

**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**

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**THE AUTHORITY’S OPPOSITION TO APPELLANT’S  
MOTION TO STRIKE**

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Appellant Natalia Lynch (“Appellant”) has moved to strike the Horseracing Integrity & Safety Authority’s (“the Authority”) Reply Findings of Fact and its Conclusions of Law on the basis that they are overlength. She argues that the two documents together contain 3,901 words, when the maximum allowed under 16 C.F.R. § 1.147(c)(3)(iv) and this Court’s July 17 Order is 2,500 words.

Appellant’s reading of the rules is wrong. The correct interpretation is that the parties’ Reply Findings of Fact and Reply Conclusions of Law may each contain up to 2,500 words. Indeed, the Authority’s two documents add up to 3,885 words, well within the 5,000-word maximum. Nevertheless, on further review, it appears that one of those documents individually exceeded 2,500 words (although the other contained far fewer). Accordingly, the Authority respectfully requests permission to submit a conforming document (attached as Ex. A).

1. This Court’s Order and the FTC’s Rule, 16 C.F.R. § 1.147(c)(3)(iv), clearly provide that each required document may be up to 2,500 words. The Order provides as follows:

A. Deadlines

1. August 15, 2024: Simultaneous filing of proposed findings of fact, conclusions of law and supporting briefs.
2. August 26, 2024: Simultaneous filing of reply findings of fact, conclusions of law and supporting briefs.

....

- C. I further have determined that, for these filings, the parties may apply the word counts in Rule 1.146(c)(4)(ii) *individually to each filing described in Paragraph A above*. The parties are nevertheless encouraged to be concise and non-repetitious; the full allotted word count need not be used for each filing. In determining word count, the parties shall apply Rule 1.147(c)(3)(iv).

Order (July 17, 2024) ¶¶ A, C (emphasis added). The plain meaning of ¶ C is that “each filing” “individually” described above—namely, the Findings of Fact, the Conclusions of Law, and the Supporting Briefs, in both the opening submissions and the reply submissions—is subject to the specified word limits in the FTC Rule. In turn, that Rule states as follows:

Within 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. § 1.147(c)(3)(iv).

Reading the Order and the Rule in tandem (as the Order mandates), it is clear that “each filing” on reply “individually” may contain up to 2,500 words. In other words, the Reply Findings of Fact, the Reply Conclusions of Law, and the Reply Brief each have that limit. That is exactly what the Authority aimed to do, aside from the unrelated error discussed below.

Appellant’s interpretation, by contrast, makes no sense. She claims that the 2,500-word limit applies to (1) the *combined* reply findings of fact and conclusions of law, and separately to

(2) the reply brief. But the July 17 Order doesn't read that way. It refers to "proposed findings of fact, conclusions of law and supporting briefs." There is a comma between the first two items, indicating that they are *not* to be treated together. Appellant ignores the words "individually" and "each filing," which have no meaning on her interpretation. To top it off, one of Appellant's arguments unwittingly undermines her position and bolsters the Authority's. She notes that another provision in the July 17 Order states: "The opposing party's findings of facts shall not be included in the *word count applicable to reply findings of fact.*" Order ¶ I.10(c) (emphasis added). But according to Appellant, there is no word count applicable only to reply findings of fact—there is just one limit for findings of fact combined with conclusions of law. Evidently, her view is not correct. Each document individually has its own limit of 2,500 words.

2. Separately from the preceding point, the Authority inadvertently miscalculated the number of words in its Reply FOF. According to the July 17 Order, the Reply FOF were required to set forth each of the opposing party's proposed findings of fact, followed by the corresponding reply, Order ¶ I.10, but the former did not count toward the word limit, *id.* ¶ I.10(c). It appeared, therefore, that the most efficient way to calculate the number of words for just the reply portions was (1) to take the word count for the entire Reply FOF document, and then (2) to subtract the word count of Appellant's FOF. *Ruthberg Aff.* at ¶ 5. Unfortunately, Appellant had filed a combined document that contained *both* her proposed findings of fact and her conclusions of law (Doc. No. 611465). *Id.* ¶ 6. When counsel for the Authority went to subtract (2) above, she mistakenly used the *entire* document, Doc. No. 611465, thereby over-calculating the number to be subtracted, and under-calculating the difference. *Id.* The error was unintentional and not designed to gain any advantage. *Id.* ¶ 7.

