

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

ADMINISTRATIVE LAW JUDGE: Jay L. Himes

IN THE MATTER OF:

DOCKET No. D09423

NATALIA LYNCH, APPELLANT

APPELLANT'S PROPOSED FINDINGS OF FACTS AND CONCLUSIONS OF LAW

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Appellant Natalia Lynch (“Natalia”) submits these Proposed Findings of Fact and Conclusions of Law. This filing is made in conjunction with a supporting brief (“Brief”), which is cross-referenced herein. A proposed order is also attached.

I. Background and Standard of Review

A. Proposed Findings of Fact

1. Natalia was born in 1993. She is a horse trainer and one of the few female trainers in the industry. Appellant’s Exhibit (“AX”) 10; Tr. 11:16-17 (Boehning).
2. Before Natalia was charged with these violations, she was at the beginning of a promising career. JX1 at 2768:16-2775:23 (Lynch), 2774:7-2777:9 (Lynch); Tr. 11:16-17 (Boehning).
3. On November 9, 2023, an Arbitrator found that Natalia violated ADMC Rule 3212 for the Presence of Altrenogest on June 24, 2023, and ADMC Rule 3214(a) for Possession of Banned Substance Thyro-L on July 20, 2023. JX1 at 44-45, ¶ 7.1.
4. The Arbitrator imposed the maximum period of ineligibility and financial penalty for each violation and ordered that the ineligibility periods run consecutively, resulting in a total ban of 48 months, \$50,000 in fines, and \$5,000 in arbitration costs. JX1 at 44-45, ¶ 7.1.
5. The horse with the alleged Presence Violation, MOTION TO STRIKE, was disqualified from a June 24, 2023 claiming race, and \$1,100 in winnings were forfeited. JX1 at 44-45, ¶ 7.1.a.iv.
6. Natalia does not have the financial means to pay the over \$55,000 in fines and costs imposed, nor can she afford legal counsel. JX1 2833:4-22 (Lynch). Natalia’s counsel for this proceeding is representing her *pro bono*. AX2 at ¶ 11.

B. Proposed Conclusions of Law regarding Standard of Review

7. The sanctions HISA seeks to impose are subject to *de novo* review by the Administrative Law Judge (“ALJ”), with no deference owed to any determinations made below. Brief at I.
8. The ALJ is fully empowered to “affirm, reverse, modify, set aside or remand” the civil sanctions imposed by the Arbitrator below. Brief at I.

II. The Process Afforded to Natalia**A. Proposed Findings of Fact**

9. Prior to the Arbitration, HISA:
 - a. Did not supply the “B” Sample Laboratory Documentation for the Presence Charge with its Charge Letter. JX1 at 450-456.
 - b. Did not notify Natalia of an “Atypical Finding,” despite its records indicating that it was investigating one. JX9 at 1.
 - c. Produced under 20 files to Natalia in the Arbitration proceedings, while producing over 80 files after issuance of a subpoena in conjunction with these proceedings. *Compare* JX1 at 326-891 (produced before Arbitration) *with* JX4-JX16; AX6-10; AX13-42 (produced following subpoena).
 - d. Did not produce documents disclosing the identity or involvement of its investigator, Kevin O’Donnell, in Natalia’s case. JX9.
10. HISA also improperly contacted Natalia after it had been notified on July 24, 2023, that Natalia had retained John Mac Hayes as counsel. JX1 at 375-76. JX1 at 315-18.

11. Prior and during the Arbitration, Mr. Hayes:

- a. Made late filings, which were stricken by the Arbitrator and resulted in the denial of Natalia's request to call witnesses. JX1 at 59 ¶ 1, 60 ¶ 1.
- b. Made sloppy filings in draft form, which were clearly still subject to client review. JX1 at 284-288.
- c. Failed to call key witnesses, such as Natalia's mother. JX1 at 42, ¶ 6.44.
- d. Made admissions as to Possession which were inconsistent with the facts as propounded by his own client and the law. *E.g.*, JX1 at 99.
- e. Made statements as to the lawfulness of the search of her mother's car which were not endorsed by his client and contrary to law. *E.g.*, JX1 at 106.

12. Natalia expressed her concerns regarding her counsel and the conduct of the Arbitration Hearing at the hearing but they were brushed aside. JX1 at 3078:17-3079:21 (Lynch).

13. On October 18, 2023 and October 23, 2023, during the Arbitration hearing:

- a. Regarding the barn at Monmouth Park ("Monmouth"), HISA's counsel said "we have no evidence about that barn, we don't know what horses at that barn were administered Altrenogest, we don't know of any horses at that barn who were administered Altrenogest, where they were located, and we don't know where MOTION TO STRIKE was at that barn in relation to any such horses." JX1 at 3447:19-3448:2 (Bunting).
- b. Mr. Bunting objected to Natalia's arbitration counsel's questions to Natalia's expert, Dr. Fenger, about Monmouth on the basis that "I don't believe that is a factually established fact in this case." JX1 at 3075:24-3076:2 (Bunting).

- c. Mr. Bunting stated in his cross-examination of Dr. Fenger that she had “no information or evidence about the stall that MOTION TO STRIKE was stored in at Monmouth Park. You don’t know what stall number it was, you don’t know what horse was stored in there before, you don’t know what horses were stored on either side, fair?” JX1 at 3139:23-3140:5 (Bunting).
 - d. HISA’s counsel, Allison Farrell, objected to questioning directed to Dr. Cole by Natalia’s arbitration counsel concerning the issue of contamination on the basis that “[t]here’s no evidence in the record...as to what MOTION TO STRIKE did with [Bruno Tessore], what [Mr. Tessore] did with MOTION TO STRIKE.” JX1 at 3278:4-8 (Farrell).
 - e. Ms. Farrell objected to the relevance of a horse testing positive for Altrenogest in Mr. Tessore’s barn stating: “We don’t dispute that there’s testimony in evidence that MOTION TO STRIKE was shipped to Monmouth and arrived at the stable gate at 8 o’clock in the morning. What is not in evidence is what happened after that; where the horse went, who touched him, who did what. None of that is in evidence. And it is improper for Mr. Hayes to ask the witness to opine on facts that are not in evidence.” JX1 at 3279:14-24 (Farrell).
14. On May 10 and 12, 2024, and on July 5, and 8, 2024, following issuance of a subpoena on May 1, 2024, HISA produced evidence which revealed that:
- a. HISA’s investigators, Gregory Pennock and Kevin O’Donnell had investigated the connection between Mr. Tessore’s barn at Monmouth and Natalia’s Presence Charge prior to the Arbitration in August 2023. JX8; JX9; JX16; AX6; AX7;

AX25; AX26; AX36. Mr. O'Donnell's report is signed by Investigator Richards.
JX9.

