinson also tested positive for lidocaine approximately one month after the June 14, 2025 positive test. **PFF 17(c).**

[9] PCL 9.

Appellant confirmed that she was contacted by John Vinson's mother following his horse Money Trail's July 2025 positive for lidocaine. **PFF 17(c).**

Professor Pascal Kintz, of the Institute of Legal Medicine at the University of Strasbourg provided an Expert Report in this matter, and testified as follows:

1. He explained the mechanism of transdermal transfer of lidocaine, by which topical lidocaine, intended for localized delivery, can be transferred to the blood stream and distributed throughout the body. He further testified that Lidocaine is detectable in blood after topical exposure and can be stored on the skin after massage if not washed. **PFF 20**.

2. He identified a number of anti-doping cases in which drug transfer between a user and non-user of a substance has been proven, including: transfer due to rubbing ointment onto a partner's back; skin transfer of clostebol during a massage; cross contamination involving transfer via skin, saliva, or seminal fluid; and a case of cross-contamination which involved contamination via sweat in athletes sharing a neoprene sleeve. **PFF 21.**

3. Studies indicate that lidocaine is well excreted in sweat and can be stored on the skin if not washed. **PFF 25(a).**

4. The measured concentrations of lidocaine and its metabolites in the blood of the Covered Horse "are very low when compared with data from scientific literature dealing with the pharmacokinetic publications of lidocaine in the horse. **PFF 22**.

5. The low concentration in the Covered Horse's Sample (roughly 119 pg/mL), the use of lidocaine by the RSSM, and the fact that a second horse who had the same contact with the RSSM also returned a positive finding for lidocaine is consistent with contamination, as opposed to intentional administration. **PFF 25(b).**

6. The mechanism of contamination could have been through the RSSM's unwashed

hands, or via contact with his sweat. **PFF 25(f).**

Despite agreeing in initial briefing that "Trainer Antonucci has provided evidence of the likely source of 3-Hydroxylidocaine in Bee A Queen's sample" (**AB, p. 33**), in response to Prof. Kintz's Expert Report, HIWU submitted the February 10, 2026 Witness Statement of Dr. Mary Scollay, HIWU's former Chief of Science. Dr. Scollay provided that, in her opinion, Appellant's proposed mechanism of exposure is speculative (**PFF 23(a)**), based on factors including the following:

1. Dr. Scollay cites the Bidwell study for the proposition that application of 5% lidocaine patches applied above the knee did not result in detectable concentrations of lidocaine, and that any absorption across the epidermis in the horse did not result in a measurable concentration. **PFF 23(b).**
2. It has been determined that for topical applications of a lidocaine preparation, plasma concentrations of lidocaine and its associated metabolites were all below 2 ng/mL. **PFF 23(c).**
3. Dr. Scollay asserts that Prof. Kintz "has no experience in equine medication control, equine anti-doping, equine pharmacology, or any field which would make him an appropriate individual to opine regarding the subject matter at hand," and that "his report should be disregarded." **PFF 23(c).**

Professor Kintz specifically responded to each of Dr. Scollay's criticisms. In response to Dr. Scollay's assertion that the paper of Lori Bidwell establishes that transfer from a patch is not possible from the skin to the blood, Prof. Kintz identified two fundamental differences which made the Bidwell study inapposite. Namely, (i) that the study used lidocaine patches, which were created for the specific purpose of allowing the effect of lidocaine on the skin without entering the

bloodstream, in order to avoid side effects; and (ii) that the limit of detection identified by the study was 1000 pg/mL, meaning that an amount lower than 1000 pg/mL *could not be detected*. **PFF 25(d).** In response to Dr. Scollay's assertion that "for topical applications of lidocaine preparation, plasma concentrations of lidocaine are all well-below two nanograms," Dr. Kintz agreed and pointed out that this is consistent with the positive result in this case, which had a concentration of 119 pg/mL – which is well-below two nanograms. **PFF 25(e).** Dr. Scollay did not testify at the hearing in this matter and offered no response to Dr. Kintz's testimony.