More specifically, Appellant’s Proposed Findings of Fact and Conclusions of Law contained the following number of words:

<b>Appellant’s Proposed Findings of Fact and Conclusions of Law</b>	
<i>Total Word Count in Document</i>	7,401
<i>Findings of Fact Word Count</i>	6,853
<i>Conclusions of Law Word Count</i>	548

*Id.* ¶ 6. Thus, the Authority’s counsel erroneously calculated the length of the Authority’s Reply FOF as 2,455 words long, when it was really 3,003 words long, and therefore 503 words over:

<b>Calculations of Word Count</b>	<b>Authority’s Reply Proposed Findings of Fact</b>	<b>Appellant’s Proposed Findings of Fact</b>	<b>Calculated Word Count (difference between columns 2 and 3)</b>	<b>Words Over 2,500</b>
<b>Erroneous Calculation</b>	9,856	7,401	2,455	N/A
<b>Correct Calculation</b>	9,856	6,853	3,003	503

*Id.*

3. Appellant asks for the Authority’s Reply Findings of Fact and Conclusions of Law to be stricken, without allowing any opportunity to cure the error. That is a draconian request. The error was inadvertent. And Appellant has not been prejudiced in any way. Courts routinely allow parties to correct errors in similar circumstances.<sup>1</sup>

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<sup>1</sup> There is no basis whatsoever to strike Appellants’ Reply Conclusions of Law. That document is 849 words, far under the 2,500 limit.

Instead, the Authority respectfully proposes that it should be permitted to file the attached conforming Revised Reply Findings of Fact (Ex. A) in place of the previous document. The revised document contains 2,476 words. It adds no new words from the previous version, but merely deletes words. Thus, there is no conceivable way that the Authority derived any “benefit” from having seen Appellant’s submissions.

**HORSERACING INTEGRITY & SAFETY AUTHORITY**

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

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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 this Authority's Reply to Appellant's Proposed Conclusions of Law is being served on August 28, 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)

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Attorney for Appellant

*/s/ Lee Popkin*

Counsel for HISA

# EXHIBIT A



**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 FINDINGS OF FACT**

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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 Findings of Fact.

**HORSERACING INTEGRITY & SAFETY AUTHORITY**

/s/ Bryan H. Beaman

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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 this Authority's Reply Findings of Fact 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  
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**THE AUTHORITY’S REPLY TO APPELLANT’S  
PROPOSED FINDINGS OF FACT**

HISA’s reply to Appellant’s Proposed Findings of Fact (“APF”) are set out below. HISA’s replies (“RAPF”) are double spaced, bulleted, and indented from the APFs, which have been reproduced in single space with the numbering preserved. Appellant improperly cites to the statements and arguments of her counsel as “facts” numerous times in the APFs; the Authority objects to all of these APFs on that basis.

**I. Background and Standard of Review.**

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).
  - HISA agrees, except the number of female trainers in the industry is not established in evidence.
  
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).
  - HISA disagrees. JX1 at 2770:11–2771:7 (Lynch).
  
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.
  - Agreed.
  
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.
  - HISA disagrees; the Arbitrator imposed the default sanction. JX1 at 43, ¶ 6.51.

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.

- Agreed.

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.

- Dr. Barker's expert report is not fact evidence regarding Appellant's financial means or fee arrangement with her counsel.

## II. The Process Afforded to Natalia 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.

- Agreed.

b. Did not notify Natalia of an "Atypical Finding," despite its records indicating that it was investigating one. JX9 at 1.

- HISA was not investigating an "Atypical Finding." JX1 at 358, AX9.

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).

- Agreed, but Appellant did not request documents or a subpoena at the Arbitration. JX1 at 3644.

d. Did not produce documents disclosing the identity or involvement of its investigator, Kevin O'Donnell, in Natalia's case. JX9.