- b. Mr. Pennock and Mr. O'Donnell had uncovered additional information about the handling of MOTION TO STRIKE at Mr. Tessore's barn on June 24, 2023. JX8; JX9.
 - c. Mr. Pennock and Mr. O'Donnell had determined which stall MOTION TO STRIKE had been placed into and where that stall was situated relative to the stall occupied by TENEBRIS. JX8; JX9.
 - d. Mr. O'Donnell's involvement in Natalia's case had not been disclosed in the Arbitration and had not been revealed at all to Natalia until HISA produced documents following issuance of a subpoena on May 1, 2024. JX9; JX16; AX6; AX7.
 - e. HISA also had additional evidence about its investigation of Natalia's barn (including testing information about horses in her barn) at Belmont Park ("Belmont") which it did not disclose in the Arbitration. AX10.
 - f. Each of the documents set out above at (a)-(e) were contained in HISA's investigation file for Natalia. JX1 at 3447:19-3448:2, 3075:24-3076:2 (Bunting); JX1 at 3278:3-12 (Farrell); HISA's April 26, 2024 Response to Appellant's Motion for Issuance of Subpoena Duces Tecum at 4.
15. During the Arbitration hearing on October 18, 2023, Mr. Pennock was called to testify by HISA and his witness statements and investigation reports were also entered into the record. Mr. Pennock's testimony, witness statements and investigation report did not

contain any information about, or include the reports of, the investigation he conducted at Monmouth on August 7, 2023. JX1 at 69, 461-65, 646-700, 2944:14-15 (Farrell).

16. On October 18, 2023, during his Arbitration testimony, Mr. Pennock:

- a. Denied having knowledge about HISA's case against Raymond "Ray" Handal, stating that "it wasn't my case." JX1 at 2984:21-24 (Pennock).
- b. Denied knowing how Mr. Handal's case was adjudicated, what "[Handal's] filing was for," or that HISA's investigators asked Natalia about Mr. Handal's case. JX1 at 2984:21-2985:8 (Pennock).

17. On September 14, 2023, a Confidential Informant called an unidentified person at HISA to state [REDACTED]

[REDACTED] AX41.

18. On September 14-15, 2023, Mr. Pennock and Mr. Richards contacted Natalia directly several times. JX1 at 315-318. In the Arbitration, HISA did not produce any investigator notes about the purpose or content of those calls made to Natalia.

19. On September 15, 2023, Mr. Pennock was present when Mr. Richards contacted Natalia "to speak to [Natalia] about some recent information that came to [Mr. Richard's] attention regarding LYNCH." AX42. HISA's report documenting this call bears Natalia's case number. Parties' July 12, 2024, Joint Stipulation at 1.

20. On September 15, 2023, Ms. Farrell denied that HISA had attempted to communicate with Natalia about her case, stating "Richards was attempting to discuss with Ms. Lynch a matter involving other Covered Persons wholly unrelated to her two pending EAD violations." Ms. Farrell threatened Natalia with sanctions if she did not comply with Mr. Richards' requests to speak with her. JX1 at 316.

21. On October 18, 2023, during the arbitration:

- a. Natalia testified that Mr. Richards asked her about the pending Charges against her. JX1 at 2827:22-2829:23 (Lynch).
- b. Mr. Pennock stated, with respect to Mr. Richards directly reaching out to Natalia in September 2023, that Mr. Richards was contacting Natalia “on an unrelated matter,” because they had “a demand for business records to serve on her.” JX1 at 2995:2-7. Mr. Pennock clearly said that he and Mr. Richards “were not going to talk to [Natalia,]” and that the purpose of contacting Ms. Lynch was “just to give her some papers.” JX1 at 2997:11, 2999:3-4 (Pennock).

22. On July 8, 2024, HISA was compelled to produce documents in answer to the May 1, 2024 subpoena *duces tecum* which revealed that:

- a. On September 14, 2023, a Confidential Informant (“CI”) contacted HISA stating
[REDACTED]
[REDACTED] AX41.
- b. On September 15, 2023, Mr. Richards called Natalia – in the presence of Mr. Pennock – and told her that he “also needed to speak to [Natalia] about some recent information that came to [Mr. Richard’s] attention regarding LYNCH.” AX42.

23. During the Arbitration hearing on October 18, 2023, Mr. Bunting challenged Natalia on cross-examination about the timing of administration of Altrenogest to a horse in Natalia’s barn in the lead up to MOTION TO STRIKE testing positive on June 24, 2024. JX1 at 2880:8-2881:15 (Lynch).

24. HISA tested MARY KATHERINE on July 2, 2023. AX10. HISA has refused to provide testing data for those tests or disclose whether MARY KATHERINE was tested for Altrenogest, notwithstanding an order from Judge Himes posing that very question. AX12 at 14-15; Tr. 55:8-57:20 (Barker); May 17, 2024 Order Setting In Camera Session at the May 20, 2024 Hearing. And notwithstanding Dr. Barker's conclusion that the testing results could have shed light on the amount of Altrenogest in MARY KATHERINE's blood at the relevant time. Tr. 56:12-57:5 (Barker).
25. HISA did not disclose the information at ¶ 14 above to its expert, Dr. Cole, who testified in the Arbitration as to the plausibility that the alleged Presence violation was caused by environmental contamination. JX1 at 3290:10-16 (Cole). Prior to the Arbitration, HISA also did not disclose this information to Natalia or her expert for the Arbitration, Dr. Fenger either.
26. On February 5, 2023, Natalia informed HISA (Tr. 19:21-23 (Boehning)), that its expert, Dr. Cole had made a math error in her report. JX1 at 702-709. That math error was central to Dr. Cole's conclusion rejecting contamination as a source of the Presence Charge which the Arbitrator relied on in reaching her decision. (JX1 at 37 ¶ 6.18-6.22).
27. HISA did not raise the error with Dr. Cole until July 2024. Tr. 136:12-14 (Cole).
28. Dr. Cole acknowledged the error on cross-examination at the evidentiary hearing. Tr. 120:11-15 (Cole).
29. HISA did not disclose all of the documents regarding its investigation into the possibility of contamination at Monmouth to Dr. Cole in conjunction with her report or testimony at the arbitration. JX10; JX1 at 3290:10-16 (Cole).

