PUBLIC

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

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

IN THE MATTER OF:

JOSE CORRALES **APPELLANT**

THE AUTHORITY'S REPLY TO APPELLANT'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER, AND SUPPORTING LEGAL BRIEF

Comes now the Horseracing Integrity and Safety Authority, Inc. ("**HISA**" or the "**Authority**") pursuant to the Administrative Law Judge's ("**ALJ**") Order Setting Briefing Schedule, dated October 23, 2026, and submits the following Reply to Appellant's Proposed Findings of Fact, Conclusions of Law, Order, and Supporting Legal Brief.

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CERTIFICATE OF SERVICE

Pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), a copy of the Authority's Reply to Appellant's Proposed Findings of Fact, Conclusions of Law, Order and Supporting Legal Brief is being served on November 23, 2026, via Administrative E-File System and by emailing a copy to the below listed. The Reply to Appellant's Findings of Fact, Conclusions of Law, and Supporting Legal Brief is limited to 2,500 words excluding reproduced text from Appellant's Proposed Findings of Fact and Conclusions of Law. I further certify that no portion of the filing was drafted by generative artificial intelligence ("**AI**") and any language in the filing that was drafted by generative AI was checked for accuracy by human attorneys or paralegals using printed legal reporters or online legal databases.

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THE AUTHORITY'S REPLY TO APPELLANT'S PROPOSED FINDINGS OF FACT

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

- Disagree. Curlene's Spirit's Sample was collected on February 20, 2026 following Curlene's Spirit's Race.[1] The Arbitrator found that "[t]here is no doubt that the Sample belongs to Curlene's Spirit."[2] The Arbitrator noted that the "unrebutted evidence" showed the start time of Curlene's Spirit's race, the time Curlene's Spirit arrived in the test barn, and the time Curlene's Spirit's urine Sample was sealed.[3] Additionally, Curlene's Spirit's identity was verified by the correct: (1) name; (2) microchip number; (3) color; (4) sex; (5) reason for selection; and (6) Responsible Person.[4] The unique Sample number assigned to Curlene's Spirit was the same one assigned to the tracking number associated with the Sample shipped from Laurel Park to Industrial and verified by Industrial upon receipt.[5]

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

- Disagree to the extent that this implies that the Agency has a burden to establish that Trainer Corrales administered the Banned Substance, which it does not.[6] Agree that the Agency did not present evidence of intentional administration.

[1] Authority's Proposed Finding of Fact ("**PPF**" #2).
[2] AB 744 ¶ 7.7 (Tab 21, Final Decision).
[3] AB 744 ¶ 7.5 (Tab 21, Final Decision).
[4] AB 744 ¶ 7.5 (Tab 21, Final Decision).
[5] AB 744 ¶ 7.6 (Tab 21, Final Decision).
[6] Rule 3212(a).

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THE AUTHORITY'S REPLY TO APPELLANT'S PROPOSED CONCLUSIONS OF LAW[7]

1. 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.

- Disagree. "It is not necessary for the Agency to demonstrate intent, Fault, negligence, or knowing Use on the part of the Responsible Person in order to establish that the Responsible Person committed a Rule 3212 Anti-Doping Rule Violation."[8]

2. 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.

- Disagree. Appellant entered into a valid agreement when registering with the Authority to participate in Covered Horseracing. He "agreed to be 'subject to and comply with the rules, standards, and procedures developed by the Authority and approved by the FTC,"[9] which are themselves constitutional.

3. Moreover the most persuasive ruling on the non-delegation issue is that of Nat'l Horseman's Benevolent & Protective Ass'n v. Black, 178 F. 4th 224 (5th Cir. 2026), and therefore this case must be dismissed.

- Disagree. The Fifth Circuit granted an unopposed motion to stay *Nat'l Horsemen's Benevolent & Protective Ass'n v. Black* which stays the Fifth Circuit's judgment

[7] Appellant's Proposed Conclusions of Law are written in a single paragraph. For clarity and ease of responding, the Authority has divided each sentence into a single Proposed Conclusion of Law.
[8] Rule 3212(a).
[9] *Serpe v. FTC*, No. 0:24-CV-61939, 2025 U.S. Dist. LEXIS 273435, at *6 (S.D. Fla. Oct. 30, 2025) (alterations omitted).

pending disposition of petitions of writs of certiorari to the Supreme Court of the United States and any granting of the same.

SUPPORTING REPLY LEGAL BRIEF

I. Introduction

The existing factual record clearly demonstrates that the Arbitrator's findings were in accordance with the Rules and were not arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. Appellant's constitutional claims are both forfeited and meritless.

