

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES  
FTC DOCKET NO. 9423**

**ADMINISTRATIVE LAW JUDGE: JAY L. HIMES**

**IN THE MATTER OF:**

**NATALIA LYNCH**

**APPELLANT**

---

**THE AUTHORITY'S REPLY TO APPELLANT'S  
PROPOSED CONCLUSIONS OF LAW**

---

Comes now the Horseracing Integrity and Safety Authority, Inc. (“**HISA**” or the “**Authority**”) pursuant to the briefing schedule of the Administrative Law Judge, dated July 17, 2024, and submits the following Reply to Appellant’s Proposed Conclusions of Law (“**APC**”), with numbering preserved.

**HORSERACING INTEGRITY & SAFETY AUTHORITY**

*/s/ Bryan H. Beaman*\_\_\_\_\_

**BRYAN H. BEAUMAN  
REBECCA C. PRICE  
STURGILL, TURNER, BARKER, &  
MOLONEY, PLLC  
333 W. Vine Street, Suite 1500  
Lexington, Kentucky 40507  
Telephone: (859) 255-8581  
[bbeaman@sturgillturner.com](mailto:bbeaman@sturgillturner.com)  
[rprice@sturgillturner.com](mailto:rprice@sturgillturner.com)**

**MICHELLE C. PUJALS  
ALLISON J. FARRELL  
HORSERACING INTEGRITY &  
WELFARE UNIT, A DIVISION OF  
DRUG FREE SPORT LLC  
4801 Main Street, Suite 350  
Kansas City, MO 64112**

Telephone: (816) 291-1864  
[mpujals@hiwu.org](mailto:mpujals@hiwu.org)  
[afarrell@hiwu.org](mailto:afarrell@hiwu.org)

LEE POPKIN  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, NY 10036  
Telephone: (212) 969-3326  
[ipopkin@proskauer.com](mailto:ipopkin@proskauer.com)

PAUL J. GREENE  
**GLOBAL SPORTS ADVOCATES, LLC**  
254 Commercial St., Suite 245  
Portland, ME 04101  
Telephone: (207) 747-5899  
[pgreene@globalsportsadvocates.com](mailto:pgreene@globalsportsadvocates.com)

## CERTIFICATE OF SERVICE

Pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), a copy of this Authority's Reply to Appellant's Proposed Conclusions of Law is being served on August 26, 2024, via Administrative E-File System and by emailing a copy to:

Hon. Jay L. Himes  
Administrative Law Judge  
Office of Administrative Law Judges  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington DC 20580  
Via e-mail: [Oalj@ftc.gov](mailto:Oalj@ftc.gov)

April Tabor  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Washington, DC 20580  
Via email: [electronicfilings@ftc.gov](mailto:electronicfilings@ftc.gov)

H. Christopher Boehning / Grant S. May  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019  
(212) 373-3061  
Via email: [cboehning@paulweiss.com](mailto:cboehning@paulweiss.com) / [gmay@paulweiss.com](mailto:gmay@paulweiss.com)  
Attorney for Appellant

/s/ Lee Popkin

Counsel for HISA

## **REPLY TO APPELLANT’S PROPOSED CONCLUSIONS OF LAW**

HISA’s reply to APC are set out below, with numbering preserved. HISA’s replies point to sections of the reply brief, below.

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.
  - A HISA civil sanction is subject to *de novo* review, limited to a determination of whether “the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *See* 15 U.S.C. § 3058(b)(3); March 25, 2024 Order at 3.
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.
  - Any modification of HISA civil sanctions can only occur pursuant to a finding that “the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law” (*see* 15 U.S.C. § 3058(b)(3)) and must comply with the ADMC Program Rules.
46. HISA has breached its duty of candor to the Tribunal both in the Arbitration below and before the FTC. Brief at II.D.
  - This is not correct. There is no evidence in the record that HISA breached its duty of candor to the Tribunal either in the Arbitration below or before the FTC.
47. HISA withheld exculpatory evidence. Brief at II.E.
  - Under the ADMC Program Rules, HISA is not required to produce “exculpatory” evidence to Covered Persons (*see* Rule 7260), and there is no legal obligation for

HISA to do so in this non-criminal context. *See Fox v. Elk Run Coal Co., Inc.*, 739 F.3d 131, 138–39 (4th Cir. 2014); *Almodovar v. McDonough*, No. 21-1061, 2021 WL 5879205, at 3 n.2 (1st Cir. Dec. 13, 2021); *Yee v. Bureau of Prisons*, 348 F. App'x 1, \*2 (5th Cir. 2009); *Foster v. Ball*, 79 F. App'x 263, 264 n.1 (9th Cir. 2003); *Armstrong v. Tygart*, 866 F. Supp. 2d 572, 583 (W.D. Tex. 2012); *United States ex rel. (Redacted) v. (Redacted)*, 209 F.R.D. 475, 483 (D. Utah 2001).

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.

- There is no evidence in the record that Appellant was not charged consistently with other Covered Persons or that HISA breached its duty of candor, and HISA did not withhold "exculpatory" evidence from Appellant. *See United States v. Scarpa*, 913 F.2d 993, 1010-11 (2d Cir. 1990); *Black's Law Dictionary* (exculpatory evidence is evidence "tending to establish a criminal defendant's innocence").