30. In a filing before the ALJ on March 15, 2024, HISA stated that “there is no exculpatory evidence related to Bruno Tessore.” The Authority’s Response to Ms. Lynch’s Statement of Contested Facts and Specification of Additional Evidence at 19-20.
- a. HISA had “exculpatory evidence” related to Mr. Tessore because it had investigated whether Mr. Tessore’s barn, where another gelding had tested positive for Altrenogest, was a source of the trace amounts of Altrenogest found in MOTION TO STRIKE on June 24, 2024. JX8-JX9.
31. On April 19, 2024, Natalia sought a subpoena *duces tecum* requesting (among other things) “[a]ll stall or barn records in HISA or its agents’ custody and control for stalls or barns used or occupied by Mr. Tessore’s horses at Monmouth during June and July 2023.” Motion for Issuance of Subpoena Duces Tecum at 6.
32. On April 26, 2024 HISA objected to that subpoena stating (among other things) that:
- a. “HISA does not create or maintain stall or barn records from racetracks.” HISA’s Response to Appellant’s Motion for Issuance of Subpoena Duces Tecum at 4.
 - b. Natalia’s subpoena request sought information that was “not relevant.” Authority’s April 26, 2024, Response to Appellant’s Motion for Issuance of Subpoena Duces Tecum at 10.
33. On May 1, 2024, Judge Himes issued a subpoena for certain documents in response to Natalia’s motion for issuance of a subpoena *duces tecum*. May 1, 2024 Order Granting in Part Motion for Issuance of a Subpoena Duces Tecum.
34. On May 10 and 12, 2024, HISA produced information regarding:

- a. The stall locations of horses in Mr. Tessore's barn on June 24, 2023, including the location of TENEBRIS's stall, the horse which subsequently tested positive for Altrenogest. JX8-JX9.
 - b. That HISA had investigated a connection between Monmouth and Natalia's Presence Charge and that Natalia's case was treated as "related" to Mr. Tessore's case. JX8; JX9.
35. In a filing before the ALJ on March 15, 2024, HISA stated that "the first mention of Bruno Tessore occurred during Appellant's cross-examination." Authority's Response to Natalia's Statement of Contested Facts and Specification of Additional Evidence at 18.
- a. But Mr. Pennock wrote in his July 20, 2023 Intelligence Report that "LYNCH wondered aloud that she never gave this horse anything before shipping it to Monmouth Park and wondered aloud if the finding 'could be a contamination or something? Or maybe the other trainer gave the horse it before he raced it June 24.'" JX1 at 467.
 - b. Mr. Pennock also wrote in his witness statement dated September 13, 2023 that Natalia had said to Mr. Pennock that "it was possible something happened while MOTION TO STRIKE was at Monmouth Park." Mr. Pennock also wrote that Natalia "suggested that maybe another horse near MOTION TO STRIKE could have had something to do with the positive result." JX1 at 463 ¶ 4.
 - c. HISA was aware that Natalia had said this to Mr. Pennock because it served Mr. Pennock's July 20, 2023 Intelligence Report and September 13, 2023 witness statement in support of its case in the Arbitration below. JX1 at 461-465, 467.

- d. And HISA was aware of the possibility of Monmouth as a source of contamination based on its own pre-Arbitration investigation of Mr. Tessore's barn at Monmouth. JX8, JX9.
36. In a filing before the ALJ on May 16, 2024 regarding a redacted version of what became Appellant's Exhibit 10, HISA said "no redactions were made in respect of the horse MARY KATHERINE that is [sic] relevant to the contamination theory advanced by Natalia below," and [REDACTED] HISA's Statement re Bases for Redactions at 2; May 20, 2024 Evidentiary Hearing Public and In Camera Session Tr. at 18:6-8 (Farrell), 20:23-25 (Farrell).
 - a. HISA was compelled to produce the unredacted document on May 20, 2024 and it has subsequently been introduced as Appellant's Exhibit 10. May 20, 2024 Order Memorializing Bench Rulings at 1; AX10.
 - b. Appellant's Exhibit 10 contains testing information for MARY KATHERINE and other horses in Natalia's care. AX10.
37. Counsel for Natalia alerted counsel for HISA of statements it considered to be misrepresentations set out above at ¶ 30-36. July 15, 2024 Pre-Hearing Conference Tr. at 23:4-23 (Boehning).
38. On May 31, 2024, HISA filed a "Motion to Correct" which did not correct any of the misstatements set out above at ¶ 30-36. May 31, 2024 Motion to Correct Appellee's Response to Motion for Issuance of Subpoena *duces tecum*.
39. On July 5, 2024, HISA sent a letter to Judge Himes, stating that it realized that Natalia's Supplemental Exhibit 10 (AX10), which was subject to Judge Himes' *in camera* review order was, "in fact, in Ms. Lynch's file in addition to Mr. Tessore's," and that the

statement in the letter attached as Exhibit C to the June 5, 2024 submissions indicating that there were no additional investigative records in Natalia's file related to the Presence Charge was "likewise incorrect." HISA's July 5 Letter at 1; AX12 at 13-16.

40. The July 5, 2024 letter did not correct any of the misstatements set out above at ¶ 30-36.

HISA's July 5, 2024 Letter to Judge Himes at 1.

41. HISA was compelled to produce evidence in answer to a subpoena *duces tecum* issued on May 1, 2024 which it did not disclose to Natalia in the Arbitration proceedings. The documents HISA produced following issuance of the subpoena included: JX8; JX9; AX6-7; AX10; AX25-26.

