

PUBLIC

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

IN THE MATTER OF

ERIN THOMPSON,

Appellant.

DOCKET No. 9453

**APPELLANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF
LAW, PROPOSED ORDER, AND SUPPORTING LEGAL BRIEF**

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PROPOSED FINDINGS OF FACT

1. Erin Thompson was first licensed as a trainer in 2013 and has been licensed in four states.¹

2. On June 5, 2025, Thompson was the Trainer of Record and Responsible Person for the Covered Horse, Motion to Adjourn.²

3. On June 5, 2025, Motion to Adjourn competed in Race 7 at Belterra Park in Cincinnati, Ohio.³

4. Thompson decided to race the horse at Belterra Park because he was not particularly fast and the races there are relatively easy.⁴

5. In the 48 hours before being transported to the race, Motion to Adjourn was at Thompson's facility in Indiana, where only Thompson, her partner, and exercise riders had access to the horse.⁵

6. On the day of the race, the horse was driven by Thompson and her partner directly to Belterra Park, where the horse was unloaded at the receiving barn near his assigned stall.⁶

7. Generally, clean straw was put on top of a stall's dirt and limestone flooring. On June 5, 2025, Motion to Adjourn's stall smelled of urine.⁷

¹ Appeal Book (AB) 1101.

² AB 1045.

³ AB 1045.

⁴ AB 1104.

⁵ AB 1106.

⁶ AB 1107, 1122–23, 1126–27.

⁷ AB 1123–24.

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8. No stall in the receiving barn was different from any other that day.⁸

9. Motion to Adjourn was in the stall in the receiving barn for about four hours.⁹

10. The receiving barn was generally accessible to anyone on the back side of the track.¹⁰

11. Thompson was present for a majority of the time that Motion to Adjourn was in his receiving barn stall.¹¹

12. Thompson's groom, Santiago Ramos, walked the horse from the receiving barn to the paddock on the day of the race.¹²

13. Thompson and her valet saddled the horse in the paddock.¹³

14. Next, Santiago handed Motion to Adjourn over to a pony horse for a warm up, who handed him off to an assistant starter for loading into the starting gate for Race 7.¹⁴

15. The gate hands who load multiple horses throughout the day would have loaded Motion to Adjourn into the starting gate.¹⁵

16. Thompson did not bet on Race 7.¹⁶

⁸ AB 1124.

⁹ AB 1125.

¹⁰ AB 1128.

¹¹ AB 1109.

¹² AB 1109, 1127.

¹³ AB 1109.

¹⁴ AB 1110.

¹⁵ AB 1111.

¹⁶ AB 1104.

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17. The betting pool for Race 7 was relatively small, and no unusual betting activity was apparent.¹⁷

18. A win in Race 7 at Belterra Park did not carry with it a significant economic benefit for Thompson—she estimated the winnings would be approximately \$5,000.¹⁸

19. After the race, Thompson picked the horse up from the track and was notified that Motion to Adjourn had been selected for testing. Ramos then walked the horse to the test barn.¹⁹

20. Sample Collection Personnel collected a post-race urine Sample, designated #U200014219, from Motion to Adjourn.²⁰

21. Motion to Adjourn's A Sample was submitted to the Ohio Department of Agriculture's Analytical Toxicology Laboratory (the "Ohio Lab").²¹

22. The Ohio Lab analyzed Motion to Adjourn's A Sample in accordance with the Laboratory Standards and reported an Adverse Analytical Finding ("AAF") for the presence of the banned substance clenbuterol.²²

23. On July 8, 2025, Trainer Thompson was served with an Equine Anti-Doping ("EAD") Notice.²³

¹⁷ AB 1105.

¹⁸ AB 1113–14.

¹⁹ AB 1110–11.

²⁰ AB 1045.

²¹ AB 1045.

²² AB 1045.

²³ AB 1045.

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24. The concentration of clenbuterol in Motion to Adjourn's urine from the Ohio Lab test was 2.5 nanograms per milliliter.²⁴

25. This high level of clenbuterol in the horse's urine indicates that it ingested the substance close to the time of the race.²⁵

26. Thompson was shocked to learn of the positive result.²⁶

27. Thompson never administered clenbuterol to Motion to Adjourn.²⁷

28. Thompson did not possess clenbuterol at Belterra Park, nor was any clenbuterol at the same location with Motion to Adjourn in the 48 hours before the horse arrived at Belterra Park.²⁸

29. None of Thompson's other horses were prescribed clenbuterol.²⁹

30. Thompson was familiar with clenbuterol in part because of her work training quarter horses. Thompson left quarter horse racing because of the widespread clenbuterol use.³⁰

31. Thompson was aware that giving a horse a banned substance shortly before a race carried with it a significant risk of detection and career-ending penalties; in particular, she understood that there is a three-week withdrawal time for clenbuterol from blood and urine.³¹

²⁴ AB 1112.

²⁵ See AB 1050–52, 1056–57.

²⁶ AB 1105.

²⁷ AB 1105.

²⁸ AB 1105.

²⁹ AB 1121.

³⁰ AB 1105–06, 1113.

³¹ AB 1112–14.

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32. Thompson's only medication-related violation before this proceeding was in 2019 for an overage of dexamethasone—a therapeutic drug with a sanction threshold—resulting from that horse not metabolizing it.³²

33. Prior to the race, Motion to Adjourn did not display any unusual symptoms, such as excessive sweating, excessive excitement, or trembling.³³

34. Since Motion to Adjourn's positive test, virtually all of Thompson's horses have been tested in some manner without an adverse finding.³⁴

35. Thompson was cooperative with the Horseracing Integrity and Welfare Unit's (HIWU) investigation.³⁵

36. When HIWU personnel reported the result to Thompson, they conducted a thorough search of her facilities, which did not result in a charge that was pursued through adjudication for possession of clenbuterol.³⁶

37. Thompson also conducted her own investigation that included confirming with her veterinarian, partner, and staff that clenbuterol had not been given to the horse.³⁷

38. Thompson also reviewed the camera footage from her Indiana barn for two weeks prior to the race and did not identify any unusual activity.³⁸

³² AB 1102–03.

³³ AB 1106.

³⁴ AB 1119.

³⁵ *See, e.g.*, AB 1114.

³⁶ AB 180, 1106, 1121.

³⁷ *See* AB 1086 ¶ 7.17, 1121–22.

³⁸ AB 1127.

