

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 MOTION TO STRIKE HISA’S REPLY PROPOSED FINDINGS OF
FACT AND REPLY PROPOSED CONCLUSIONS OF LAW**

Appellant Natalia Lynch (“Natalia”) hereby moves to strike Respondent Horseracing Integrity and Safety Authority’s (“HISA”) Reply Proposed Findings of Fact and Reply Proposed Conclusions of Law for violating 16 C.F.R. § 1.146(c)(4)(ii) and Judge Himes’s July 17 Order on Proposed Findings of Fact, Conclusions of Law and Supporting Briefs (“July 17 Order”).

An evidentiary hearing in this matter was held on July 16, 2024. 16 C.F.R. § 1.146(c)(4)(ii) states that “[w]ithin 30 days of the hearing's conclusion, each party will concurrently file with the Secretary for consideration by the Administrative Law Judge proposed findings of fact, conclusions of law, and a proposed order, *and* a supporting legal brief explaining the party's reasoning. Such filings, limited to 7,500 words, must be served upon the other party and contain references to the record and authorities on which they rely. Reply briefs, limited to 2,500 words, may be filed by each party within 10 days of service of the initial filings.” 16 C.F.R. § 1.146(c)(4)(ii) (emphasis added). 16 C.F.R. § 1.147(c)(3)(iv) specifies how word limits are to be calculated.

Following the evidentiary hearing, Judge Himes issued the July 17 Order, which set an August 15, 2024, deadline for “filing of proposed findings of fact, conclusions of law *and* supporting briefs” and an August 26, 2024, deadline for “filing of reply findings of fact, conclusions of law *and* supporting briefs.” July 17 Order at A (emphasis added).

In the July 17 Order, Judge Himes further stated that he had “determined that, for these filings, the parties may apply the word counts in Rule 1.146(c)(4)(iii) individually to each filing in Paragraph A above” and that “[i]n determining word count, the parties shall apply Rule 1.147(c)(3)(iv).” July 17 Order at C. Specifically, Judge Himes directed that “Reply findings of fact shall set forth the opposing party’s proposed finding of fact in single space and then set forth the reply in double space” and that “[t]he opposing party’s findings of fact shall not be included in the word count applicable to reply findings of fact.” July 17 Order at 10, 10(c).

On August 26, 2024, HISA submitted three separate filings—a reply brief, reply proposed findings of fact, and reply proposed conclusions of law. The result is that HISA’s reply proposed findings of fact *on their own* well exceed the 2,500-word limit under the Rules and the July 17 Order, as set forth in the table below:

Document	Word Count
HISA’s Reply Proposed Findings of Fact <i>9,856 words total less the word count from Natalia’s Proposed Findings of Fact (6,804)</i> ¹	3,052
HISA’s Reply Proposed Conclusions of Law <i>1,373 words total less the word count from Natalia’s Proposed Conclusions of Law (524)</i>	849
Total Word Count for HISA’s Reply Proposed Findings of Fact and Reply Proposed Conclusions of Law	3,901
Word Limit	2,500
Over	1,401

Thus, HISA’s reply proposed findings of fact on their own exceed the word limit by 552 words. When combined with HISA’s reply proposed conclusions of law, as they must be, HISA’s filing is 3,901 words total—1,401 words over the limit.²

Natalia has complied with the Rules and the July 17 Order. HISA has not, thereby prejudicing Natalia’s defense. Accordingly, HISA’s Reply Proposed Findings of Fact and Reply Proposed Conclusions of Law and any portions of HISA’s Supporting Brief referencing them should be stricken in their entirety and HISA should also be barred from referencing them in the forthcoming Closing Arguments, or the Court should grant such other relief as it deems appropriate. At a minimum—given that HISA has now had the benefit of seeing Natalia’s Reply Proposed Findings of Fact and Reply Proposed Conclusions of Law—HISA should be directed to cut 1,401 words from its filing and to make no other changes.

¹ Because HISA split its Reply Proposed Findings of Fact and Reply Proposed Conclusions of Law into two documents, the word count from Natalia’s Proposed Conclusions of Law should not be included in this number.

² Natalia regrets having to raise this issue. Were HISA only marginally over the word limit, Natalia would not have sought relief but a filing that is so well in excess of the word limit necessitated bringing this motion.

Dated: August 28, 2024

Respectfully submitted,

/s/ Grant S. May

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ADMINISTRATIVE LAW JUDGE: JAY L. HIMES

IN THE MATTER OF:
NATALIA LYNCH, APPELLANT

DOCKET No. D09423

**[PROPOSED] ORDER STRIKING AUTHORITY'S REPLY PROPOSED FINDINGS OF
FACT AND REPLY PROPOSED CONCLUSIONS OF LAW**

On August 26, 2024, Respondent Horseracing Integrity and Safety Authority ("HISA") filed a Supporting Brief and two separate documents containing its Reply Proposed Findings of Fact and Reply Proposed Conclusions of Law.

HISA's Reply Findings of Fact and Conclusions of Law were limited to a single filing of 2,500 words under the Rules and this Court's July 17 Order ("July 17 Order," "the Order").

On August 28, 2024, Appellant Natalia Lynch filed a motion to strike Appellant's Reply Findings of Fact and Reply Proposed Conclusions of Law for violating the word limit set forth in the rules and this Court's July 17 Order. 16 C.F.R. § 1.146(c)(4)(ii); July 17 Order at C.

For the reasons set forth in Appellant's brief, HISA has violated the word limitation. For these reasons, Appellant's motion to strike is **GRANTED**. HISA's Reply Proposed Findings of Fact and Reply Proposed Conclusions of Law are **STRICKEN**, and any portion of HISA's Supporting Reply Brief referencing HISA's Reply Proposed Findings of Fact and Reply Proposed Conclusions of Law is also **STRICKEN**. HISA is further **ENJOINED** from referencing its Reply Proposed Findings of Fact and Reply Proposed Conclusions of Law at the forthcoming Closing Arguments set for September 4, 2024.

ORDERED

Jay L. Himes
Administrative Law Judge

AUGUST [], 2024

CERTIFICATE OF SERVICE

I hereby certify that, 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 on August 28, 2024:

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