42. Natalia has relied on that evidence in these proceedings to establish the source of contamination of the Presence Charge. Brief at III.C.1; *see also, e.g.*, AX2 at ¶ 12.

43. Natalia has relied on that evidence in these proceedings to impeach the evidence of HISA's investigator, Mr. Pennock. Brief at II.D.

44. Natalia's expert, Dr. Barker, relied on that evidence to support his findings on contamination in his report filed in these proceedings. *E.g.*, AX2 at ¶ 12.

45. HISA has not produced the B Sample Laboratory Documentation Package. Tr. at 21:3-4 (Boehning).

B. Proposed Conclusions of Law

46. HISA has breached its duty of candor to the Tribunal both in the Arbitration below and before the FTC. Brief at II.D.

47. HISA withheld exculpatory evidence. Brief at II.E.

48. HISA's failure to charge Natalia consistently with others, its breaches of its duty of candor to the Tribunal and its withholding of exculpatory evidence have violated

Natalia's due process rights, warranting dismissal of both of the charges against Natalia with prejudice. Brief at II.F.

III. Presence Charge

A. Proposed Findings of Fact

49. The Presence and Possession Charges were Natalia's first-ever alleged ADMC Rule violations. JX1 at 451.
50. Natalia was the trainer of the Covered Horse MOTION TO STRIKE, which is a gelding, until the horse was claimed on June 24, 2023. JX1 at 220, 451, 2866:11-16 (Lynch); AX10.
51. Natalia was also the trainer of the filly MARY KATHERINE. AX 10; JX1 at 2779:8-9.
52. In June 2023, MOTION TO STRIKE and MARY KATHERINE were both stalled in Natalia's Barn No. 57 at Belmont until MOTION TO STRIKE was transported to Monmouth on June 24, 2023 for a claiming race. JX1 at 698-70; 2810:15-17 (Lynch); AX10.
53. Natalia had 11 horses in her care at Belmont, Barn 57, circa May-June 2023, and occupied stalls 2-15. JX1 at 650-51; AX10.
54. Regumate is a brand name for Altrenogest, which is commonly used in the horseracing industry. JX1 at 2812:19-22 (Lynch). Altrenogest is an oil-based formulation, which is administered orally to a filly or mare on a daily basis for five up to 15 days or longer to suppress estrus. AX2 at ¶¶ 18-20, 45.
55. The filly MARY KATHERINE was prescribed "500cc (1 pint)" of Regumate starting on June 11, 2023. JX1 at 215. A therapeutic dose of Altrenogest is 10cc, which contains 22 mg or 22,000 ug of Altrenogest. JX1 at 2862:14-21 (Lynch). A 500cc prescription

therefore contains 50 therapeutic doses of Altrenogest. JX1 at 215; AX2 at ¶¶ 18,45; Tr. 35:2-14 (Barker).

56. After the issuance of this prescription on June 11, 2023, MARY KATHERINE was being administered Regumate daily at least until June 19, 2023. JX1 at 2587:2-5 (Lynch), 2783:21-22 (Lynch), 2880:22-2881:5 (Lynch). Altrenogest must be administered daily to avoid the onset of estrus, which can occur approximately four to five days after ceasing administration. AX2 at ¶ 18.

57. The FDA has acknowledged that Altrenogest poses a risk of environmental contamination in barns, noting that it has received numerous reports of “accidental human exposure;” that “adverse events may be under-reported;” and that exposures have occurred when individuals have “touched product residue on barn surfaces, equipment, or treated animals.” AX2 at ¶ 18, 62-66 (Ex. E).

58. The FDA has advised that Altrenogest should not be administered by women. AX2 at ¶ 18, 62-66 (Ex. E). Natalia followed this practice. JX1 at 2780:15-20 (Lynch).

59. Natalia’s groom administered Altrenogest to MARY KATHERINE. JX1 at 2783:24-2784:3 (Lynch). There is no evidence that HISA attempted to contact him in the course of its investigation.

60. The Belmont barn is typical of a barn in the horseracing industry. JX1 at 654-96; JX15; AX13-19; AX2 at ¶ 19.

61. In a video of Belmont Barn No. 57, which HISA introduced into evidence (JX1 at 696).

- a. The stalls have very limited exposure to sunlight. Some stalls are unlit and the stalls housing horses are lit with dim or infrared light. Tr. 93:12-17 (Barker); 104:19-120:1 (Barker); JX1 at 696 at 20 seconds (stall 13); JX1 at 696 at

36 seconds (stall 11); JX1 at 696 at 36 seconds-end (stalls 9, 10); JX1 at 672, 683-84, 688, 692, JX15 (stall 11); AX13 at 4, 17-23, 25-27.

- b. The soil in front of the stalls is lined with foot- and hoofprints, indicating the track around the barn where the horses are walked for daily exercise. JX1 at 680, 683, 686, 696:0:01-0:05; AX13 at 28, 30.
 - c. Some of the horse's bedding has spilled outside of the stalls. JX1 at 680, 696:0:01-0:05.
 - d. There are water or feed buckets hung around the barn for the horses to drink or eat from as they are walked. JX1 at 696:0:01-0:05 (water/feed bucket visible on the far right of the opposite barn wall); 696:0:36 (stall 11, bucket inside the stall).
62. On the morning of June 24, 2023, MOTION TO STRIKE was loaded on a trailer with at least two other horses, SELF ISOLATION and ALLABOUTTHEMONEY. AX2 at 15, n.9.
63. MOTION TO STRIKE was shipped to Bruno Tessore's barn No. 34 at Monmouth ("the Monmouth Barn") in Oceanport, New Jersey. JX1 at 698; JX8; JX9.
64. Teodoro Ramirez, one of Mr. Tessore's employees, told HISA's investigator that he picked MOTION TO STRIKE up from the trailer at 8am and brought him to stall No. 38 in Mr. Tessore's barn No. 34 where MOTION TO STRIKE was saddled and prepared for the race. JX8; JX9.
65. The Monmouth Barn is typical of barns in the horseracing industry. Tr. 58:12-62:20 (Barker) (describing assessment of video and photo evidence produced).
66. In videos and pictures of the Monmouth Barn produced by HISA:

