PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9455

ADMINISTRATIVE LAW JUDGE: HON. DANIA L. AYOUBI

IN THE MATTER OF:

JOSE CORRALES APPELLANT

Docket 9455

APPELLANT'S BRIEF

Now comes Jose Corrales, Appellant, by his undersigned counsel, Richard J. Hackerman, and says in support Appellant as follows:

Counsel will first address the constitutional issues raised before in the Arbitration and respond to the queries as directed by the Court. Counsel will then address the particular facts established and how applicable law applies to same.

CONSTITUTIONAL ISSUES

THIS IS A PROPER FORUM TO RAISE APPELLANT'S CONSTITUTIONAL DEFENSES?

The court cites Axon Enter. v. FTC, 598 U.S. 175 (2023) in its query whether constitutional challenges are appropriate before the Federal Trade Commission. The Supreme Court in Axon stated the agency adjudications are generally ill suited to address structural constitutional challenge. In the Axon case, the Movant raised claims that Administrative Law

Judges are too far insulated from the President's removal authority. Axon made constitutional challenges to the combination of prosecutorial and adjudicative functions. The court held these claims are not the type the statutory review scheme in that case reaches. Structural challenges are claims that target power-sharing arrangements of the administrative agency such as separation of powers and the appointments clause rather than individual rights.

The Axon case does not address the constitutional challenges brought by Mr. Corrales herein and has no applicability herein. If Mr. Corrales lacks the ability or standing to raise these issues before the very tribunal deciding his fate, the process set out by Congress is even more fundamentally flawed than as set forth below.

The Appellant also notes that the Federal Trade Commission considered a constitutional issue in In the Matter of Philip Serpe, No. 9441, 2026 WL 1906387 (June 30, 2026), considering whether Mr. Serpe had a Seventh Amendment right to a jury trial. Appellant's Book of Authorities hereinafter ABOA, TAB 1.

APPELLANT'S RIGHT TO A JURY TRIAL

As a threshold issue, the court asks whether Appellant's argument under the Seventh Amendment that Appellant has a right to a jury trial is foreclosed by the FTC's decision In the Matter of Philip Serpe, No. 9441, 2026 WL 1906387 (June 30, 2026). That case similarly is inapposite to the instant case because the Administrative law Judge in that case was not authorized to impose a civil penalty because no fine was requested nor awarded in the arbitration. In this case the Judge may authorize or affirm the fine imposed in the arbitration. While the decision goes past this saying the applicable case law supports treating the Authority as a state actor, that language is at best dicta. The Court in its decision declares: "Because Mr. Serpe's Seventh Amendment jury-trial right did not attach before the ALJ's review, and because the ALJ was not authorized to impose a civil penalty that would have triggered that right, we need not address whether imposition of the fine would have been appropriate nor whether the Jarkesy framework applies in this case."

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In the instant case, the Authority's actions fines are directly attributed to an investigatory scheme set up and enforced by a government or semi-government authorities, HISA, HIWU and the Federal Trade Commission.

The Seventh Amendment guarantees a jury trial in civil cases at law in federal court. In Securities & Exchange Commission v. Jarkesy,144 S.Ct. 2117, (2024) the Supreme Court reconfirmed that Congress cannot give executive-branch agencies, rather than federal courts, the authority to adjudicate claims that are "quintessentially suits at common law.",quoting Granfinanciera, SA v. Nordberg, 492 US 33, 56 (1989). ABOA 2. The Jarkesy court went on,"Even when an action 'originates in a newly fashioned regulatory scheme,' (also citing Granfinanciera at 52), "what matters is the substance of the action, not where Congress has assigned it." (Jarkesy at 2124). In short, where the federal government brings claims "whose causes of action are modeled on common law fraud and that provide a type of remedy available only in law courts. This is a common law suit in all but name. And such suits typically must be adjudicated in Article III courts". Jarkesy at 2136. See also Serpe, pp6-7.

HISA VIOLATES THE PRIVATE-NONDELEGATION DOCTRINE OF THE US CONSTITUTION.