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39. Motion to Adjourn had to have been exposed to the clenbuterol close to the race.³⁹

40. On July 14, 2025, Trainer Thompson requested analysis of Motion to Adjourn's B Sample.⁴⁰

41. Motion to Adjourn's B Sample was then analyzed by the Kenneth L. Maddy Equine Analytical Chemistry Laboratory in Davis, California, in accordance with the Laboratory Standards, which confirmed on August 28, 2025, the presence of clenbuterol.⁴¹

42. On September 4, 2025, HIWU served Trainer Thompson with a Charge letter for an Anti-Doping Rule Violation ("EAD Charge") pursuant to ADMC Program Rule 3212.⁴²

43. On September 11, 2025, Thompson requested a hearing.⁴³

44. HIWU initiated a hearing on September 12, 2025.⁴⁴

45. This matter was heard on June 16, 2026.⁴⁵

46. On June 30, 2026, the arbitrator issued his final decision in which he found Thompson liable for violating Rule 3212 as a first-time offence and that she was not entitled to a reduction of consequences under Rules 3224 and 3225.⁴⁶

³⁹ AB 1117.

⁴⁰ AB 1045.

⁴¹ AB 1045.

⁴² AB 1046.

⁴³ AB 1046.

⁴⁴ AB 1046.

⁴⁵ AB 1046.

⁴⁶ AB 1087–93.

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47. The arbitrator imposed, among other penalties, a period of ineligibility for Thompson of two years and a \$25,000 fine.⁴⁷

48. On July 9, 2026, Thompson applied for review of the arbitrator's decision by a Federal Trade Commission administrative law judge (ALJ).⁴⁸

⁴⁷ AB 1092.

⁴⁸ Appellant's Petition for Appellate Review and Combined Motion to Stay Suspension Order (July 9, 2026).

PUBLIC**PROPOSED CONCLUSIONS OF LAW**

1. The arbitrator erroneously applied the Rule 3225 framework for determining the amount of Thompson's fine—including requiring the establishment of the source of the banned substance for a reduction from the Rule 3223(b) maximum fine—instead of exercising his full discretion to determine the amount up to the maximum.

2. Considering all the facts and circumstances, Thompson's fine should be reduced to \$5,000.

3. The arbitrator's imposition of a two-year suspension was arbitrary and capricious and an abuse of discretion because the arbitrator failed to consider all of the relevant facts and circumstances, including the logical inferences that may be drawn therefrom, under the balance of probabilities standard for establishing No Significant Fault or Negligence under Rule 3225.

4. Thompson established under the balance of probabilities standard that Motion to Adjourn was exposed to clenbuterol at Belterra Park, and not by Thompson herself, thereby establishing the source of the clenbuterol.

5. Considering all the facts and circumstances, Thompson's level of objective and subjective fault is light, and her suspension should be reduced to time served.

6. Thompson's sanctions were unconstitutionally imposed and must be reversed.

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7. HIWU's investigation of Thompson, decision to charge her, adjudication of that charge, and imposition of sanctions violated the private non-delegation doctrine because they are executive functions that were undertaken without involvement of the Commission in the decision-making.

8. HIWU's presence of a banned substance claim under Rule 3212 (Banned Substance Claim) must be tried to a jury in an Article III court because it is common law in nature and not subject to the public rights exception.

9. The Banned Substance Claim must be adjudicated in an Article III court because it is both common law and equitable in nature, and it is not subject to the public rights exception.

10. The Seventh Amendment and Article III apply here because the HIWU arbitration is state action and Thompson's Commission appeal is a government adjudication process.

11. Thompson did not waive her Seventh Amendment or Article III right by registering with the Horseracing Integrity and Safety Authority (Authority) because (1) registration was mandated by statute; (2) Article III structural interests cannot be waived; (3) compulsory arbitration of enforcement actions was an unconstitutional condition on Thompson's right to pursue her livelihood; and (4) Thompson's registration with the Authority was not a knowing and voluntary waiver of her Seventh Amendment or Article III rights.

PUBLIC**LEGAL BRIEF**

Erin Thompson, a trainer with a nearly spotless record, was erroneously sanctioned by a HIWU arbitrator for a presence of a banned substance violation under both the Authority's rules and the U.S. Constitution. The arbitrator applied the wrong standard in setting Thompson's fine and failed to properly evaluate the evidence of the source of the clenbuterol in imposing Thompson's suspension. Additionally, Thompson's entire adjudication process under the Horseracing Integrity and Safety Act (HISA) violates the private non-delegation doctrine, the Seventh Amendment, and Article III. As a result, Thompson's sanctions should be reversed or at least reduced due to the flaws in the arbitrator's reasoning.

I. Facts

Thompson has been a licensed horse trainer since 2013 and is licensed in four states.⁴⁹ With a minor exception noted below, she has a clean record.⁵⁰

On June 5, 2025, Motion to Adjourn ran in Race 7 at Belterra Park in Cincinnati, Ohio.⁵¹ Thompson was the horse's Trainer of Record and Responsible Person.⁵² Before the race, Thompson and her partner transported the horse from Thompson's facility in Indiana (where only she, her partner, and exercise riders had access) to Belterra Park.⁵³ The horse was unloaded at the receiving barn and kept there during his brief stay.⁵⁴ Motion to Adjourn's receiving barn stall smelled of

⁴⁹ AB 1101.

⁵⁰ AB 1102–03.

⁵¹ AB 1045.

⁵² AB 1045.

⁵³ AB 1106–07, 1122, 1126–27.

⁵⁴ AB 1107, 1122.

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urine.⁵⁵ After arrival at Belterra Park but before the race, Motion to Adjourn was handled by a number of people aside from Thompson herself: a groom named Santiago Ramos, Thompson's valet, a pony horse, and individuals who were involved in loading the horse into the starting gate.⁵⁶ During this time the horse did not display any unusual symptoms.⁵⁷

Thompson never administered clenbuterol to Motion to Adjourn nor did Thompson possess clenbuterol at Belterra Park or any other place Motion to Adjourn was located in the 48 hours before the horse arrived at the receiving barn.⁵⁸ Additionally, Thompson did not bet on the race, nor was there any unusual betting activity.⁵⁹ Indeed, a win in Race 7 did not carry with it any significant economic benefit.⁶⁰

After the race, Motion to Adjourn was selected for testing.⁶¹ The urine sample was tested at the Ohio Lab, which reported an AAF for the presence of Clenbuterol, a banned substance, in the amount of 2.5 nanograms per milliliter.⁶² As a result, Thompson was served with an EAD notice.⁶³ Thompson was shocked to learn of the positive result.⁶⁴ She cooperated with the HIWU investigation, which included a

⁵⁵ AB 1123–24.

⁵⁶ AB 1109–11, 1127.

⁵⁷ AB 1106.

⁵⁸ AB 1105.