- a. The stalls show very limited sunlight in the stall lane/outside the stalls and also inside the stalls. AX2 at ¶ 61; Tr. 59:10-13 (Barker); JX16:0:00-0:15; AX6; AX7; AX 25.
 - b. The walls that divide the stalls do not extend all the way to the roof of the barn, so the stalls are not completely enclosed. AX2 at ¶ 61; Tr. 59:4-9 (Barker); JX16:0:00-0:15; AX6; AX7.
 - c. The soil in front of the stalls is lined with foot- and hoofprints indicating the track around the barn where the horses are walked for daily exercise. AX2 at 14, ¶ 61; JX16; AX6; AX7; AX25.
 - d. There is straw bedding in each stall, and the videos show lip chains and bridles, as well as water buckets hung around the barn. Tr. 59:14-20 (Barker); AX2 at ¶ 61; JX16:0:00-0:36; AX6; AX7.
67. In conjunction with the claiming race at Monmouth, MOTION TO STRIKE was claimed by Filvino Ramirez, the son of Teodoro Ramirez. Teodoro Ramirez is Mr. Tessore's groom who told HISA's investigator that he prepared MOTION TO STRIKE for the race on June 24, 2023. JX1 at 367; JX8; JX9.
68. A post-race blood sample was collected from MOTION TO STRIKE (code B100100684). Neither urine nor hair was collected from MOTION TO STRIKE. JX1 at 544.
69. On July 20, 2023, Mr. Pennock and Mr. Richards, and NYRA Investigator Mr. Patricola served Natalia with an EAD Notice of Alleged ADMC Rule Violation for MOTION TO STRIKE. JX1 at 360-65, 548-50.

70. The EAD Notice stated that Natalia had the right to request the analysis of the B Blood Sample, and informed Natalia that, if she did so, she would be required to pay the cost “to have the B Sample analyzed *and B Sample Laboratory Documentation Package prepared.*” JX1 at 362, Section IV (emphasis added).
71. On July 25, 2023, Natalia “request[ed] analysis of the B Sample and agree[d] to pay all associated costs per the Rules.” JX1 at 378.
72. Industrial Laboratories estimated that the concentration of Altrenogest detected in MOTION TO STRIKE’s A Blood Sample was 172.5 pg/mL. JX1 at 523. There is no evidence that Natalia or anyone else ever intended to administer Altrenogest to any geldings in her care. JX1 at 2809:16-24, 2854:19-22 (Lynch); AX2 at ¶ 20; AX10; Parties’ July 12, 2024, Joint Stipulation at 1; Tr. 99:7-8 (Barker).
73. On July 14, 2023, TENEBRIS, a gelding which HISA’s investigation determined was stalled in Mr. Tessore’s Barn, the same barn where MOTION TO STRIKE was stalled prior to race on June 24, 2023, tested positive for Altrenogest. JX8; JX9; HISA’s Response to Motion for Issuance of Subpoena Duces Tecum (Corrected Version) at 3, Section I.
74. HISA’s investigation determined that TENEBRIS was stalled four stalls away from MOTION TO STRIKE. JX9 at 1. (“MOTION TO STRIKE was placed in Stall #38”; “TENEBRIS . . . was stabled in Stall #34”).
75. HISA’s investigation of Mr. Tessore’s barn in connection with Natalia’s Presence Charge failed to inquire whether any horses in Mr. Tessore’s barn were being administered Altrenogest and, if so, when, where they were stalled, and whether the groom handling MOTION TO STRIKE was involved in any such administration. JX8; JX9; JX14.

76. Mr. O'Donnell took a video of Mr. Tessore's barn at Monmouth on August 11, 2023, which shows TENEBRIS in Stall #33, as opposed to Stall #34. Tr. at 63:20-23 (Barker).
77. On August 7, 2023, HISA served Mr. Tessore with an EAD Notice for Presence of Altrenogest in TENEBRIS. JX5; JX14 at 1. HISA did not search Mr. Tessore's vehicle following service of that EAD Notice. JX14 at 1-2; AX29 at 2.
78. On August 14, 2023, Mr. Hayes and counsel for HISA agreed to a hearing date for Natalia's arbitration on October 18, 2023. JX1 at 16, ¶¶ 3.10-11.
79. On September 11, 2023, HISA served Natalia with a Charge Letter for Presence (ADMC Rule 3212), alleging that the Blood B Sample taken from MOTION TO STRIKE confirmed the Presence of Altrenogest in Natalia's horse. JX1 at 450-56. HISA did not append the Laboratory Documentation Package for the B Sample to the Charge Letter as required by ADMC Rule 3248. JX1 at 456. Instead, it included only a one-page "Summary of Results" from the UIC Analytical Testing Laboratory, which stated "Altrenogest detected." JX1 at 457. Natalia and HISA subsequently stipulated that the Certificate of Analysis for the B Sample stated that it "confirm[ed] Altrenogest is present in the sample." JX 1 at 196.
80. On September 29, 2023, Mr. Pennock took photos and videos of Belmont Barn No. 57. JX1 at 651-696; JX15; AX13-19. Natalia had not occupied the barn since July 20, 2023. The photos and videos show evidence of recent repairs. JX1 at 661, 674-675, 677, 682, 690.
81. HISA retained Dr. Cynthia Cole as an expert in the Arbitration below. Dr. Cole issued her expert report on October 4, 2023. JX 1 at 702-709.