The Courts ask for briefing of the applicability (if any) of the United States Court of Appeals for the Fifth Circuit's decision in Nat'l Horsemen's Benevolent & Protective Ass'n v. Black, 178 F.4th 224 (5th Cir. 2026), ABOA 3, to Appellant (as a Maryland resident and trainer) and the status of the case, including whether the Supreme Court of the United States has granted a writ of certiorari or any other mechanism for review.

On August 10, 2026, a Petition for a writ of certiorari was filed by the authority with respect to the case referenced above. ABOA 4, Briefs in support have been filed. The issue appears ripe for determination. The matter is to be distributed for conference on December 4,

2026. ABOA 5. Supreme Court docket, Case No.26-199.

While legal authority on the subject of the constitutionality of the application of HISA and HIWU is divided, in the most recent ruling on the subject, the Fifth Circuit Court of Appeals in National Horsemen's Benevolent and Protective Association, et al v. Jerry Black, the Fifth Circuit Court of Appeals declared HISA in violation of the private nondelegation doctrine of the U.S. Constitution. The Court ruled:

"The inescapable conclusion is that the Authority does not "function subordinately" to the FTC when enforcing HISA. Horsemen's I, 53 F.4th at 881. That is not permitted under the private nondelegation doctrine. A private entity that can investigate potential violations, issue subpoenas, conduct searches, levy fines, and seek injunctions—all without the say-so of the agency—does not operate under that agency's "authority and surveillance." Ibid. Put another way, with respect to enforcement, HISA's plain terms show that the Authority does not merely act "as an aid" to the FTC because the FTC does not "retain[] the discretion to approve, disapprove, or modify" the Authority's enforcement actions. Ibid. (cleaned up) (quoting Amtrak I, 721 F.3d at 671). Id at 20.

The decision of the Sixth Circuit in Oklahoma v. United States (Oklahoma I), 62 F.4th 221 (6th Cir. 2023) and Oklahoma v. United States(Oklahoma II), 163 F.4th 294 (6th Cir. 2025) was decided contrary to the decision of the Fifth Circuit.

The Eighth Circuit decision in Walmsley et al v. FTC, et al, 117 F.4th 1032 (8th Cir. 2024), 145 S. Ct. 2870 (2025), also held that the HISA was valid, however that is now vacated and remanded to the appellate court for further consideration. See Walmsley v. FTC, 145 S.Ct 2870 (2025). It is also important to note that in Walmsley there was a concurring in part and dissenting in part portion of the opinion wherein Judge Gruender opined that HISA violated the the private nondelegation doctrine of the U.S. Constitution.

HISA is not enforced in West Virginia and Louisiana pursuant to an injunction issued in Louisiana et al v. Horseracing Integrity & Safety Authority Inc and upheld in large part on

appeal. HISA similarly is not enforced in Texas. To be clear West Virginia was a plaintiff in the Louisiana case.

While neither the Maryland Courts nor the Fourth Circuit have rendered a decision on the constitutionality of HISA, HISA is not enforced in West Virginia which is a Fourth Circuit sister state of Maryland. As the only precedent on the subject directly affecting a Fourth Circuit state, the most controlling precedent is the Fifth Circuit order holding HISA is unconstitutional. Until and unless that case is overturned by the Supreme Court, the most persuasive authority is that controlling Maryland's Fourth Circuit sister state. As such the Federal Trade Commission may not be enforcing HISA in Maryland.

As all relevant parties are asking for Supreme Court to review this issue and there is a split of authority the matter is ripe for review. A decision on whether take up the case for review appears near and likely.

It is exceptionally unfair that the scheme upon which the prosecution of Mr. Corrales would be undertaken and completed under these circumstances. There is no easy mechanism for repairing injury to a person's livelihood and reputation. There is no simple mechanism for a federal tort claim or suit against the authority, HIWU or The Federal Trade Commission. Proceeding to adjudication at this time risks the substantial possibility of imposition of penalties and harm that may later be held unconstitutional or unenforceable on other grounds.

EIGHTH AMENDMENT/EXCESSIVE PUNISHMENT/DUE PROCESS

The court asks whether Appellant raised in the arbitration proceedings any argument under the Eighth Amendment for unlawfully excessive punishment. The appellant raised issues regarding a lack of substantive due process and that the absolute insurer rule was unfair. (AB 144-46). The Appellant noted within that context that the severe punishment imposed for a matter upon which no fault of the trainer was unwarranted. While the citation of the Eighth

Amendment was not directly noted, the argument is sufficiently related and on point.