⁵⁹ AB 1104–05.

⁶⁰ AB 1113–14.

⁶¹ AB 1110–11, 1045.

⁶² AB 1112, 1045.

⁶³ AB 1045.

⁶⁴ AB 1105.

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thorough search of her facilities.⁶⁵ Thompson also conducted her own investigation that included confirming with her veterinarian, partner, and staff that clenbuterol had not been administered to Motion to Adjourn and confirming there was no unusual activity on the camera footage at her Indiana barn.⁶⁶ Since Motion to Adjourn's positive test, virtually all of Thompson's horses have been tested in some manner without an adverse finding.⁶⁷

Thompson requested testing of Motion to Adjourn's B Sample, which confirmed the presence of clenbuterol.⁶⁸ In September 2025, HIWU served Thompson with an EAD Charge under ADMC Program Rule 3212 and Thompson requested a hearing.⁶⁹

II. Procedural History

Thompson's hearing took place on June 16, 2026.⁷⁰ The arbitrator issued his final decision on June 30, 2026, finding Thompson liable for violating HISA Rule 3212 due to the presence of clenbuterol in Motion to Adjourn's urine samples.⁷¹ The arbitrator further concluded that Thompson was not entitled to a reduction in sanctions under Rules 3224 and 3225.⁷² He imposed on Thompson, among other sanctions, a two-year suspension and a \$25,000 fine.⁷³

⁶⁵ AB 1114. *See also*, AB 1106, 1121.

⁶⁶ *See* AB 1086 ¶ 7.17, 1121–22, 1127.

⁶⁷ AB 1119.

⁶⁸ AB 1045.

⁶⁹ AB 1046.

⁷⁰ AB 1046.

⁷¹ AB 1088.

⁷² AB 1092.

⁷³ AB 1092–93.

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On July 9, 2026, Thompson filed her petition for review with the Commission Office of ALJs and moved for a stay of her sanctions.⁷⁴ Thompson identified four issues in her petition: (1) whether the inability to identify a precise source of clenbuterol was dispositive for Rule 3225; (2) whether the arbitrator failed to appropriately weigh mitigating evidence; (3) whether the arbitrator improperly discounted evidence of the circumstances at Belterra Park; and (4) whether the sanctions were excessive.⁷⁵ The ALJ denied the stay, determined no further evidentiary hearing was necessary, and ordered the parties to file their opening briefs by August 10, 2026.⁷⁶ Thompson's opening brief deadline was subsequently continued until October 16.⁷⁷

III. Standard of Review

On appeal from a final civil sanction, “the [ALJ] shall determine whether . . . the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”⁷⁸ That determination is made under an overall “de novo review” standard.⁷⁹ The ALJ “may affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction.”⁸⁰

⁷⁴ Appellant's Petition for Appellate Review and Combined Motion to Stay Suspension Order (July 9, 2026).

⁷⁵ *Id.*

⁷⁶ Order on Application for Review and Motion for Stay (July 27, 2026).

⁷⁷ Order Granting Appellant's Motion for Continuance (August 14, 2026).

⁷⁸ 15 U.S.C. § 3058(b)(2)(A)(iii).

⁷⁹ *Id.* § 3058(b)(1).

⁸⁰ *Id.* § 3058(b)(3)(A)(ii).

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IV. Thompson's \$25,000 Fine Is Excessive

The Authority's rules establish both suspensions and financial penalties as sanctions for violations of the anti-doping rules.⁸¹ For a Rule 3212 presence violation, Rule 3223(b) sets the suspension at "2 years," providing no discretion in setting the length.⁸² But Rule 3225 establishes a rubric for the arbitrator to reduce the length of a suspension.⁸³ While Rule 3223(b) establishes a mandatory suspension, it allows the HIWU arbitrator to impose a fine for a presence violation of "*up to \$25,000 or 25% of the total purse (whichever is greater).*"⁸⁴ Thus, the amount of the fine is discretionary, a standard that the Authority has previously acknowledged.⁸⁵ "The degree of fault, among other facts and circumstances, may be considered in exercising discretion to determine an appropriate fine."⁸⁶ A Covered Person need not establish the source of the banned substance to receive a reduced fine.⁸⁷

A. The Arbitrator Applied the Wrong Standard

When imposing fines under Rule 3223(b), the arbitrator has full discretion to consider all the facts and circumstances.⁸⁸ Here, Thompson argued that the totality of the circumstances supported substantial mitigation of any sanctions in her brief and at her hearing.⁸⁹ Instead of applying the proper standard and fully considering

⁸¹ HISA Rule 3223; *In re Jim Iree Lewis*, No. 9434, 2024 WL 5078296, at *5 (FTC ALJ Oct. 17, 2024).

⁸² HISA Rule 3223(b).

⁸³ HISA Rule 3225(a).

⁸⁴ HISA Rule 3223(b) (emphasis added).

⁸⁵ *Lewis*, 2024 WL 5078296, at *5, *11.

⁸⁶ *Id.* at *5.

⁸⁷ *See, e.g., id.* at *8, *10–11.

⁸⁸ *Id.* at *5.

⁸⁹ AB 375–76, 1134–35.

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Thompson's evidence and arguments, the arbitrator applied Rule 3225 to *both* the suspension and the fine, and required that Thompson establish the source of the clenbuterol to receive a fine lower than the \$25,000 maximum.⁹⁰ But establishing the source is *not* a threshold requirement for imposing a *fine* below \$25,000.⁹¹

Thus, the fine is “not in accordance with law.”⁹² The ALJ should exercise its statutory authority to “modify” the sanction based on a “de novo review” of the facts and significantly reduce Thompson's fine.⁹³

B. Thompson's Fine Should Be Reduced or Remanded Under Existing Precedent

Under the facts here—including the complete lack of evidence that Thompson caused or intended for the clenbuterol to be administered to Motion to Adjourn—Thompson's fine should be reduced. Reduced fines have been imposed where the circumstances indicate that the Covered Person neither intended to violate the rules nor obtained a benefit by doing so. In *Lewis*, the ALJ upheld a \$10,000 reduction in the fine for a trainer who cooperated with the investigation and had a clean record.⁹⁴ In a possession case, an ALJ upheld a \$15,000 reduction in part because there was neither “wrongful intent” nor any benefit to the charged party.⁹⁵ The record demonstrates that a reduction in the fine is also warranted here.

⁹⁰ AB 1092.

⁹¹ *Lewis*, 2024 WL 5078296, at *5, *10 n.19.

⁹² 15 U.S.C. § 3058(b)(2)(iii).

⁹³ *Id.* § 3058(b)(1), (b)(3)(A)(ii).