- a. Dr. Cole concluded that it was unlikely that the Altrenogest detected in MOTION TO STRIKE resulted from contamination, and that the concentration of the substance “is consistent with the administration of a typical therapeutic dose 24 to 36 hours before [testing].” JX1 at 707, ¶ 21.
 - b. HISA did not inform Dr. Cole of TENEBRIS’s Altrenogest positive at Monmouth Park or its subsequent investigation of Monmouth in conjunction with Natalia’s case. JX 1 at 3289:24-3290:18 (Cole).
 - c. Dr. Cole did not review AX10, which lists testing information for Natalia’s horses at Belmont or consider the underlying results, which were all negative. JX1 at 705 (listing the material Dr. Cole reviewed); Parties’ July 12, 2024 Joint Stipulation at 1.
 - d. Dr. Cole was not provided with the B Sample Laboratory Documentation Package, and did not request it from HISA. Tr. 151:9-15 (Cole).
82. Natalia’s counsel for this proceeding raised concerns about the accuracy of Dr. Cole’s expert report in February 2024. Tr. 19:21-23 (Boehning). HISA never sought to correct or withdraw Dr. Cole’s report. AX12 at 16.
83. Following objections by HISA, the Arbitrator repeatedly prevented Natalia from testifying and making arguments concerning the Altrenogest positive at Monmouth and the possibility of contamination at Monmouth. JX1 at 3072:19-3073:14, 3080:20-3081:4, 3280:17-3282:11 (Bush).
84. On January 16 and 24, and on March 1, 2024, Natalia again requested the B Sample Laboratory Documentation Package from HISA. Appellant’s March 1 Statement of Contested Facts at 9.

85. HISA refused to provide the B Sample Laboratory Package. Appellant's March 1 Statement of Contested Facts at 9; HISA's March 15 Response to Natalia's March 1 Brief at 12.
86. On April 19, 2024, Natalia filed a Motion for Issuance of a subpoena *duces tecum*, requesting further documents from HISA. Among other things, the request included "all veterinary records . . . for any horses stabled at or trained by Mr. Tessore at Monmouth Park in June and July 2023." April 19, 2024, Subpoena, Exhibit A.
87. Following the issuance of a subpoena on May 1, 2024 by Judge Himes, on May 10 and 12, 2024 HISA produced documents to Natalia revealing information about HISA's investigation into potential contamination at Monmouth, including:
- a. An August 8, 2023 report prepared by Mr. Pennock. JX8. According to the report, Mr. Pennock called Mr. Tessore that day, and asked him about MOTION TO STRIKE. Mr. Pennock asked Mr. Tessore about the horses MOTION TO STRIKE traveled to Monmouth Park with and where MOTION TO STRIKE and TENEBRIS were stalled.
 - b. An August 11, 2023 report prepared by Mr. O'Donnell. JX9. JX9 includes two references to an "Atypical Finding Policy Notice" against Natalia "at Monmouth Park on June 24, 2023[,]" and also notes that Mr. O'Donnell is carrying out an investigation at Monmouth "related to" that notice. The report is signed by Investigator Shaun Richards. JX9 at 1.
 - c. Three videos Mr. O'Donnell took of Mr. Tessore's barn at Monmouth on August 11, 2023. JX16; AX6; AX7.

- d. A summary of testing performed on Natalia's horses at Belmont. AX10 (discussed further below). HISA initially produced this with nearly all information redacted, representing that redactions were not made regarding MARY KATHERINE, and were not relevant to Natalia's "theory" of contamination (HISA's May 16, 2024 Statement of Bases for Redactions at 2) and only agreed to produce it unredacted following a May 20, 2024 hearing before Judge Himes. May 20, 2024 Order Memorializing Bench Rulings.
- e. In the Arbitration, HISA did not disclose Mr. O'Donnell's involvement in the case. JX9 at 1; AX28 at 1; AX29 at 1-2; JX10 at 1; JX11 at 1.
88. HISA tested five of Natalia's horses at Belmont after MOTION TO STRIKE was tested on June 24, 2023. AX10. The horses tested at Belmont included MARY KATHERINE. AX10. The document also indicates that HISA tested two of Natalia's horses at Saratoga. AX10. The results of all of the testing reflected in AX10 for all horses other than MOTION TO STRIKE were negative. Parties' July 12, 2024, Joint Stipulation at 1. HISA refused to provide the underlying data for the tests reflected in AX10 or to provide information regarding whether any of the mares or fillies were tested for Altrenogest. AX12 at 14-15; Tr. 56:1-57:20 (Barker) (describing the importance of this information, including that it would have shed light on the amount of Altrenogest in MARY KATHERINE's blood).
89. HISA refused to provide veterinary records or drug prescriptions for Altrenogest available to Mr. Tessore. HISA's April 26, 2024 Response to Appellant's Motion for Issuance of a Subpoena Duces Tecum at 4; Tr. 106:25-107:9 (Barker).

90. On June 5, 2024, HISA asserted that the references to an “Atypical Finding” in Mr. O’Donnell’s Report (JX9 at 1) were in error. AX12 at 15. HISA did not call the author of these documents to testify at the evidentiary hearing. Tr. 113:22-24 (Greene).
91. In the July 16, 2024, Evidentiary Hearing, HISA represented that it had produced all documents in Natalia’s file. July 15, 2024 Pre-Hearing Conference Tr. at 49:1-3 (Popkin).
92. On July 9, 2024, Dr. Cole issued another expert report. RX 3.
- a. Dr. Cole did not review any of the photos or videos taken at Monmouth and admitted that she therefore could have no opinion on, for example, the presence of light in the barn at Monmouth and its effect on the environment and the likelihood of contamination. Tr. 156:1-6 (Cole).
 - b. Though Natalia had been raising concerns about Dr. Cole’s report since February (Tr. 19:21-23 (Boehning)), Dr. Cole testified that she was first contacted about writing a report for this hearing in July. Tr. 136:12-14 (Cole).
93. At the July 16, 2024, Evidentiary Hearing, Dr. Cole
- a. admitted that her conclusion (that the amount of Altrenogest in MOTION TO STRIKE’s blood was likely the result of an administration 24-36 hours before testing) was an extrapolation based on the Machnik study and that she did not disclose as much in her report in the Arbitration. Tr. 137:17-138:9 (Cole).
 - b. acknowledged that the Machnik study showed Altrenogest in at least one horse at 3 ng/mL after an administration. Tr. 142:12-17 (Cole). This amount is almost 17 times higher than the amount allegedly detected in MOTION TO STRIKE. AX2 at ¶ 20.