- Agreed.

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.

- HISA disagrees. JX1 at 18 ¶ 3.23(a), 21 ¶ 3.36(b).
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.
    - HISA agrees that Appellant made late filings, but Appellant did call two timely disclosed witnesses: JX1 at 20 ¶ 3.35, JX1 at 3632.
  - b. Made sloppy filings in draft form, which were clearly still subject to client review. JX1 at 284-288.
  - c. HISA agrees that Appellant's former counsel appeared to file a draft version of her verification statement. JX1 at 200, 206–209, 3609. Failed to call key witnesses, such as Natalia's mother. JX1 at 42, ¶ 6.44.
    - HISA agrees Appellant chose not to call her mother as a witness at the Arbitration but disagrees with the characterization of "key" witnesses.
  - 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.
    - HISA does not know to what admissions Appellant is referring and disagrees that any part of JX1 at 99 is inconsistent with the facts provided by Appellant at the Arbitration.
  - 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.
    - HISA does not know to what statements Appellant is referring but disagrees that any part of JX1 at 106 contains inaccurate information regarding the lawfulness of the search. It is not factually established Appellant rejected the statements of her former counsel.
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).

- HISA disagrees. This citation does not contain Appellant expressing concerns about her counsel or his conduct, but rather contains Appellant interrupting her counsel’s examination of her expert witness to express her desire to re-open the record to add more evidence. The Arbitrator advised that she could not do so at that time but could make a motion to re-open the testimony at the end of the hearing, which was not done. JX1 at 3080:9–12 (Bush).
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).
  - HISA agrees that Mr. Bunting said this but disagrees that it was “regarding the barn at Monmouth.” It was regarding the absence of any evidence adduced by Appellant at the Arbitration demonstrating Monmouth as the source of contamination. This is seen by his statements immediately preceding: “Your Honor, the onus to show source is on the Covered Person,” and following: “[s]o there is just a void for the experts and for you, as a Judge or arbitrator here, to try and even assess this late-breaking theory [...]”. JX1 at 3447:17–3228:6. In any event, Mr. Bunting’s statement was accurate even if read in isolation. Specifically, HIWU did not know what horse in Tessore’s barn was being administered Altrenogest when MTS was stabled at that barn or where any such horses were located in relation to MTS. Tessore had a horse in his barn test positive for Altrenogest almost a month later, but that horse was not a horse that was

administered Altrenogest under a prescription and there was no evidence that that horse was being administered Altrenogest at the time MTS was stabled at the Tessore barn.

- 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).
- HISA agrees that Mr. Bunting said this but disagrees that the question was "about Monmouth." The question was, "[d]id the fact that [Tessore] later had a reported Regumate, does that factor into your opinion, Dr. Fenger?" JX1 at 3075:18-20.
- 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).
- Agreed.
- 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).
- The questioning was not "concerning the issue of contamination," but rather questions asked of Dr. Cole regarding evidence not in the record of which she was unaware. JX1 at 3277:10-25. Ms. Farrell's full quote was "[t]here's no evidence in the record as to – I would say Ms. Lynch has put no evidence in the record as to what Motion to Strike did with Mr. [Tessore], what Mr. [Tessore] did with Motion to Strike." JX1 at 3278:408.



- 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).
  - HISA agrees that Ms. Farrell said this but disagrees that it was an objection to the "relevance of a horse testing positive for Altrenogest in Mr. Tessore's barn." It was an objection to questions asked of Dr. Cole about evidence not in the record, as can be seen by the Arbitrator's response to the objection: JX1 at 3280:19-3281:16 (Bush).
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.
  - HISA agrees that HIWU investigated a possible connection.
  - 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.
  - Agreed.
  - 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.
  - Agreed.
  - 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.