⁹⁴ *Lewis*, 2024 WL 5078296, at *10, *12.

⁹⁵ *In re Jeffrey Poole*, No. 9417, 2023 WL 8435860, at *5, *7 (FTC ALJ Nov. 13, 2023).

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First, there is no evidence that Thompson administered the clenbuterol to Motion to Adjourn. Thompson denied doing so in un rebutted testimony.⁹⁶ The Authority proved the presence violation solely through the two positive urine samples.⁹⁷ But the presence of clenbuterol does not establish who—if anyone—administered clenbuterol.

Second, no one associated with Thompson and Motion to Adjourn gave clenbuterol to the horse. Only Thompson and her partner transported the horse to Belterra Park.⁹⁸ And Thompson confirmed with her veterinarian, partner, and staff that none of them had administered clenbuterol to Motion to Adjourn and confirmed through her Indiana facility's camera footage that there was no unusual activity in the two weeks prior to the race.⁹⁹ Thompson also confirmed in un rebutted testimony that she did not possess clenbuterol at Belterra Park, nor was any clenbuterol at the same location with Motion to Adjourn in the 48 hours before the horse arrived at Belterra Park.¹⁰⁰ Additionally, HIWU investigators' search of her facilities did not result in a charge for possession of clenbuterol that was pursued through adjudication.¹⁰¹

Third, the record reflects (through a process of elimination) that Motion to Adjourn was likely exposed to clenbuterol while at Belterra Park. The horse's

⁹⁶ AB 1105.

⁹⁷ AB 1087–88.

⁹⁸ AB 1107, 1122, 1126–27.

⁹⁹ *See* AB 1086¶ 7.17, 1121–22, 1127.

¹⁰⁰ AB 1105.

¹⁰¹ AB 1106, 1121.

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receiving barn stall smelled of urine, indicating substances could have been left behind for Motion to Adjourn to ingest.¹⁰² Thompson determined that it was pointless to move the horse because no stall was better than another.¹⁰³ Moreover, the period immediately before the race is most relevant because the high level of clenbuterol in the urine indicates it was ingested close to the time of the race.¹⁰⁴ And as established above, Thompson, her partner, and her staff did not give the horse clenbuterol.

Fourth, Thompson was cooperative with the HIWU investigation.¹⁰⁵ She permitted HIWU investigators to search her facilities.¹⁰⁶ And there is no evidence in the record that Thompson took any action to impede the investigation.¹⁰⁷

Fifth, Thompson had little to gain and everything to lose from administering clenbuterol to Motion to Adjourn. Thompson was aware that administering clenbuterol to a horse carried substantial risk of career ending penalties.¹⁰⁸ She knew there was a three-week withdrawal window for clenbuterol from blood and urine, which is longer than the likely time of ingestion here given the concentration in the horse's urine.¹⁰⁹ But the estimated winnings from the race were low and Thompson

¹⁰² AB 1123–24.

¹⁰³ AB 1124.

¹⁰⁴ *See* AB 0366; 1050–52, 1056.

¹⁰⁵ AB 1106, 1114, 1121.

¹⁰⁶ AB 1106, 1121.

¹⁰⁷ *See, e.g.*, AB 1114.

¹⁰⁸ AB 1113–14.

¹⁰⁹ AB 1050–52, 1056, 1112.

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knew that Motion to Adjourn was not very fast.¹¹⁰ Thompson also did not bet on the race.¹¹¹ There was no point in Thompson risking everything on this horse in this race.

Sixth, Thompson has a virtually clean record. Her only other medication-related violation was for an overage of a therapeutic drug that the horse did not metabolize.¹¹² Additionally, after Motion to Adjourn's positive test, most of Thompson's other horses have been tested without an adverse finding.¹¹³

Given the similarity between Thompson's circumstances and *Lewis* and *Poole*, a similar reduction in the fine to \$5,000 is warranted. At a minimum (and assuming Thompson does not prevail on her constitutional arguments), Thompson's fine should be vacated and the case remanded to the arbitrator for reconsideration of the fine under the appropriate standard.¹¹⁴

V. Thompson's Period of Ineligibility Should Be Reduced Because She Established No Significant Fault

The arbitrator appropriately used Rule 3225 as the standard for evaluating a potential reduction in Thompson's suspension. But his application of the rule was arbitrary and capricious and an abuse of discretion. Rule 3225 allows an arbitrator to reduce a suspension for an anti-doping rule violation "[w]here the Covered Person establishes that . . . she bears No Significant Fault or Negligence."¹¹⁵ The extent of

¹¹⁰ AB 1104, 1113–14.

¹¹¹ AB 1104.

¹¹² AB 1102–03.

¹¹³ AB 1119.

¹¹⁴ *Lewis*, 2024 WL 5078296, at *5.

¹¹⁵ HISA Rule 3225(a).

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the reduction is based on the person’s “degree of Fault.”¹¹⁶ For a presence violation under Rule 3212, “the Covered Person must also establish how the Prohibited Substance entered the Covered Horse’s system.”¹¹⁷ The source need only be established “by a balance of probability.”¹¹⁸

Thompson’s hearing testimony established under the balance of probabilities that Motion to Adjourn most likely was exposed to clenbuterol at Belterra Park.¹¹⁹ Thompson established through her own investigation that neither her staff and partner nor her veterinarian administered clenbuterol to the horse, nor was it administered to the horse in the two weeks prior to the race.¹²⁰ Thompson also denied administering clenbuterol to Motion to Adjourn.¹²¹ Based on Thompson’s un rebutted testimony, that leaves only the dirty receiving barn stall and the track staff who assisted with Motion to Adjourn as the possible sources.¹²²

Beyond the source of the clenbuterol, the “totality of the circumstances” also demonstrate that Thompson was not at significant fault.¹²³ To determine fault, the circumstances must be evaluated in terms of objective and subjective fault and placed into one of three categories—“significant,” “normal,” and “light.”¹²⁴ Objective fault is

¹¹⁶ *Id.*

¹¹⁷ HISA Rule 1020.

¹¹⁸ HISA Rule 3121(b).

¹¹⁹ *See supra* Part IV.B.

¹²⁰ *See* AB 1086 ¶ 7.17, 1121–22, 1127.

¹²¹ AB 1105, 1122.

¹²² *See* AB 1109–11, 1127.

¹²³ HISA Rule 1020.

¹²⁴ *In re Philip Serpe*, No. 9441, 2025 WL 4740144, at *50 (FTC ALJ Sep. 12, 2025) (citation omitted).