- c. agreed with Dr. Barker's analysis that correcting her error in the report would have led to the conclusion that an intentional administration of Altrenogest would had to have been 4-5 days out from testing. Tr. 44:9-10 (Barker), Tr. 122:10-15 (Cole).
94. Under HISA's current Rules, Altrenogest is an S6 category Banned Substance for male horses and geldings. ADMC Rule 4117(d). There is no established use for or documented therapeutic effect from administration of Altrenogest to a gelding. AX2 at ¶ 20. The amount of Altrenogest observed in the blood was orders of magnitude below the typical therapeutic dose for mares. Tr. 35:2-14 (Barker).
- a. On November 13, 2023, HISA submitted proposed changes to its Rules for review by the Federal Trade Commission. Under the new proposed Rules, Altrenogest will no longer be classified as a Banned Substance. Altrenogest will be downgraded to a Class A Controlled Substance with a reduced period of ineligibility and a reduced fine (maximum period of ineligibility of 60 days and a maximum fine of \$5,000). HISA Submits Proposed ADMC Rule Change to FTC for Approval, Rule Series 4000 – Prohibited List, Rule 4117(former letter d), <https://hisaus.org/news/hisa-submits-proposed-admc-rule-changes-to-ftc-for-approval>; Rule 3323(b).
95. HISA also proposed changes to ADMC Rule 3245. In relevant part, the new proposed Rule reads: “the Responsible Person or Owner must pay to have the B Sample **tested analyzed** and **(if requested)** B Sample Laboratory Documentation Package prepared ” Horseracing Integrity and Safety Authority, *HISA Submits Proposed ADMC Rule Change*

to FTC for Approval, Rule Series 4000 – Prohibited List, Rule 4117 (former letter d).
<https://hisaus.org/news/hisa-submits-proposed-admc-rule-changes-to-ftc-for-approval>.

96. HISA has lifted the provisional suspensions for the Presence of Altrenogest against Michael Pappada, Bruno Tessore and Mary Pirone pending the FTC’s approval of the new Rules. These are the only individuals against whom HISA has pursued charges without the B Sample voiding the result. Ms. Pirone’s alleged Presence violation was from June 24, 2023—the same day as Natalia’s alleged violation. Tr. 15:18-21

(Boehning); HIWU, *Pending ADMC Violations for Altrenogest*,

<https://www.hiwu.org/cases/pending?terms=altrenogest>; HIWU, *Resolved cases from previous year(s) for Altrenogest*,

<https://www.hiwu.org/cases/archived?terms=altrenogest>; HIWU, *Pending ADMC*

Violations for Altrenogest, <https://www.hiwu.org/cases/pending?terms=altrenogest>

97. To date, Natalia is the only Covered Person to be sanctioned for Presence of Altrenogest, with all other trainers having their cases stayed, and has received the maximum sanction.

Tr. 15:17-21 (Boehning); HIWU, *Resolved cases from previous year(s) for Altrenogest*),

<https://www.hiwu.org/cases/archived?terms=altrenogest>.

98. In 2 out of 6 of the Altrenogest Presence cases brought by HISA, the B Sample failed to confirm the A Sample. Tr. 151:3-8 (Boehning); HIWU, *Resolved cases from previous*

year(s) for Altrenogest, <https://www.hiwu.org/cases/archived?terms=altrenogest>; HIWU,

Pending ADMC Violations for Altrenogest,

<https://www.hiwu.org/cases/pending?terms=altrenogest>

99. On June 4, 2024, HISA charged Mr. Tessore with Presence of the Controlled Substance Dexamethasone. Mr. Tessore’s Provisional Suspension for Presence of Altrenogest and

case remain stayed. HIWU Pending ADMC Violations of Mr. Bruno Tessore, <https://www.hiwu.org/cases/pending?terms=tessore>; HIWU, *Pending ADMC Violations for Altrenogest*, <https://www.hiwu.org/cases/pending?terms=altrenogest>.

B. Proposed Conclusions of Law

100. Due to HISA's failure to provide the B Sample Laboratory Documentation Package, as its Rules require, it cannot meet its burden to establish a Presence violation. Brief at III.A.
101. HISA's failure to provide the B Sample Laboratory Documentation Package has prejudiced Natalia's right to challenge the charge asserted against her. Brief at III.B.
102. Even if the Presence violation charge is considered on the merits, Natalia has established that the source of any alleged Presence violation was environmental contamination and she has established further that she bears No Fault for any such violation. Brief at III.C.1-2.
103. Natalia has established that, regardless of whether the ALJ finds Natalia bears No Fault for this alleged violation, the ALJ has authority to reduce any sanctions imposed for this violation and that, if any sanctions are to be imposed, substantial reductions from those imposed by the Arbitrator are warranted. In no event should Natalia's sanction exceed that contemplated by the proposed Rule. Brief at III.C.3.

IV. The Possession Charge

A. Proposed Findings of Fact

104. Before it was designated as a Banned Substance by HISA, trainers, including Natalia, commonly administered Levothyroxine (also called "Thyro-L") to horses to treat common health conditions. JX1 at 2786:1-2787:4, 2856:9-13 (Lynch).

105. There is no evidence that Natalia administered Thyro-L to a Covered Horse after it was banned. JX1 at 2921:3-7 (Lynch).
106. When cleaning her barn, Natalia removed a small amount of Thyro-L powder from her barn and gave it to her mother to discard. JX1 at 2790:24-2791:16 (Lynch).
107. Natalia lost the keys to her car in July 2023 and had her car towed from Belmont on July 19, 2023. JX1 at 252. Natalia borrowed her mother's car to drive to Belmont on July 20, 2023. JX1 at 252, 2798:14-2800:12 (Lynch), 2802:2-2803:3 (Lynch), 2889:5-7 (Lynch).
108. The vehicle Natalia drove to Belmont on July 20, 2023 was not her car. It was a 2001 Green Honda Civic that was owned by her uncle Byron Genner and usually driven by her mother Kimberly Rae Genner. JX1 at 2801:25-2803:3 (Lynch), 2890:12-15 (Lynch), 253, 2964:18-19 (Pennock); AX41 at 1; Tr. 171:2-5 (Popkin).
109. Following personal service of an EAD Notice for Presence by HISA's Investigators Gregory Pennock, Shaun Richards and Anthony Patricola on July 20, 2023, Natalia was interrogated by HISA's investigators in a room at Belmont. Following that interrogation, Natalia was informed that the vehicle she had driven to the racetrack that day would be searched. JX1 at 462-63, 467, 2817:15-16 (Lynch).
110. By contrast, following personal service of an EAD Notice for Presence of Altrenogest in a gelding by Mr. Pennock, Robert Michaelis and Mr. O'Donnell, Mr. Tessore's vehicle was not searched. JX14 at 1-2; AX29 at 2.
111. HISA's investigators did not find any Banned Substances in the searches of the barn Natalia was using at the time, which included a search of the feed room, the tack room, the office, and the stables. JX1 at 465, 475; AX9 at 2.