- Agreed.
  - 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.
  - HISA disagrees that the testing information about horses other than MTS contained in AX10 was collected in relation to MTS’s AAF.
  - 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.
  - HISA disagrees; none of these citations support this APF.
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).
- HISA agrees, but notes that Mr. Pennock was called by HIWU, not HISA.<sup>1</sup>
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).
  - Agreed.
  - 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).
  - HISA agrees with the first two contentions, but Mr. Pennock did not deny that any of the investigators present on July 20, 2023 asked Appellant about Mr. Handal’s case.

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<sup>1</sup>HISA notes that the Arbitration below was conducted by HIWU, not HISA, and the documents produced were HIWU’s, not HISA’s. Therefore, all such references in the APF should be to HIWU.

17. On September 14, 2023, a Confidential Informant called an unidentified person at HISA to state [REDACTED] AX41.
- Agreed.
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.
- This evidentiary citation says that Mr. Richards contacted Appellant, not Mr. Pennock. HISA does not disagree that Mr. Richards contacted Appellant. JX1 at 3602. Mr. Pennock provided extensive evidence at the Arbitration regarding his knowledge as to the purpose and content of Mr. Richards' contact. JX1 at 2992:8-3001:17 (Pennock).
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.
- Mr. Pennock was present for a call on September 14, 2023, but was only aware of a call on September 15, 2023. JX1 at 3000:10-3001:3.
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.
- HISA agrees Ms. Farrell sent an email containing those quotes but disagrees that informing Appellant's formal counsel of Appellant's obligations under the ADMC Program constituted a "threat."
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).
    - HISA disagrees that the cited testimony contains reference to Mr. Richards “ask[ing Appellant] about the pending Charges against her.”
  - 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).
    - Agreed.
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] AX41.
    - Document AX41 was not within the scope of the subpoena, but rather was produced voluntarily. July 15 Tr. 47:22–48:4 (Popkin). Otherwise agreed.
  - 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.
    - Document AX41 was not within the scope of the subpoena, but rather was produced voluntarily. July 15 Tr. 47:22–48:4 (Popkin). HISA disagrees that Mr. Pennock was present for the call. JX1 at 3000:10–3001:3.
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).
  - Agreed.

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).
- Mary Katherine was tested by HIWU on July 2, 2023. HIWU did not “refuse to provide testing data” but rather stipulated that Mary Katherine’s test on July 2, 2023 was Negative, and further advised it did not have any laboratory documents to produce because laboratories do not prepare underlying documentation for Negative findings in the normal course. AX12 at 14–15.
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.
- Assuming this reference is intended to be to ¶ 24, HISA agrees.
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).
- HISA disagrees that Dr. Cole’s report contained a “math error.”
27. HISA did not raise the error with Dr. Cole until July 2024. Tr. 136:12-14 (Cole).
- This citation indicates Dr. Cole received Dr. Barker’s report in July 2024, not that HISA raised any alleged error.
28. Dr. Cole acknowledged the error on cross-examination at the evidentiary hearing. Tr. 120:11-15 (Cole).

- Dr. Cole did not acknowledge any alleged error on cross-examination. In this citation, Dr. Cole indicates there are “some indications that there’s a trailing of elimination of this drug” but she “[did not] think it’s significant in terms of being needed to be addressed in this particular analysis”: Tr. 120:11–15 (Cole). Dr. Cole elaborated on why she thought the amount of Altrenogest that remained after 24 hours (i.e. the tailing elimination) was not clinically or scientifically significant, explaining that if it were, it would bio-accumulate with each new dose after 24, 48, and 72 hours, and that that did not occur: Tr. 146:5–15 (Cole). When asked directly about Dr. Barker allegedly “correct[ing] calculations that [she] made,” Dr. Cole expressly did not agree and only stated that Dr. Barker has a “different opinion” than her: Tr. 136:19–24 (Cole). Dr. Cole confirmed she stood by her opinion produced at the Arbitration. Tr. 134:8–14 (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).
- Agreed.
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.
- Agreed.
  - 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.
  - HISA disagrees that any of the evidence Appellant describes is “exculpatory”; this is a legal determination.