The IAP Member erred in finding that Appellant had not met her burden of establishing the source of the positive result in deeming Dr. Kintz's evidence "purely speculative," despite: (i) the fact that HIWU had already conceded the source of the 3-Hydroxylidocaine In Bee A Queen's Sample; (ii) the fact that no expert was called to testify on behalf of HIWU at the hearing in this matter; (iii) the fact that the RSSM admits to using lidocaine cream on the date of the positive test; (iv) the fact that the RSSM in question raced on a different horse trained by a different trainer who also tested positive for Lidocaine just over one month later; (v) Prof. Kintz's testimony with respect to the mechanism of contamination; and (vi) Prof. Kintz's assertion that the concentration of lidocaine in the sample was inconsistent with intentional administration. **PCL 8-9**.

In sum, the IAP erred in finding that the source of the Controlled Medication in Bee A Queen's June 14, 2025 Sample had not been established. **PCL 8-9**.

IV. APPELLANT'S DEGREE OF FAULT WITH RESPECT TO THE JUNE 14, 2025 POSITIVE TEST

Having established source, Appellant's degree of fault is assessed through application of ADMC Rule 3324, as to "No Fault or Negligence," or Rule 3325, as to "No Significant Fault or Negligence." **PCL 10**.

A. Appellant Bears No Fault or Negligence With Respect to the June 14, 2025 Positive Test

Rule 3324 provides that where a Covered Person can establish that he or she bears no fault or negligence for the ADMC violation, the charge can be eliminated as to the Covered Person, but not the Covered Horse. "No Fault or Negligence" is defined as a circumstance in which "[Appellant] did not know …and could not reasonably have known or suspected, even with the exercise of utmost caution, that he…committed a [violation]" **Rule 1020.** "Fault" is defined as a "breach of duty or lack of care" considering "degree of risk that should have been perceived by [Appellant][and] level of care and investigation exercised by [Appellant] in relation to what should have been the perceived level of risk." **Rule 1020.**

The Sanction imposed is arbitrary, capricious and contrary to law. Arbitrary and capricious review requires a "rational connection between facts and judgment," *Burlington Truck Lines v. United States,* 371 U.S., at 167, 168 (1962); and "does not require accepting unreasoned conclusions," which are not "the result of a deliberate, principled reasoning process ... supported by substantial evidence." *Gillespie v. Liberty Life Assur. Co. of Bos.,* 567 F. App'x 350, 353 (6th Cir. 2014) (Quoting *Bennett v. Kemper Nat'l Servs., Inc.,* 514 F.3d 547, 552 (6th Cir.2008)).

The Arbitrator unreasonably and illogically concluded that Appellant did not demonstrate "No Fault or Negligence," as required to void penalties under Rule 3324, by ignoring Appellant's credible testimony as to the precautions[10] she takes to ensure her horses do not come into contact with prohibited substances and the distinct differences[11] between her employees as compared to contract workers like the RSSM, and the relative contact and control she can exert over each (**Rule 1010**). The IAP Member wrongly concluded that Appellant did not establish that she bore "No

[10] PFF 28-29.
[11] PFF 13, 30.

Fault or Negligence" because she "never questioned her racing support staff member concerning his massage therapist's methods or drug usage." **Decision, AB, p. 359-360**. This reasoning is perplexing given that the IAP Member did not find that the use of lidocaine by the RSSM was the source of the positive test. **Decision, AB, p. 359**. Fault, if any, is minimal, and the reasoning given to support a finding of significant fault is illogical, unreasoned, and contrary to the Rule requiring the Arbitrator to look at the factual circumstances underlying the positive test. **PCL13-14.**

The Decision also unreasonably ignores HIWU case law. In a case considering potential stall contamination in which the Covered Horse tested positive after sharing a stall with a horse using the prohibited substance, *HIWU v. VanMeter* (JAMS 1501000594)[12], the Arbitrator held that the issue to be determined, with respect to degree of fault, is whether the Covered Person could reasonably have known or suspected (i) that the other horse (not trained by him) was taking a prohibited substance; and (ii) that the Covered Horse could have ingested/absorbed the prohibited substance due to exposure to that horse. **PCL 14.**