112. The car Natalia drove to the racetrack on July 20, 2023 had items strewn throughout the passenger compartment and in the trunk. JX1 at 482, 483, 487-489. The car contained a mix of possessions from at least Natalia and her mother. JX1 at 2896:6-23 (Lynch), 2898:17-2899:3 (Lynch), 2963:8-13 (Pennock).
113. A small quantity of Thyro-L was in a container in the trunk of the car Natalia drove to Belmont on July 20, 2023. There is no evidence that Natalia was aware of or intended to have the Thyro-L in the car that day. JX1 at 2795:23-25 (Lynch).
114. When the Thyro-L was seized from the trunk of the vehicle, Natalia recognized it as one of the items she had given her mother to discard and told HISA's investigators that it was Thyro-L. JX1 at 2818:17-2819:5 (Lynch).
115. The amount of Thyro-L found in the trunk of Natalia's mother's car was "a few scoops" of powder. JX1 at 15 ¶ 2.9; JX1 at 486. That is not enough for more than a few doses of a substance whose manufacturer supplies the substance in "one-pound bottles" or "ten-pound pails" and advises that "[t]he recommended daily dose is ½ to 2 ½ level teaspoons for a 500kg (1,100) pound horse." The manufacturer also advises, for example, treating a horse for obesity by administering it Thyro-L daily for "3-6 months." "Thyro-L," Lloyd, available at http://www.lloydinc.com/media/filer_private/2017/05/11/thyro-l_ss_special_050917.pdf
116. Natalia had not received any violations before she was served with the Presence violation on July 20, 2023. JX1 at 87, ¶ 60.
117. On September 14, 2023, HISA received a tip from a confidential informant suggesting that the Thyro-L they had seized was not Natalia's. AX41 at 1.

118. HISA's Rules in effect at the time of the search provided that HISA "shall have access to the books, records, offices, racetrack facilities and other places of business of Covered Persons that are used in the care, treatment, training, or racing of Covered Horses." ADMC Rule 5730(b)(1). On November 13, 2023, HISA proposed changes to its Rules to provide that it shall have access to "any facility, office, stall, or equipment or other relevant location that is used in the care, treatment, training, or racing of Covered Horses, or any feed, medicine, or other item given to Covered Horses." HISA Submits Proposed ADMC Rule Change to FTC for Approval, <https://hisaus.org/news/hisa-submits-proposed-admc-rule-changes-to-ftc-for-approval>

119. The Arbitrator stated that she would not entertain "any constitutional or other legal challenges to the ADMC program," claiming that "those challenges are beyond the scope of the Arbitration and not for the Arbitrator to decide." JX1 at 24 n.5.

B. Proposed Conclusions of Law

120. HISA must operate consistent with the law and Constitution subject to robust supervision by the FTC. Brief at IV.A.

121. The car Natalia drove to the Belmont Park on July 20, 2023 was not subject to search under HISA's Rules. Brief at IV.A.

122. The search of the vehicle was both unlawful and unconstitutional and Natalia has good cause to raise these issues in this proceeding. Brief at IV.A.

123. Any evidence stemming from the unlawful search should be therefore suppressed, and the Possession violation against Natalia should therefore be dismissed with prejudice. Brief at IV.A.

124. Even if the evidence were considered, the Possession Charge must be dismissed, because HISA has not shown that Natalia had “actual, physical possession” of the Thyro-L at the time of the search. Brief at IV.B.1.
125. HISA has not met its burden to show constructive possession of the Thyro-L at the time of the search. Brief at IV.B.2.
126. Natalia has shown that she bears No Fault or Negligence for the alleged violation. Brief at IV.C.
127. Natalia has established that, regardless of whether the ALJ finds Natalia bears No Fault for this alleged violation, the ALJ has authority to reduce any sanctions imposed for this violation and that, if any sanctions are to be imposed, substantial reductions from those imposed by the Arbitrator are warranted. Brief at III.C.3, IV.D.

Respectfully submitted,

/s/ Grant S. May

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

ADMINISTRATIVE LAW JUDGE: JAY L. HIMES

**IN THE MATTER OF:
NATALIA LYNCH, APPELLANT**

DOCKET No. D09423

**[PROPOSED] ORDER SETTING ASIDE CIVIL SANCTIONS AND DISMISSING
CHARGES WITH PREJUDICE**

On December 13, 2023, Appellant Natalia Lynch gave notice of appeal of sanctions imposed by an Arbitrator in HIWU Case No. 1501000597.

Following briefing, an evidentiary hearing and post-trial briefing and oral argument in accordance with 16 C.F.R. § 1.146, the Administrative Law Judge adopts the proposed findings of fact and conclusions of law set forth in Appellant's filings in accordance with 15 U.S.C. § 3058. For the reasons stated therein and in Appellant's supporting briefing, all civil sanctions imposed by Respondent Horseracing Integrity and Safety Authority are hereby **SET ASIDE**, all costs imposed on Ms. Lynch are **VACATED** and the charges brought against Ms. Lynch are **DISMISSED WITH PREJUDICE**. The Authority shall assume responsibility for all costs, including any previously imposed on Ms. Lynch.

ORDERED

Jay L. Himes
Administrative Law Judge

SEPTEMBER [], 2024

CERTIFICATE OF SERVICE

I hereby certify that on August 15, 2024, pursuant to Federal Trade Commission

Rules of Practice 4.2(c) and 4.4(b), I caused the foregoing to be filed and served as follows:

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