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measured by a reasonable person's standard of care.¹²⁵ Here, Thompson's objective fault is light because, according to unrebutted testimony, Thompson kept clenbuterol away from Motion to Adjourn, maintained security cameras in her Indiana facility, transported the horse herself with her partner, and stayed with Motion to Adjourn the majority of the time at Belterra Park.¹²⁶ Thompson's particular circumstances similarly place her subjective fault in the light category. Unrebutted testimony from Thompson established that she had a nearly clean record,¹²⁷ cooperated with HIWU investigators and conducted her own investigation,¹²⁸ and had no other subsequent adverse test results.¹²⁹ Further, as discussed, Thompson had no incentive to cheat.¹³⁰

Because Thompson's fault is light, the length of her suspension should be at the bottom of the range.¹³¹ Thompson has already been suspended for three months since the suspension went into effect on July 10, 2026.¹³² Under the current schedule, the decision in this appeal will be issued by the end of December, roughly six months into Thompson's suspension.¹³³ Thus, Thompson's suspension should be set at time served.

¹²⁵ *Cilic v. ITF*, CAS 2013/A/3327, ¶ 71 (Apr. 11, 2014). The *Cilic* factors for fault have been specifically adopted by Commission ALJs. *See, e.g., Serpe*, 2025 WL 4740144, at *50 n.484.

¹²⁶ AB 1105–07, 1109, 1122, 1126–27.

¹²⁷ AB 1102–03.

¹²⁸ AB 1114, 1121; *see also* AB 1127.

¹²⁹ AB 1119.

¹³⁰ AB 1113–14; *see supra* Part IV.B.

¹³¹ *Cilic*, CAS 2013/A/3327, ¶ 70.

¹³² Petition for Appellate Review at 5.

¹³³ *See* 16 C.F.R. § 1.146(d)(1).

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The arbitrator’s rejection of a No Significant Fault finding for Thompson and the imposition of a two-year suspension was arbitrary and capricious and an abuse of discretion. The arbitrator did not give reasonable consideration to the evidence discussed above under the balance of probabilities standard as arbitrary and capricious review requires.¹³⁴ While the arbitrator acknowledged this standard, he rejected that the source could be proven through logical inference and found that Thompson’s argument that the contaminated stall was the source was “not supported by the evidence.”¹³⁵ But logical inference based on circumstantial evidence is sufficient to establish source under the balance of probabilities standard.¹³⁶ This resulted in a conclusion that was in “plain error” because it failed to follow the logical chain narrowing the possible sources of contamination, and was therefore also an abuse of discretion.¹³⁷

VI. Thompson’s Adjudication Process Is Unconstitutionally Structured

A. The HIWU Arbitration Violated the Private Nondelegation Doctrine

HIWU’s actions—investigating, charging, and sanctioning Thompson—violated the private non-delegation doctrine. Indeed, the Fifth Circuit has already recognized this.¹³⁸ Private entities may not participate in government regulatory schemes other than “to give” the government agency “recommendations” in an “advisory role.”¹³⁹

¹³⁴ *Poole*, 2023 WL 8435860, at *3.

¹³⁵ AB 1089 ¶ 8.13, 1091 ¶ 8.23.

¹³⁶ *HIWU v. VanMeter*, JAMS No. 1501000594, ¶¶ 7.7–7.10 (Sep. 26, 2023).

¹³⁷ AB 1089 ¶ 8.23; *see Poole*, 2023 WL 8435860, at *3.

¹³⁸ *See NHBPA v. Black*, 178 F.4th 224, 248 (5th Cir. 2026) (*Black III*).

¹³⁹ *FCC v. Consumers’ Rsch.*, 606 U.S. 656, 692–93 (2025).

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The Authority and HIWU do not function in a merely advisory role. Congress authorized the Authority, through HIWU (HISA Rule 3010(e)), to launch investigations, bring charges, adjudicate those charges, and impose sanctions that go into effect before Commission review.¹⁴⁰ Here, HIWU initiated an investigation and conducted a search by collecting urine from Motion to Adjourn.¹⁴¹ HIWU charged Thompson with violating its presence rule.¹⁴² HIWU arbitrated the charge.¹⁴³ The arbitrator found Thompson liable and imposed sanctions that took immediate effect.¹⁴⁴ These powers “are all quintessentially executive functions” that were unconstitutionally exercised by HIWU without the Commission.¹⁴⁵

That the Authority and HIWU exercise a decision-making instead of an advisory role is further confirmed by the Commission’s limited involvement—after-the-fact de novo review of the sanctions already imposed.¹⁴⁶ As noted above, HIWU’s sanctions take immediate effect and are not subject to an automatic stay while on appeal.¹⁴⁷ A similar sanctions-review arrangement involving FINRA and the SEC has already been held to violate the private non-delegation doctrine.¹⁴⁸

¹⁴⁰ 15 U.S.C. §§ 3054(e), (h), 3055(c)(4)(B), 3057, 3058(a), (d).

¹⁴¹ AB 1045.

¹⁴² AB 1046.

¹⁴³ AB 1046.

¹⁴⁴ AB 1092–93 ¶ 9.1; 15 U.S.C. § 3058(d).

¹⁴⁵ *Black III*, 178 F.4th at 238.

¹⁴⁶ 15 U.S.C. § 3058(c)(3)(B).

¹⁴⁷ *Id.* § 3058(d).

¹⁴⁸ *Alpine Sec. Corp. v. FINRA*, 121 F.4th 1314, 1326–28 (D.C. Cir. 2024).

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B. Thompson's Adjudication Violates the Seventh Amendment

The Seventh Amendment provides that “[i]n Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.”¹⁴⁹ The Seventh Amendment extends to statutory claims under two conditions: (1) the claim must be “legal in nature,” taking into account “the cause of action and the remedy”; and (2) the claim must not fall within the “public rights exception to Article III jurisdiction.”¹⁵⁰ Given Thompson’s fine, the Banned Substance Claim is common law in nature and therefore must be tried to a jury in an Article III court.¹⁵¹

1. Thompson's Fine Is a Common Law Remedy

Civil money penalties were traditionally imposed by courts of law.¹⁵² Here, pursuant to HISA,¹⁵³ the Authority established a “[f]ine of up to \$25,000 or 25% of the total purse (whichever is greater)” and imposed it on Thompson.¹⁵⁴ Additionally, as in *Jarkesy*, HISA’s penalties are “designed to punish or deter the wrongdoer.”¹⁵⁵ The Authority’s civil sanctions must “deter . . . anti-doping . . . rule violations.”¹⁵⁶ Thus, Thompson’s \$25,000 fine is legal.¹⁵⁷

¹⁴⁹ U.S. Const. amend. VII, cl. 1.

