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 REPLY BRIEF

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

On page 8 of the Authority's Brief it raises the issue that the B Sample supposedly confirmed the presence of Nikethamide and its metabolite N.-EthlyInicotinamide. On November 11, 2026 the laboratory that produced that result presence in HIWU proceedings came under national scrutiny. Michelle Pujals, Esquire, HIWU's former general counsel, who has been involved in the prosecution of Mr. Corrales, has also been involved with SMRTL, the entity that owns EQIAS Lab. This conflict of interest, contrary to any applicable standard of conduct confirms Appellant's complaints regarding the process to which he has been subjected. A separate filing will address these issues.

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RULES 3224 AND 3225

Appellant relies on his initial brief that although he does not know source, as his barn his open access that the source of the purportedly positive result could come from anyone and/or anywhere and therefore Rules 3224 and 3225 apply. Findings of no fault or no significant fault are therefore mandated.

RIGHT TO A JURY TRIAL

Mr. Corrales has not waived his right to a jury trial. A waiver has to be knowing and voluntary. Mr. Corrales desires to continue his career as racehorse trainer. There has been no evidence presented by the Authority that any purported waiver was knowing and voluntary. "It is elementary that the Seventh Amendment right to a jury is fundamental and that its protection can only be relinquished knowingly and intentionally. Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); Heyman v. Kline, 456 F.2d 123, 129 (2d Cir. 1972), cert. denied, 409 U.S. 847, 93 S.Ct. 53, 34 L.Ed.2d 88 (1972)."

There has been no evidence presented that Mr. Corrales understood the waiver.

A presumption exists against its waiver. Aetna Insurance Co. v. Kennedy, 301 U.S. 389, 393, 57 S.Ct. 809, 81 L.Ed. 1177 (1937). The waiver clause at issue is buried in a website that the Appellant had to agree to in order to maintain his career. See National Equipment Rental, Ltd. v. Szukhent, 375 U.S. 311, 332-3, 84 S.Ct. 411, 423, 11 L.Ed.2d 354 (1964) which stated in the dissenting opinion: "The waiver clause was set deeply and inconspicuously in the contract. This printed form provision buried in a multitude of words is too weak an imitation of a genuine agreement to be treated as a waiver of so important a constitutional safeguard . . . it exhausts credulity to think that they or any other layman reading these legalistic words would have known or even suspected that they amounted to [such] an agreement . "

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The instant case is much like the facts in the matter of Fuentes v. Shevin, 407 U.S. 67,95, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972). In that case, there "was no bargaining over contractual terms between the parties who, in any event, were far from equal in bargaining power. The purported waiver provision was a printed part of a form sales contract and a necessary condition of the sale. The appellees made no showing whatever that the appellants were actually aware or made aware of the significance of the fine print now relied upon as a waiver of constitutional rights."

It would be absurd to argue that Mr. Corrales had any bargaining power as he needed to "sign on" to maintain his training career. It would be absurd to argue that the jury trial was anything but buried in a web portal all but impossible for most people to take note of or understand.

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). In Jarkesy the court determined that the public rights exception cited by the Authority did not apply. In the instant case the differences cited by the Authority from those in Jarkesy are merely a distinction without a difference. In the instant case the Authority seeks civil penalties as does the SEC in the Jarkesy case.

The Court in Jarkesy applied a number of factors including: "(1) whether the alleged misconduct involved fraud, deceit, manipulation, or deliberate or reckless disregard for regulatory requirements, (2) whether it caused harm, (3) whether it resulted in unjust enrichment, accounting for any restitution made, (4) whether the defendant had previously violated securities laws or regulations, or had previously committed certain crimes, (5) the need for deterrence, and (6) other

"matters as justice may require." §§78u–2(c), 80b–3(i)(3). Of these, several concern culpability, deterrence, and recidivism. Because they tie the availability of civil penalties to the perceived need to punish the defendant rather than to restore the victim, such considerations are legal rather than equitable." Id at 2129.

In the instant case, every factor set forth above applies to Mr. Corrales's prosecution. The alleged purpose of the antidoping statute is prevent cheating. The Authority's argument is that Mr. Corrales cheated and disregarded anti-doping rules. The Authority has to argue the conduct caused harm and that Mr. Corrales and his owners were unjustly enriched. The amount of the fine and suspension is determinative on prior similar conduct. The whole purpose to these proceedings is to punish. In sum, the civil penalties in this case are designed to punish and deter, not to compensate. They are therefore "a type of remedy at common law that could only be enforced in courts of law." ... "That conclusion effectively decides that this suit implicates the Seventh Amendment right, and that a defendant would be entitled to a jury on these claims". Id at 2122.

EXCESSIVE PUNISHMENT/DUE PROCESS

Appellant raised in the arbitration proceedings arguments under the Fifth Amendment and Eighth Amendment arguing that these proceedings lack due process and that punishment is excessive. The Appellant raised issues in his filings before JAMS that "HIWU/HISA laws are unconstitutional as they do not afford substantive due process. (AB 144-146). The matter was also argued at the Arbitration hearing. (AB 763-764). The Appellant noted within those filings that the severe punishment imposed for a matter upon which no fault of the trainer was found was unwarranted.

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THE PRECEDENT SET IN HORSEMEN'S BENEVOLENT & PROTECTIVE ASS'N V. BLACK APPLIES TO THE INSTANT PROCEEDINGS.

Whether the Supreme Court takes up the appeal of the Fifth Circuit's decision in Nat'l Horsemen's Benevolent & Protective Ass'n v. Black, 178 F.4th 224 (5th Cir. 2026), is scheduled to go to conference on December 4, 2026. The Authority's argument that this case does not apply is incorrect. Not only has one Circuit of the United States determined the Act is unlawful, the Authority has not even tried to force the states of Louisiana and West Virginia to enforce HISA after the Fifth Circuit decision even though the ruling has been stayed pending resolution before the Supreme Court.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on November 23, 2026 a copy of the aforegoing was emailed to the following parties:

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