II. The Parties Agree This Is The Proper Forum.

Appellant acknowledges that the constitutional arguments he has preserved are "appropriate before the Federal Trade Commission."[10] The Authority agrees that "the constitutional challenges brought by [Appellant] herein" are meaningfully distinct from the "structural constitutional challenges" that the Supreme Court in *Axon Enterprises, Inc. v. FTC*, 598 U.S. 175 (2023), held were "not the type the statutory review scheme in that case reache[d]," based on application of the three factors outlined in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994).[11]

Application of the *Thunder Basin* factors here underscores that this is the proper forum for Appellant's constitutional claims, as the Authority explained in its opening brief.[12] Indeed, Appellant notes that the FTC has previously reviewed the same principal constitutional claim he raises here.[13] Accordingly, there is no dispute that Appellant's constitutional challenges to the Consequences are "of the type Congress intended to be reviewed within this statutory structure."[14]

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[10] Appellant's Br. 1.
[11] Appellant's Br. 1-2.
[12] *See* Authority Br. 16-17.
[13] Appellant Br. 2 (citing *In re Serpe*, No. 9441, 2026 WL 1906387 (June 30, 2026)).
[14] *Axon Enter.*, 598 U.S. at 186 (quoting *Thunder Basin Coal Co.*, 510 U.S. at 208).

III. Appellant is Not Entitled to a Jury Trial.

Appellant waived his right to a jury trial by entering into a valid agreement to arbitrate when he registered with the Authority.[15] Appellant does not dispute that he "signed up" for that agreement.[16] He argues instead that he "had little choice" because the agreement relates to how he "earns a living."[17] But that is no different than most Covered Persons—or than the countless securities industry participants who "waive[]" any jury-trial right by agreeing to similar "mandatory securities industry arbitration under federally-compelled and SEC-approved procedures" pursuant to the FINRA framework on which HISA was modeled.[18]

Moreover, Appellant's assertion that the Act is modeled on common law fraud is wholly inaccurate. As recently discussed by the Commission, "[a] strict liability charge for the presence of illegal substances in a racehorse" has no "common law analogues" as the "promises, state of mind, and intentions [of the Covered Person] are irrelevant to that claim."[19] Adjudication of health and safety problems has long been the realm of a regulatory framework rather than necessitating the involvement of an Article III court. As such, even if Appellant had not waived his Seventh Amendment claim, it would be foreclosed by the public-rights doctrine, as the Authority explained previously.[20]

IV. The Fifth Circuit Decision Has No Bearing.

The Fifth Circuit's judgment remains stayed pending the disposition of the petition for certiorari and any resulting grant of the same by the Supreme Court of the United States. So

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[15] *Serpe v. FTC*, No. 0:24-CV-61939, 2025 U.S. Dist. LEXIS 273435, at *6 and *107 (S.D. Fla. Oct. 30, 2025) (alterations omitted).
[16] See Appellant Br. 14.
[17] *Id.*
[18] *Koveleskie v. SBC Cap. Mkts., Inc.*, 167 F.3d 361, 368 (7th Cir. 1999); *see also, e.g.*, *Desiderio v. National Ass'n of Secs. Dealers, Inc.*, 191 F.3d 198, 206-207 (2d Cir. 1999) (rejecting similar Seventh Amendment argument due to agreement to arbitrate under rules governing FINRA's predecessor).
[19] Decision of the Commission, *In re Serpe*, No. 9441 (FTC June 30, 2026) at 8-9 nn.69.
[20] *See* Authority Br. 17-18.

Appellant is wrong that it constitutes "controlling precedent."[21] The only appellate court precedent currently in effect that considered a private-nondelegation challenge is the Sixth Circuit's decision, which squarely rejected the constitutional claim.[22]

V. Appellant Did Not Advance Eighth Amendment Claims in Arbitration.

Appellant did not raise any claims under the Eighth Amendment to the Constitution during the Arbitration proceedings. Appellant's Supporting Legal Brief admits that "the citation of the Eighth Amendment was not directly noted." His Eighth Amendment claims are forfeited.

VI. Appellant Did Not Advance Fourteenth Amendment Claims in Arbitration.

Appellant did not advance any fact driven claims under the Fourteenth Amendment, instead choosing to vaguely reference "due process" violations. Not only did Appellant fail to make any specific claims of how Fourteenth Amendment protections were being denied to him, but he has failed to advance any reason supporting good cause for raising this issue now on appeal when it was not raised at arbitration. This is not in keeping with the requirement of §1.146 which states that "[e]xcept for good cause shown, no assignment of error by the aggrieved party may rely on any question of fact or law not presented to the Authority." His Fourteenth Amendment claims are forfeited.