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.
- Agreed.
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.
- Agreed.
- 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.
- Agreed.
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*.
- Agreed.
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.
- Agreed.
- 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.
- HISA does not disagree but denies that the two cases were treated as “related.” JX8 and JX9 demonstrates only that HIWU investigated to determine if they were related, but found no evidence of relation.

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.
- The paragraph quoted concerns Appellant’s ability to raise Mr. Tessore “during the hearing below.” The sentences directly preceding provide further context: “Moreover, at the hearing, Appellant was given a full opportunity to provide her examination in chief about whatever topics she wished. At no point did she mention a Bruno Tessore (or “Tessore”). The first mention of Bruno Tessore occurred during Appellant’s cross-examination.”
  - 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.
  - Agreed.
  - 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.
  - Agreed.
  - 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.
  - Agreed.
  - 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.



- Agreed.
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).
- Agreed.
  - 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.
  - Agreed.
  - b. Appellant’s Exhibit 10 contains testing information for MARY KATHERINE and other horses in Natalia’s care. AX10.
  - Agreed.
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).
- HISA does not agree this is supported by the record.
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*.
- HISA agrees it filed the Motion, but disagrees that ¶¶ 30–36 contain misstatements.
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.

- Agreed.
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.
- HISA disagrees that ¶¶ 30–36 contain misstatements.
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.
- Agreed.
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.
- This is a legal conclusion.
43. Natalia has relied on that evidence in these proceedings to impeach the evidence of HISA’s investigator, Mr. Pennock. Brief at II.D.
- This is a legal conclusion.
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.
- This is a legal conclusion.
45. HISA has not produced the B Sample Laboratory Documentation Package. Tr. at 21:3–4 (Boehning).
- Agreed.

### III. Presence Charge

49. The Presence and Possession Charges were Natalia’s first-ever alleged ADMC Rule violations. JX1 at 451.
- Agreed.

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.
- Agreed.
51. Natalia was also the trainer of the filly MARY KATHERINE. AX 10; JX1 at 2779:8-9.
- Agreed.
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.
- Agreed.
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.
- HISA agrees Appellant occupied stalls 2-15 but these citations do not establish the total number of horses.
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.
- HISA agrees but clarifies that "Altrenogest" refers to synthetic progestin administered by way of oil-based formulation (i.e., Regumate). JX1 at 705-06 ¶¶ 14, 18, 20.
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).
- Agreed.

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.
- Agreed.
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).
- HISA disagrees that Altrenogest poses a risk of “environmental” contamination; HISA disagrees that the word “numerous” is a fact in evidence. The FDA has received 130 reports between October 1987 and May 2018. AX2 at 64 (Ex. E). Whether this is “numerous” is an opinion. Otherwise agreed.
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).
- Agreed.
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.
- Agreed.
60. The Belmont barn is typical of a barn in the horseracing industry. JX1 at 654-96; JX15; AX13-19; AX2 at ¶ 19.
- Agreed.
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.
    - HISA disagrees. AX13 at 28.
  - 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.
    - HISA disagrees.
  - c. Some of the horse's bedding has spilled outside of the stalls. JX1 at 680, 696:0:01-0:05.
    - HISA disagrees. JX1 at 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).
    - HISA disagrees.
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.
  - Agreed.
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.
  - Agreed.
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.

- HISA disagrees as neither JX8 nor JX9 indicate that Teodoro Ramirez made these statements.
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).
- Agreed.
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; AX25.
  - HISA disagrees. AX7:0:00–0:03.
  - 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.
  - Agreed.
  - 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.
  - HISA disagrees.
  - 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.
  - HISA agrees that the stalls appear to be bedded with straw.
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.
- HISA disagrees as these citations do not indicate that the person who claimed MTS, identified in JX8 as Filvino Ramirez, is the same person as

Teodoro Ramirez's son, who is identified in JX9 as Silberio Ramirez.

Moreover, these documents also do not establish that Teodoro Ramirez said he prepared MTS on race day.

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.
- Agreed.
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.
- The citations do not support this APF. HISA agrees. JX1 at 2948:22–25 (Pennock).
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).
- Agreed.
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.
- Agreed.
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).
- HISA agrees with the first sentence. The second sentence is a legal conclusion.