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.

- Production of the B Sample Laboratory Documentation Package is not required for HISA to meet its burden to establish a Presence Violation. *See* Rules 3212(b) and 3248(b); JX1 at 194, 196; March 25, 2024 Order at 3.

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.
- HISA was not required to provide Appellant with the B Sample Laboratory Documentation Package and therefore Appellant was not prejudiced by not receiving it. *See* Rule 3212(b) and 3248(b); JX1 at 194, 196; March 25, 2024 Order at 3.
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.
- Under the ADMC Program and relevant case law, Appellant has failed to establish the source of the Altrenogest in the Sample and has provided no evidence to support that she is entitled to “No Fault,” which is limited to “exceptional circumstances” where the “utmost caution” is exercised for the Presence Violation. *See* Rule 1020 (Definitions of Fault and No Fault or Negligence); Rule 3224(a) & (b); *See José Paolo Guerrero v. FIFA, CAS 2018/A/5546*, ¶ 65; *HIWU v. Pineda, JAMS No. 1501000613* at ¶ 8.11; *WADA v. UWW, CAS 2018/A/5619*, ¶ 75; JX1 at 2108.
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.
- HISA has agreed that, if the proposed Rule revision changing the classification of Altrenogest is approved by the Commission, Appellant’s

period of Ineligibility will not exceed 60 days and her fine will not exceed \$5,000.

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

- HISA agrees it must operate consistent with the Constitution and applicable law, including the ADMC Program Rules.

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.

- The car Appellant drove to the backside of Belmont Park on July 20, 2023 was legally subject to search by HISA under Rules 5730 and 8400. *Louisiana v. HISA*, 617 F. Supp. 3d 478, 497 (W.D. La. 2022); *In the Matter of Luis Jorge Perez*, FTC Docket No. 9420 at 5 (Aug. 8, 2024).

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.

- The search of the vehicle Appellant drove to the backside of Belmont Park on July 20, 2023 was lawful and did not violate the Fourth Amendment. *Louisiana v. HISA*, 617 F. Supp. 3d 478, 497 (W.D. La. 2022) (reiterating HISA's ability to inspect personal property of covered persons).

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.

- The exclusionary rule, which generally prohibits the introduction at criminal trials of evidence obtained in violation of a defendant's Fourth Amendment

rights, does not apply here in a proceeding involving the review of sanctions in a civil case.

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.

- The evidence below, including Appellant’s own statements, establish that Appellant had “Possession” of the Thyro-L under Rules 1020 (definition of Possession) and 3214. *See HIWU v. Perez*, JAMS No. 15010000589, ¶ 7.2.

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.

- The circumstances around the discovery of Thyro-L and Appellant’s own statements establish that Appellant had “constructive Possession” of the Thyro-L under Rules 1020 (definition of Possession) and 3214. *See Roland Diethart v. Int’l Olympic Comm.*, CAS 2007/A/1290, ¶¶ 38–39, 43.

126. Natalia has shown that she bears No Fault or Negligence for the alleged violation. Brief at IV.C.

- The evidence does not establish that Appellant bears No Fault or Negligence for the Possession Violation. *See* Rule 1020 (definitions of Fault and No Fault or Negligence); *HIWU v. Pineda*, JAMS No. 1501000613, ¶ 8.11.

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.



- Under the ADMC Program, sanctions can only be reduced if the Covered Persons establishes they are entitled to No Fault or Negligence or No Significant Fault or Negligence for a Rule 3214 Possession Violation. *See* Rules 3224 and 3225; *HIWU v. Pineda*, JAMS No. 1501000613, ¶ 8.17.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 26TH DAY OF AUGUST  
2024.

/s/ Bryan H. Beauman  
BRYAN H. BEAUMAN  
REBECCA C. PRICE  
**STURGILL, TURNER, BARKER, &  
MOLONEY, PLLC**  
333 W. Vine Street, Suite 1500  
Lexington, Kentucky 40507  
Telephone: (859) 255-8581  
[bbeauman@sturgillturner.com](mailto:bbeauman@sturgillturner.com)  
[rprice@sturgillturner.com](mailto:rprice@sturgillturner.com)

MICHELLE C. PUJALS  
ALLISON J. FARRELL  
**HORSERACING INTEGRITY &  
WELFARE UNIT, A DIVISION OF  
DRUG FREE SPORT LLC**  
4801 Main Street, Suite 350  
Kansas City, MO 64112  
Telephone: (816) 291-1864  
[mpujals@hiwu.org](mailto:mpujals@hiwu.org)  
[afarrell@hiwu.org](mailto:afarrell@hiwu.org)

LEE POPKIN  
**PROSKAUER ROSE LLP**  
Eleven Times Square  
New York, NY 10036  
Telephone: (212) 969-3326  
[ipopkin@proskauer.com](mailto:ipopkin@proskauer.com)

PAUL J. GREENE  
**GLOBAL SPORTS ADVOCATES, LLC**

254 Commercial St., Suite 245  
Portland, ME 04101  
Telephone: (207) 747-5899  
[pgreene@globalsportsadvocates.com](mailto:pgreene@globalsportsadvocates.com)

*Counsel for Appellees*