¹⁵⁰ *SEC v. Jarkesy*, 603 U.S. 109, 120, 122–23 (2024) (citation modified).

¹⁵¹ *See id.* at 140.

¹⁵² *Id.* at 123.

¹⁵³ 15 U.S.C. §§ 3054(i), 3057(d)(3).

¹⁵⁴ HISA Rule 3223(b).

¹⁵⁵ 603 U.S. at 123.

¹⁵⁶ 15 U.S.C. § 3057(d)(2).

¹⁵⁷ *See Jarkesy*, 603 U.S. at 123–24.

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2. The Banned Substance Claim Is Common Law in Nature

The Banned Substance Claim has several common law analogs, particularly given its obvious common law remedy, “confirm[ing]” that the claim is legal in nature.¹⁵⁸ Establishing the legal nature of a statutory cause of action does not require “an abstruse historical search” for a “precise[]” analog—“characterizing the relief sought is more important.”¹⁵⁹

a. Action in Debt

First, a claim for punitive civil money penalties like the Banned Substance Claim is itself a common law cause of action—an action in debt.¹⁶⁰

b. Fraud

Second, the Banned Substance Claim bears a “close relationship” with a claim for common-law fraud.¹⁶¹ The Banned Substance Claim was created pursuant to HISA’s authorization of a “strict liability” offense for “the presence of a prohibited substance” with “an opportunity to reduce the applicable civil sanctions.”¹⁶² In general, HISA established the ADMC Program to prevent, among other harms, fraud on the betting market¹⁶³—a principle long recognized as a cornerstone of horseracing regulations.¹⁶⁴ Moreover, in requiring that the ADMC Program ensure “full

¹⁵⁸ *Id.* at 125.

¹⁵⁹ *Tull v. United States*, 481 U.S. 412, 421 (1987) (citation modified).

¹⁶⁰ *Jarkesy*, 603 U.S. at 122.

¹⁶¹ *Id.* at 125.

¹⁶² 15 U.S.C. § 3057(a)(2)(A), (d)(3)(B).

¹⁶³ 15 U.S.C. § 3055(b)(7).

¹⁶⁴ *See, e.g., State ex rel. Morris v. W. Va. Racing Comm’n*, 55 S.E.2d 263, 274–75 (W. Va. 1949).

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disclosure,” “fair[ness],” and “transparen[cy],”¹⁶⁵ Congress drew upon common law fraud principles.¹⁶⁶ Additionally, cheating allegations in games have long been litigated (since at least 1588) through common law claims.¹⁶⁷

Thus, the Banned Substance Claim “target[s] the same basic conduct” as common law fraud: “misrepresenting or concealing material facts.”¹⁶⁸ The strict liability component is also analogous to a fraudulent conveyance claim, which is established through circumstances (such as the presence of a banned substance in a horse), not through proof of knowing misrepresentations.¹⁶⁹

c. Negligence

The Banned Substance Claim is also analogous to common law negligence. It places a “duty” on the Responsible Person “to ensure that no Banned Substance is present in the body of his or her Covered Horse(s).”¹⁷⁰ There is also an explicit negligence standard for reducing suspensions—a covered person may “establish[] that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation in question.”¹⁷¹

¹⁶⁵ 15 U.S.C. §§ 3055(b)(7), 3057(d)(2)(B).

¹⁶⁶ *See Jarkesy*, 603 U.S. at 125.

¹⁶⁷ *See, e.g., Harris v. Bowden* (1588), 78 Eng. Rep. 348, 348; Cro. Eliz. 90, 90.

¹⁶⁸ *Jarkesy*, 603 U.S. at 125.

¹⁶⁹ *See BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 540–41 (1994).

¹⁷⁰ HISA Rule 3212(a).

¹⁷¹ HISA Rule 3225(a).

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d. Breach of Contract

The Banned-Substance Claim is also analogous to a breach of contract claim.¹⁷² Participation in thoroughbred racing involves an implicit contract: a manifestation of an agreement by the trainer to follow the Authority's rules in exchange for the ability to participate (notwithstanding whether the agreement is constitutionally sound).¹⁷³ Moreover, there is a long history of regulating horse-race fairness through contracts.¹⁷⁴

e. Tortious Interference

Additionally, the Banned Substance Claim parallels tortious interference, a tort involving improper intentional disruption of a reasonable economic expectancy.¹⁷⁵ Thompson is accused of conduct that would have undermined the race's integrity and disrupted competitors' reasonable economic expectations of fair competition.¹⁷⁶

f. Strict Liability

Finally, HISA's imposition of strict liability has a clear common-law lineage.¹⁷⁷ The claim against Thompson (HISA Rule 3212(a)) also closely mirrors a "public

¹⁷² See *Sun Valley Orchards, LLC v. U.S. Dep't of Lab.*, 148 F.4th 121, 128–29 (3d Cir. 2025), cert. granted in part 146 S. Ct. 2614 (2026).

¹⁷³ See *infra* Part VI.E; Restatement (Second) of Contracts § 17 (1981).

¹⁷⁴ T. H. Breen, *Horses and Gentlemen: The Cultural Significance of Gambling among the Gentry of Virginia*, 34 Wm. & Mary Q. 239, 253–56 (1977).

¹⁷⁵ See Restatement (Second) of Torts § 766B (1979); see also *Garret v. Taylor* (1621), 79 Eng. Rep. 485, 485; Cro. Jac. 567, 567; *Tarleton v. M'Gawley* (1793), 170 Eng. Rep. 153, 153; Peake 270, 270.

¹⁷⁶ See Restatement (Second) of Torts, § 912, cmt. f, illus. 16.

¹⁷⁷ See *Prentiss v. Nat'l Airlines*, 112 F. Supp. 306, 310 (D.N.J. 1953).

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welfare” offense, a relatively modern concept drawn from common-law precepts of strict liability.¹⁷⁸

3. The Public Rights Exception Does Not Apply

Because the Banned Substance Claim is common law in nature, it does not fall within the public rights exception to Article III jurisdiction.¹⁷⁹ The public rights exception is limited to “matters [that] ‘historically could have been determined exclusively by [the executive and legislative] branches.’”¹⁸⁰ This exception is entirely atextual and in each case “must . . . derive . . . from background legal principles” and history.¹⁸¹ Even “matters that arguably fall within the scope of the public rights doctrine” still enjoy a “presumption . . . in favor of Article III courts.”¹⁸²

Only six categories of public rights have been historically recognized: revenue collection, immigration, tariffs, public lands, Indian-tribal relations, and public benefits.¹⁸³ But these recognized categories do not fit the Banned Substance Claim, nor does a review of the history and background legal principles lead to the conclusion that it should become a seventh category. The background legal principle Congress relied on here is its interstate-commerce power.¹⁸⁴ But given that *Jarkesy* concluded that Article III courts had jurisdiction over a statutory securities fraud claim, an

¹⁷⁸ See *United States v. Cordoba-Hincapie*, 825 F. Supp. 485, 490, 496–97 (E.D.N.Y. 1993).