1. Here, Appellant exercised utmost caution given that she took extensive precautions to ensure that her horses did not come into contact with prohibited substances and could not have reasonably known, even in the exercise of utmost caution, that the RSSM she selected for this race, who was not her employee, had been using Lidocaine at the time. Even if she had known that the RSSM was using Lidocaine, she could not reasonably be expected to know that the controlled substance could enter the horse's system through contact with the RSSM. ***HIWU v. VanMeter* (JAMS 1501000594), AAB, p. 90-93, ¶¶ 7.11-7.24; *HIWU v. Moquett* (IAP Case No. 2023-220), AAB, p. 99.**

Accordingly, Appellant has established that she bears No Fault or Negligence with respect

[12] AAB, p. 92, ¶ 7.21. See also, *HIWU v. Moquett* (IAP Case. No. 2023-220), AAB, p. 99.

to the June 14, 2025 positive test and, as a consequence, the Sanction[13] should be eliminated pursuant to Rule 3324. **PCL 14**.

B. <u>Alternatively, Appellant Bears No Significant Fault or Negligence With Respect to the June 14, 2025 Positive Test</u>

If the ALJ finds that Appellant has not established that she bears No Fault or Negligence with respect to the positive test, Appellant has established that she bears No Significant Fault or Negligence with respect to the same. No Significant Fault or Negligence is defined at Rule 1020 of the ADMC as:

> *"the Covered Person establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the Anti-Doping Rule Violation or Controlled Medication Rule Violation in question."*

Rule 3325(c) of the ADMC provides that in a case of No Significant Fault or Negligence, where the Controlled Medication Substance in question came from a Contaminated Product *or another form of contamination*, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and, at maximum, the otherwise applicable period of Ineligibility, depending on the Covered Person's degree of Fault. **PCL 15**.

Under Rule 3325, the Sanction is arbitrary and capricious and contrary to law for the very same reasons discussed above with respect to the Rule 3324 analysis. **Decision, p. 360**. For those same reasons, if there is any fault, which is denied, it is minimal and the sanctions should have been reduced accordingly pursuant to Rule 3225. **Rule 3225**.

Here, if it is determined that Rule 3325(c) of the ADMC applies instead of Rule 3324, then the appropriate sanction is a warning and no period of ineligibility, given that Appellant has

[13] Excluding disqualification of the Covered Horse and return of purse.

established that the positive test was more likely than not the result of unintentional transfer, or contamination, from the RSSM, and that she bears No Significant Fault or Negligence with respect to the positive test. **PCL 8-9; 13-14**. Under *Cilic v. International Tennis Federation*, CAS 2013/A/3327, objectively and subjectively a reasonable trainer in Appellant's position would not have done more than Appellant did here. ***Cilic v. International Tennis Federation* (CAS 2013/A/3327), AAB, Tab 6, ¶¶ 69-77; *Gabriel da Silva Santos v. FINA* (CAS 2019/A/6482), AAB, Tab 7, ¶¶ 69-72.** In the "totality of circumstances," Fault was "insignificant," and the Sanction should have been reduced to the minimum. **Rule 3225**.

As a case of contamination, and for the reasons explained as Section IV.A above, if there is any fault at all, then the degree of fault must be at the lowest end of the scale (i.e., a reprimand and no period of Ineligibility).

V. CONCLUSION

The Decision should be reversed, Sanction vacated and charges dismissed, with prejudice.

DATED: June 10, 2026

Respectfully submitted,

/s/ Howard Jacobs

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of the forgoing Appellant's Supporting Legal Brief is being served this 10th day of June 2026 via FedEx and by emailing a copy to:

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Executed on June 10, 2026, at Brea, California.

/s/ Katlin N. Freeman
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