The court also asks as a threshold matter whether Appellant raised in the arbitration proceedings any argument under the Fourteenth Amendment for the right to due process and the applicability of the Fourteenth Amendment. As stated above the Appellant raised issues in his filings before JAMS that "HIWI/HISA laws are unconstitutional as they do not afford substantive due process.(AB 144-46). The matter was also argued at the Arbitration hearing. (AB 763-764).

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The absolute insurer rule is an unconstitutional and improper rule in deterring illegal equine drugging See Kentucky Journal of Equine, Agriculture &national Resources Law, Volume 12, Issue 1, Article 1, 2019, "The Absolute Insurer Rule: An Unconstitutional and Ineffective Means of Mitigating Illegal Equine Drugging in the "Sport of Means of Mitigating Illegal Equine Drugging in the "Sport of Kings", by Brian Calhoun Mundell. ABOA 6.

As pointed out by the author, the science behind many of the banned substances is not rooted in scientific evidence. Additionally, the application of the rule denies the accused his constitutional right to substantive due process. A racehorse trainer undertakes his or her trade as a means of earning a living. The loss of at trainer's license, or even a suspension of a trainer's license, should "be considered the most severe and harshest possible sanction of the trainer's ability to generate income, and thus maintaining a living will be rendered impossible.

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"In the context of criminal law, strict liability offenses are generally disfavored for crimes that carry with them a severe punishment. Strict liability is generally associated with civil violations, which incur monetary penalties. In fact, the greater the possible punishment, the more

likely that the prosecuting body will be required to prove the defendant's culpability in carrying out the crime or violation." Id at 31-32.

"A trainer whose horse has tested positive for a prohibited substance is almost always subject to at least some level of suspension as a means of punishment. Similar to how a criminal defendant is deprived of his or her liberty by being incarcerated, a trainer is deprived of his or her liberty by the suspension of a license, and thus, a means of making a living. Accordingly, because of the potential punishment associated with drug violations in horse racing—especially those violations that carry with them "Class A" or "Class B" a trainer is deprived of substantive due process when his or her license is suspended without affording the trainer an opportunity to rebut the presumption of guilt placed upon him or her." Id at 32.

"The absolute insurer rule should be abolished because it is unconstitutional, and because the current state of equine drug testing easily allows for a trainer to be heavily punished as a consequence of an inaccurate lab result. Id at 33.

Strict liability is applied in tort law under ultra-hazardous activities, product liability, dram shop laws, or laws imposing strict liability on tavern keepers for serving alcohol to minors. Courts rarely impose strict in criminal matters (other than perhaps minor traffic offenses). Nonetheless punishment without proof of fault is sanctioned in HISA regulatory scheme.

In 1969, the Supreme Court of Illinois, in Brennan v. Illinois Racing Board, 247N.E.2d at 881.invalidated Illinois' absolute insurer rule. ABOA 7. The issue was whether the absolute insurer measure could be upheld as a legitimate exercise of the state's police power. The majority applied the following two-pronged test: (1) whether the means employed under the police power bear areal and substantial relation to the public welfare, and (2) whether the means employed are essentially reasonable. Under the majority's analysis, the absolute insurer measure failed both tests and was held to be arbitrary, unreasonable and a deprivation of due process. In regard to the public welfare, the court noted, "It would seem that the only applications of the rule which would not be equally covered by one based on fault would be to situations which the trainer

could not have prevented any way. We see little if any tendency in penalty-without-fault provisions to reduce the frequency of the crime." The majority found the absolute insurer rule unreasonable because a trainer could be penalized without fault for someone else's crime. The court concluded
that a drugging rule based upon "traditional principles of culpability" and the "exercise of due care" would be more appropriate than a rule of absolute liability or a rule of strict liability without fault.

FATAL FACTUAL DEFICIENCIES OF THE AUTHORITIES' PROSECUTION

The chain of custody presented by the Authority makes no sense. The shipping and receiving information of the samples previously provided to the Respondent are impossible to correlate. Rule 7260 provides: "Evidence(a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator(s) or IAP member(s) may deem necessary ." AB 764.