¹⁷⁹ See *Jarkesy*, 603 U.S. at 127.

¹⁸⁰ *Id.* at 128 (citation omitted).

¹⁸¹ *Id.* at 131.

¹⁸² *Id.* at 132 (citation modified).

¹⁸³ *Id.* at 128–30.

¹⁸⁴ See 15 U.S.C. § 3051(5).

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exercise of the interstate-commerce power cannot be a justification to invoke the public rights exception.¹⁸⁵ Additionally, the history of horseracing and gaming regulation does not support the claim’s removal from Article III jurisdiction.¹⁸⁶

The only other potential public rights exception is for “new cause[s] of action” that are “unknown to the common law.”¹⁸⁷ But that does not describe the Banned Substance Claim. As discussed, the Banned Substance Claim is analogous to several traditional common law claims.¹⁸⁸ However, if the Commission concludes that *Atlas Roofing* applies here, Thompson preserves the argument that *Atlas Roofing* should be overruled, as the Supreme Court has cast substantial doubt on it.¹⁸⁹

C. Thompson’s Adjudication Violates Article III

Irrespective of whether the Seventh Amendment applies, the Banned Substance Claim must be adjudicated in an Article III court because it is both legal and equitable and does not concern public rights. Article III extends the judicial power “to all Cases, in Law and Equity, arising under th[e] Constitution” and federal law.¹⁹⁰ The same public rights analysis required for a Seventh Amendment claim applies to an Article III claim.¹⁹¹

¹⁸⁵ *Jarkesy*, 603 U.S. at 129 n.1.

¹⁸⁶ *See supra* Part VI.B.2.b, d.

¹⁸⁷ *Atlas Roofing Co., Inc. v. OSHRC*, 430 U.S. 442, 461 (1977).

¹⁸⁸ *See supra* Part VI.B.2.

¹⁸⁹ *See Jarkesy*, 603 U.S. at 138 n.4.

¹⁹⁰ U.S. Const. art. III, § 2, cl. 1.

¹⁹¹ *See Intuit, Inc. v. FTC*, 170 F.4th 411, 422, 426 (5th Cir. 2026).

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First, as discussed above, the Banned Substance Claim falls within Article III's mandatory jurisdiction because it is common law in nature.¹⁹²

Second, the Banned Substance Claim also requires Article III adjudication because it is equitable.¹⁹³ Thompson's two-year suspension as a Covered Person is an injunction.¹⁹⁴ And an injunction "is inherently an equitable remedy."¹⁹⁵

The Banned Substance Claim is also analogous to an equitable action in deceit or "unfair competition."¹⁹⁶ This claim has been broadly applied to various methods of commercial unfair competition.¹⁹⁷ The claim is also related to equitable fraud claims, which could cover material misrepresentations "asserted without knowledge of [the] truth."¹⁹⁸ Thus, there is substantial overlap between the Banned Substance Claim—a claim created to prevent unfair competition in thoroughbred racing—and an equitable unfair competition or fraud claim.¹⁹⁹

Lastly, the claim here does not involve any of the established public rights categories, nor do the background legal principles and history support applying the exception here.²⁰⁰

¹⁹² See *supra* Part VI.B.1–2.

¹⁹³ See *Jarkesy*, 603 U.S. at 132.

¹⁹⁴ *Nken v. Holder*, 556 U.S. 418, 428 (2009).

¹⁹⁵ *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 211 n.1 (2002).

¹⁹⁶ *Intuit*, 170 F.4th at 418.

¹⁹⁷ *Motor Improvements v. A.C. Spark Plug Co.*, 80 F.2d 385, 386 (6th Cir. 1935).

¹⁹⁸ *Intuit*, 170 F.4th at 419.

¹⁹⁹ See *id.* at 419–21.

²⁰⁰ See *supra* Part VI.B.3.

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D. Thompson’s HISA Adjudication Was State Action

The Seventh Amendment and Article III apply to the HIWU arbitration because it was state action. Private action can be state action where the rule of conduct is “imposed by the state”²⁰¹ and “the government acts jointly with the private entity” in enforcing that rule.²⁰²

Here, the Authority and HIWU are sufficiently intertwined with the Commission that the HIWU arbitration was state action.²⁰³ First, the Banned Substance Claim was imposed by a combination of the government (the Commission) and “a person for whom the [government] is responsible” (the Authority).²⁰⁴ Congress required the Authority to develop a list of “prohibited medications” and establish civil sanctions for violations.²⁰⁵ The Authority’s rules then had to be approved by the Commission.²⁰⁶ Second, the HIWU arbitration is conducted “jointly” with the Commission in a multi-step process.²⁰⁷

Regardless of the HIWU arbitration’s status, it is indisputable that this proceeding before a Commission ALJ is government action subject to the Seventh Amendment and Article III.²⁰⁸

²⁰¹ *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982).

²⁰² *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 809 (2019).

²⁰³ *See Lugar*, 457 U.S. at 942. *But see In re Serpe*, 2026 WL 1906387, at *8 (FTC June 30, 2026).

²⁰⁴ *Lugar*, 457 U.S. at 937.

²⁰⁵ 15 U.S.C. §§ 3055(c)(1)(B), 3057(d).

²⁰⁶ *Id.* § 3053(d).

²⁰⁷ *Halleck*, 587 U.S. at 809; 15 U.S.C. § 3058.

²⁰⁸ *See Jarkesy*, 603 U.S. at 134.

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E. Thompson's Registration With the Authority Did Not Waive Her Seventh Amendment or Article III Rights

1. Thompson's Registration Is Not A Waiver

Thompson's registration with the Authority cannot be a waiver because both her registration and internal HIWU arbitration were mandated by Congress.²⁰⁹ The Article III structural principles implicated here are also unwaivable.²¹⁰

2. Waiver of Thompson's Seventh Amendment and Article III Rights Was an Unconstitutional Condition

To the extent that Thompson's registration could constitute a waiver of her jury trial and Article III rights, it is unconstitutional. The government is prohibited from conditioning the "receipt of a benefit," a "privilege," or the exercise of a constitutional right on the "relinquishment of a constitutional right."²¹¹ The Supreme Court has applied this unconstitutional-condition doctrine to multiple constitutional rights, including the right of "access to federal courts."²¹² In *Terral v. Burke Construction Company*, the Court held that states could not condition the "privilege" of doing business there on a corporation's waiver of its "right to resort to the federal courts."²¹³

Conditioning Thompson's right to earn a livelihood in her chosen profession on waiver of her Seventh Amendment and Article III rights is directly analogous to *Terral*.²¹⁴ Thompson has a constitutional right to pursue a career in thoroughbred

²⁰⁹ 15 U.S.C. §§ 3054(d), (e)(1)(E)(iii), 3055(c)(4)(B).