In any event, Plaintiff has conceded that he was "afforded a full and fair opportunity to present his case and had no objection to the conduct of the hearing," which undermines any

[21] Appellant Br. 5.

[22] *See Oklahoma v. United States*, 163 F.4th 294 (6th Cir. 2025). There is no basis for Appellant's assertion that "the Federal Trade Commission may not be enforcing HISA in Maryland." Appellant Br. 5. Although not relevant to this case, Appellant is also incorrect that a "Fifth Circuit order holding HISA is unconstitutional" is "controlling Maryland's Fourth Circuit sister state," West Virginia. *Id.* HISA rules are currently not in effect in West Virginia based on a preliminary injunction order concerning a challenge to rulemaking under the Administrative Procedure Act, not concerning "the constitutionality of HISA." *Id.*; *see Louisiana v. Horseracing Integrity & Safety Authority, Inc.*, 617 F. Supp. 3d 478, 486 (W.D. La. 2022) ("This opinion only addresses whether the rulemaking by HISA and the Federal Trade Commission ('FTC') was lawful.").

suggestion of a procedural due process violation.[23] And Appellant's "substantive due process" argument runs headlong into the FTC's approval of the rules, based on the Act itself and longstanding parallel regimes throughout the states and the broader anti-doping community intended to protect the health and welfare of equine athletes.[24]

VII. Appellant Did Not Prove That a Departure Occurred.

Appellant's continued assertion that the "chain of custody presented by the Authority makes no sense" does not fulfill his burden to show that (1) a departure from a standard occurred and (2) that *if* such a departure occurred it could *reasonably have caused* the Adverse Analytical Finding. Appellant presented no evidence to support his contention that the Sample did *not* belong to Curlene's Spirit. The Arbitrator correctly concluded that "[t]here is no doubt that the Sample belongs to Curlene's Spirit."[25]

VIII. Appellant is Not Entitled to a Reduction Under Rule 3224 or 3225

In order to benefit from mitigated sanctions, Appellant must demonstrate that he bears No Fault or No Significant Fault under Rule 3224 or Rule 3225. Both rules, as defined by Rule 1020, require a Covered Person who is charged with a violation of Rule 3212 "to establish how the Prohibited Substance entered the Covered Horse's system in order to establish" No Fault or No Significant Fault. At the arbitration hearing, Appellant failed to put forth any evidence which could establish how Nikethamide, or its metabolite N-Ethylnicotinamide, entered the body of his

[23] AB 732 at ¶ 3.16 (Tab 21, Final Decision).
[24] Appellant Br. 6; *see* 15 U.S.C. § 3057(a)(2)(A); Order Approving the Anti-Doping and Medication Control Rule Proposed By The Horseracing Integrity And Safety Authority (Mar. 27, 2023); *see Hansen v. FEI*, CAS 2009/A/1768 ¶ 15.6 (Dec. 4 2009) (discussing the need for strict liability in the interests of fair competition) and *Deutsche Reiterliche Vereinigung e.V. v. FEI*, CAS 2008/A/1700& 1710 at ¶ 85 (Apr. 30, 2009) (explaining the justification for strict liability in equestrian sport).
[25] AB 744 ¶ 7.7 (Tab 21, Final Decision).

Covered Horse. Moreover, Appellant concede that he did not know how Nikethamide, or its metabolite N-Ethylnicotinamide, came to be in the body of his Covered Horse.[26]

The Arbitrator properly concluded that no reduction in fault could be assessed because no evidence had been introduced to satisfy the source requirement set forth by Rules 3224 and 3225. The financial penalty and period of Ineligibility were therefore appropriate.[27] The Consequences are rationally connected to the evidence and in accordance with ADMC Program Rules.

IX. Conclusion

The Sanctions imposed in the Arbitrator's Final Decision were properly considered and should be affirmed. Appellant's appeal should be dismissed. The Authority does not believe oral argument is necessary and does not request closing statements to be heard.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 23rd day of November 2026

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[26] AB 757 24:06–24:23 (Gnam and Corrales) (Tab 22, Transcript).
[27] See *HIWU v. Poole*, JAMS Case No. 1501000576, at ¶¶ 7.24-.25, aff'd, 2023 WL 8435860, at *5; *HIWU v. Saldana*, JAMS Case No. 1501000587, at ¶¶ 7.29-.30 (Dec. 4, 2023); *In the Matter of Overly*, Docket No. 9443, §C(2) (Jan. 27, 2026).