The Authority only provided guess work as to why the shipping label for Curlenes Spirit predated by weeks the date the samples were purportedly shipped. AB 766. There was a shipping label presented which indicated the sample was shipped weeks earlier than when the sample arrived. Sufficient evidence was therefore not presented that the Authority complied with Rules 5510 and 5520 regarding Storage and Transport of the samples.

Rule 5510 provides: "Storage and Custody of Samples Prior to Analysis

"(b) If a urine or blood Sample is not transported to the Laboratory on the day of collection:
(2) the relevant Sample Collection Personnel shall store the blood Sample in a secure refrigerator;
(3) and, in each case, shall document in the Chain of Custody the location and

time in and time out of the urine or blood Sample.
(c) The DCO or BCO shall document who has custody of the Samples or who is permitted access to the Samples.
(d) The Agency shall develop a system for recording the Chain of Custody of Samples and receiving Sample .
Collection Session documentation to ensure that each Sample is securely handled and the documentation for each Sample is completed."

Rule 5520 provides: "Transport of Samples and Documentation
"(a) Samples should be transported to the Laboratory as soon as reasonably practicable after the conclusion of the Sample Collection Session. Samples collected on a weekend or over consecutive days may be stored and shipped together in batches (e.g., Samples collected on a race weekend may be stored and sent to the Laboratory on the next Monday), provided that the Samples are stored in accordance with the requirements of these Testing and Investigations Standards.
(b) Samples shall be transported securely via a transportation or shipping service authorized by the Agency. The Agency shall authorize a transport system that ensures Samples and related documentation are transported in a manner that protects their integrity, identity, and security, and which minimizes the potential for Sample degradation due to factors such as delays and extreme temperature variations. Blood samples must be transported in a manner that maintains a cool and constant environment."

THE APPELLANT BEARS NO FAULT OR NEGLIGENCE

Rule 3224 provides:. "Elimination of the Period of Ineligibility Where There Is No Fault or Negligence
(a) If a Covered Person establishes in an individual case that he or she bears No Fault or Negligence for the Anti-147PUBLIC Doping Rule Violation(s) charged, the otherwise

applicable period of Ineligibility and other Consequences for such Covered Person shall be eliminated (except for those set out in Rule 3221(a)and Rule 3620). When the violation is of Rule 3212 (presence of a Banned Substance), the Covered Person must also establish how the Banned Substance entered the Covered Horse's system as a pre-condition to application of this Rule 3224(a). In the event the period of Ineligibility otherwise applicable is eliminated pursuant to this Rule 3224, the Anti-Doping Rule Violation shall not be considered a prior violation for the purpose of Rule 3228.

(b) Rule 3224 only applies in exceptional circumstances. In particular, it will not apply where the Banned Substance found to be present in a Sample: (1) came from a mislabeled or contaminated supplement; or (2) was administered to the Covered Horse by veterinary or other support personnel without the knowledge of the Responsible Person."

Mr. Corrales bears no fault for the purportedly positive test result. He did not administer nor provide Curlene's Spirit Nikethamide and/or its metabolite, N-Ethylnicotinamide. The list of what was provided to Curlene's Spirit and Mr. Corrales was provided prior to the hearing. (AB 159 - 161). The Authority came into Mr. Corrales' barn, searched and tested Mr. Corrales's feed and supplements. No banned substances were found.

The public has access to Mr. Corrales's barn. Mr. Corrales takes excellent care of his horses. Mr. and Mrs. Corrales do what is more than appropriate to prevent contamination. They did not administer Nikethamide nor its metabolite to their horses including Curlene's Spirit. (AB 753-760)

THE APPELLANT BEARS NO SIGNIFICANT FAULT OR NEGLIGENCE

Rule 3225 provides: "Reduction of the Period of Ineligibility Where There Is No Significant Fault or Negligence Reductions under this Rule 3225 are mutually exclusive and not cumulative, i.e., no more than one of them may be applied in a particular case.

(a) General rule. Where the Covered Person establishes that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation in question, then (unless Rule 3225(b) or 3225(c) applies) the period of Ineligibility shall be fixed between 3 months and 2 years, depending on the Covered Person's degree of Fault. (b) Specified Substances. Where the Covered Person establishes that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation in question, and the violation involves only a Specified Substance, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and, at a maximum, 2 years of Ineligibility, depending on the Covered Person's degree of Fault."