²¹⁰ *Waldman v. Stone*, 698 F.3d 910, 918 (6th Cir. 2012).

²¹¹ *Bourgeois v. Peters*, 387 F.3d 1303, 1324 (11th Cir. 2004).

²¹² *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 279 (2024).

²¹³ 257 U.S. 529, 532 (1922).

²¹⁴ *Id.*

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training, a lawful, longstanding profession in which she has excelled for years.²¹⁵ HISA entirely forbids Thompson from pursuing her thoroughbred training career,²¹⁶ unless she surrenders her right to a civil jury trial. Such a condition, along with the requirement to forsake an Article III court, is not permitted.²¹⁷

3. Thompson's Registration Was Not a Knowing and Voluntary Waiver

Nor did Thompson's registration with the Authority constitute a knowing and voluntary waiver of her Seventh Amendment or Article III rights.²¹⁸ Whether a waiver is knowing and voluntary depends on several factors: "(1) [signer's] experience, background, and education; (2) the amount of time the [signer] had to consider whether to sign the waiver, including whether [she] had an opportunity to consult with a lawyer; (3) the clarity of the waiver; (4) consideration for the waiver; as well as (5) the totality of the circumstances."²¹⁹ Here, any waiver was neither knowing nor voluntary.

First, to the extent the registration agreement contains a waiver, it was unclear. Registration occurs through the Authority's website, which refers and links only to a section of the Authority's rules that do not contain the rules for ADMC Program violations.²²⁰ When waiver clauses are "set deeply and inconspicuously in

²¹⁵ *Bd. of Regents v. Roth*, 408 U.S. 564, 572 (1972); *Truax v. Raich*, 239 U.S. 33, 41 (1915).

²¹⁶ 15 U.S.C. § 3054(d)

²¹⁷ *See Terral*, 257 U.S. at 532.

²¹⁸ *See Walker v. Ryan's Fam. Steak Houses, Inc.*, 400 F.3d 370, 381 (6th Cir. 2005).

²¹⁹ *Id.*

²²⁰ HISA, *Covered Persons Agreement*, <https://portal.hisausapps.org/registration> (last visited Oct. 16, 2026); *see generally* HISA Rule 8000 Series.

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[a] contract,” waiver is not established.²²¹ Moreover, Thompson—a horse trainer with no legal training—would have had to infer from the arbitration rules that she would not receive a jury trial in an Article III court.

Second, Thompson had no bargaining power given registration was compelled by statute,²²² nor were the terms of this agreement even negotiable given she otherwise would be forced to give up her training career.²²³

Third, the waiver was not mutually binding because the Authority can choose to seek an injunction in federal court instead of pursuing an enforcement action in arbitration,²²⁴ and, with the Commission, it can unilaterally change the rules of the arbitration.²²⁵

F. Consideration of These Questions Is Appropriate

Lastly, consideration of these constitutional questions is appropriate. Thompson’s failure to raise the constitutional issues before a private arbitrator is excused by good cause.²²⁶ The Supreme Court “has consistently recognized a futility exception to exhaustion requirements.”²²⁷ “It makes little sense to require litigants to present claims to adjudicators who are powerless to grant the relief requested. Such a vain exercise will rarely protec[t] administrative agency authority or

²²¹ *Nat’l Equip. Rental, Ltd. v. Hendrix*, 565 F.2d 255, 258 (2d Cir. 1977).

²²² 15 U.S.C. § 3054(d).

²²³ *See Hendrix*, 565 F.2d at 258.

²²⁴ 15 U.S.C. § 3054(j)(1).

²²⁵ *Id.* §§ 3053(e), 3054(f).

²²⁶ 16 C.F.R. § 1.146(a)(1).

²²⁷ *Carr v. Saul*, 593 U.S. 83, 93 (2021).

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promot[e] judicial efficiency.”²²⁸ As in *Carr*, Thompson “assert[s] purely constitutional claims about which [adjudicators] have no special expertise and for which they can provide no relief.”²²⁹ In fact, Thompson is not obliged under *Carr* to even present these claims to the Commission prior to seeking judicial review.²³⁰

Second, Thompson should not be prevented from raising these constitutional issues now despite them not being in her Application for Review. Nothing under 16 C.F.R. § 1.146 prevents Thompson from raising these issues at this stage.²³¹ Nor is there substantial prejudice to the Authority. Section 1.146(a)(1) requires an application by an aggrieved party largely to determine whether an evidentiary hearing is needed.²³² Thompson’s constitutional arguments do not require such a hearing.

CONCLUSION

For the foregoing reasons, the arbitrator’s Final Decision should be set aside and all sanctions against Thompson reversed because they cannot be constitutionally imposed against her.

²²⁸ *Id.* (citation modified).

²²⁹ *Id.*

²³⁰ *See id.* at 95–96.

²³¹ *See generally* 16 C.F.R. § 1.146.

²³² *Id.* § 1.146(a)(1).

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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

IN THE MATTER OF

ERIN THOMPSON,

Appellant.

DOCKET NO. 9453

[PROPOSED] ORDER

This matter arises from the application for review of final civil sanctions filed by Appellant Erin Thompson pursuant to 15 U.S.C. § 3058(b) and 16 C.F.R. § 1.146(a). After consideration of the record, the parties' briefs, and the applicable law, it is hereby **ORDERED AND ADJUDGED** as follows:

1. Appellant's proposed findings of fact and conclusions of law are adopted in their entirety;
2. The June 30, 2026, Final Decision of Arbitrator Hugh L. Fraser is **SET ASIDE**; and
3. The final civil sanctions imposed by the Arbitrator are **REVERSED**—Thompson may participate in all activities of a Covered Person in which she is otherwise permitted to engage.

By the Commission.

Date: _____

April Tabor
Secretary of the Commission

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Dated: October 16, 2026

Respectfully submitted,

/s/ Joshua M. Robbins

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PUBLIC**CERTIFICATE OF SERVICE**

Pursuant to 16 C.F.R. § 4.4(b), I certify that on October 16, 2026, 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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