"(c) Contaminated Products or other contamination.
Where the Covered Person establishes that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation in question and that the Banned Substance in question came from a Contaminated Product or from another form of contamination, the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and, at a maximum, 2 years of Ineligibility, depending on the Covered Person's degree of Fault."

Mr. Corrales has established that he bears no significant fault or Negligence for the purportedly positive test result. The banned substance therefore had to have come from a contaminated product, another form of contamination or from a third party. Mr. Corrales did not administer nor provide Curlene's Spirit Nikethamide and/or its metabolite, N-Ethylnicotinamide. The list of what was provided to Curlene's Spirit by Mr. Corrales was provided at the hearing. The public has access to Mr. Corrales's barn. Mr. Corrales takes excellent care of his horses. Mr. and Mrs. Corrales do what is more than appropriate to prevent contamination. They did not administer Nikethamide nor its metabolite to their horses including Curlene's Spirit. AB 753-760.

CREDIBILITY/GOOD FAITH OF THE APPELLANT

It should be noted that Arbitrator determined that:
"Where, as here, the source has not been established by a balance of probabilities, the ADMC Program requires the imposition of a two (2) year period of Ineligibility. 7.16 Accordingly, the

Arbitrator has no choice but to find that Mr. Corrales should suffer a period of Ineligibility of two years." AB 746.

Arbitrator Wendt also noted: "Mr. Corrales litigated in good faith, the points he raised were neither frivolous nor unreasonable, and arose in a relatively new and perhaps not yet fully settled area of regulation". AB 746.

While this court foreclosed Mr. Corrales from introducing new theories or evidence into this appeal, Mr. Corrales did not introduce unsupported theories at the arbitration. The long and short of his testimony at the arbitration was that he did not administer or cause to be administered any prohibited substance to Curlene's Spirit, that it was his understanding Vitamin B could be cause of the positive test result and that due to the open access to his barn anyone or anything could have been the cause of the positive test result. AB 754- 760.

BURDEN OF PROOF

The burden of proof is on HlSA to show, by a preponderance of the evidence, that the covered person has violated a rule issued by the Authority. 16.CFR 1.146 (c)(6)(I)

Pursuant to 15 U.S.C. § 3058(b)(l), a HISA civil sanction is subject to de novo review by an Administrative Law Judge of the FTC. The ALJ "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 Act [15 USCS §§ 3051 et seq.] or the anti-doping 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." 15 U.S.C. § 3058(b)(2).

A decision is arbitrary and capricious "if it is 'without reason, unsupported by substantial evidence or erroneous as a matter of law.'" Abnathya v. Hoffinann-La Roche, Inc., 2 F.3d 40, 45

(3d Cir.1993).

CONCLUSION

It is clear that all involved in these and other HISA/HIWU investigative and adjudicative proceedings are compelled to prosecute to the strict and rigid extent mandated by the Authroity's rules. In every proceeding discretion and reason must play a role, if not a substantial role in the process. As indicated earlier herein, it is not reasonable go forward with this case with the Supreme Court review of the private non-delegation issue pending. It is not reasonable to go forward with this case while the only state within Mr. Corrales's federal circuit to have had the issue addressed has determined that HISA is unlawful.

The court in Serpe states when discussing whether HISI/HIWU are state actors that the Authority is a private entity. Serpe p.10. If the Authority is a private entity, this Court can not permit the continued prosecution of Mr. Corrales in the face of the Fifth Circuit Ruling in National Horsemen's Benevolent and Protective Association, et al v. Jerry Black, which holds that the HISA regulatory scheme is an unconstitutional delegation to a private entity.

It is not reasonable to affirm a $10,000.00 fine and 2 year suspension without some proof of fault of the Appellant. The Authority failed to offer any proof of fault because it did not have any nor was it compelled under the rules to provide such proof.

It is not reasonable to affirm a $10,000.00 fine and 2 year suspension without some proof of the performance enhancing effect of the alleged prohibited substance(s) found in Curlene's Spirit. The Authority failed to offer any proof because it would have impossible to offer such proof nor was it compelled under the rules to provide such proof.

While the Authority may argue Mr. Corrales signed up for these rules, it is clear he had little choice. Mr. Corrales was in his 60s at the time these rules were implemented. He earns a living training racehorses. What he did not sign up for was something occurring which would cause of the loss of his license of which he knows nothing about. As set forth above the harsher the penalty, proof of intent and culpability should be established. Strict liability associated with a two year suspension under any standard of fundamental fairness requires more - a lot more. A jury trial where citizens similarly situated would at least in part address that issue. The Authority seemingly takes the position that not only do they not have prove intent, culpability or negligence, trial by your peers is not a right afforded under the HISA/HIWU regulatory scheme.

As the authorities referenced above note, the process which the new law undertakes violates substantive due process and imposes excessive punishment. These two propositions are not independent. The more severe the punishment, greater due process and more comprehensive adjudications are required. It can not be seriously argued that severe penalties without proof of fault are anything other than an arbitrary or capricious imposition of a regulatory scheme intentionally or unwittingly designed to snare the innocent as well as the guilty.

PROPOSED FINDINGS OF FACT

1. The authority sent a sample of some horse for testing on January 13, 2026. Curlene Spirit's race was on February 20, 2026. The sample sent could not have been sample of Curlene's Spirit as the shipping label predated the date of Curlene Spirit's race.

2. Even if the sample was that of Curlene's Spirit, there was no evidence presented that Jose Corrales administered Nikethamide or its metabolite to Curlene's Spirit.

PROPOSED CONCLUSIONS OF LAW

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As there was no proof whatsoever presented that Jose Corrales engaged in any unlawful practice nor he administered or directed anyone to administer the alleged prohibited substance the decision of the arbitrator is reversed and the prosecution of Mr. Corrales is dismissed. Though the HISA regulations may purportedly permit the imposition of severe punishment without proof of fault, same is violative of fundamental principles of fairness, due process, excessive punishment and are therefore unconstitutional. Moreover the most persuasive ruling on the non-delegation issue is that of Nat'l Horsemen's Benevolent & Protective Ass'n v. Black, 178 F.4th 224 (5th Cir. 2026), and therefore this case must be dismissed.

/s/ Richard J. Hackerman

Richard J. Hackerman
3635 Old Court Road, Suite 208
Baltimore, Maryland 21208
(410) 243-8800
Attorney for the Appellant
Client Prot. No.:8212010181
Richard@richardhackerman.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on November 12, 2026 a copy of the aforegoing was emailed to the following parties:

Hon. Dania L. Ayoubi
Office of Administrative Law Judges
Federal Trade Commission

PUBLIC

600 Pennsylvania Ave. NW
Washington DC 20580
via e-mail to oalj@ftc.gov
and electronicfilings@ftc.gov

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Ave. NW
Washington, DC 20580
via e-mail to electronicfilings@ftc.gov

Bryan H. Beauman
Rebecca C. Price
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, Kentucky 40507
Telephone: (859) 255-8581
Fax: (859) 231-0851
Email: bbeauman@sturgillturner.com
rprice@sturgillturner.com

and

Janelle L. Winston
Christy Heath
Geneva N. Gnam
Horseracing Integrity & Welfare Unit
4801 Main Street, Suite 350
Kansas City, MO 64112
Telephone: (816) 601-6897
Email: jwinston@hiwu.org
cheath@hiwu.org
ggnam@hiwu.or

/s/ Richard J. Hackerman

Richard J. Hackerman
3635 Old Court Road, Suite 208
Baltimore, Maryland 21208
(410) 243-8800
Attorney for the Appellant
Client Prot. No.:8212010181
Richard@richardhackerman.com

PUBLIC

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
MATTER NO.
IN THE MATTER OF:
JOSE CORRALES, APPELLANT

Docket 9455

APPELLANT'S PROPOSED ORDER

Upon review of the decision of the Arbitrator, the decision/order dated September 30, 2026 be and is hereby reversed, and it is further

Ordered, that the charge issued in these proceedings Jose Corrales be and is hereby dismissed.

_____

Dania L. Ayoubi
Acting Chief Administrative Law Judge