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.
- Agreed.
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").
- Agreed.
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.
- Agreed.
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).
- HISA does not deny that a voice on the video appears to say "Tenebris" when speaking to a horse in Stall #33, but there is no indication of who is speaking, or why he called that horse Tenebris, or whether that horse is Tenebris. The evidence of Faith Wilson contained in JX9 indicates Tenebris was in Stall #34 from June 24, 2023 through August 11, 2023.
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.
- Agreed.
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.



- Agreed.
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.
- Agreed, except HISA disagrees that the B Sample Laboratory Documentation Package was “required by ADMC Rule 3248.”
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.
- HISA agrees that Mr. Pennock took photos and videos but does not agree that they establish when any repairs may have been performed.
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.
- Agreed.
  - 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.
  - Agreed.
  - 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).
  - Agreed.

- 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.
- Agreed.
- 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).
- Agreed.
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.
- HISA does not agree there was any basis to correct or withdraw Dr. Cole's report.
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).
- HISA does not agree Appellant was prevented from testifying concerning Monmouth. Moreover, all these citations point to the direct examination of Appellant's expert Dr. Fenger. Appellant was not prevented from providing testimony concerning Monmouth during her own direct examination. Appellant was allowed to move to reopen the testimony at the conclusion of the hearing and was also able to provide testimony regarding Monmouth at the evidentiary hearing but did not do so. JX1 at 3080; Tr. 9:12-13.
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.

- Appellant’s Statement of Contested Facts cannot be used to establish factual findings.
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.
- Appellant’s Statement of Contested Facts and HISA’s brief cannot be used to establish factual findings.
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.
- Agreed.
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.
  - Agreed.
  - 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.
  - Agreed.
  - c. Three videos Mr. O’Donnell took of Mr. Tessore’s barn at Monmouth on August 11, 2023. JX16; AX6; AX7.
  - Agreed.

- 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.
- HISA agrees this document was produced but disagrees it only pertains to horses at Belmont.
- 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.
- Agreed.
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).
- HISA agrees with sentences 1, 2, 3, and 4. HISA disagrees with sentence 5, as there were no documents to produce. HIWU disagrees with the assertion in the parens of the last citation that analytical testing data from Negative findings are "important."
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).
- HISA disagrees as veterinary records uploaded to the HISA portal are confidential.

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).

- HISA agrees, but notes that Appellant objected to Mr. O’Donnell being called to testify. July 15 Tr. 38:20–40:22.

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).

- Agreed.

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).

- Agreed.

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).

- HISA agrees that Dr. Cole testified she was first contacted about writing a report for the July 16, 2024 hearing earlier in July.

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).

- Dr. Cole testified she did not “specifically say it was an extrapolation”, but that she “believe[d] that was implied”: Tr. 137:17–138:9.

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.

- Agreed.
- 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).
- Dr. Cole did not agree there was an error in her report. Rather, she said she had “some concerns” with Dr. Barker’s opinion. Tr. 121:25–122:16.
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).
- HISA does not agree Altrenogest has no documented effect on geldings. JX1 705 at ¶¶ 14–15.
- 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).
- This is not in the evidentiary record.
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 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>.
- This is not in the evidentiary record.

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>
- These are not in the evidentiary record.
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>.
- HISA does not agree; Appellant received the default sanction. This is not in the evidentiary record.
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>
- These are not in the evidentiary record.
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>.
- These are not in the evidentiary record.

#### IV. The Possession Charge

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).
- HISA disagrees trainers commonly administered Levothyroxine to horses to treat common health conditions.
105. There is no evidence that Natalia administered Thyro-L to a Covered Horse after it was banned. JX1 at 2921:3-7 (Lynch).
- This citation does not support this APF and is a legal conclusion.
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).
- HISA disagrees; the Arbitrator found Appellant was “not able to offer credible evidence to support her original claim of giving the Thyro-L to her mother in March for disposal.” JX1 at 41, ¶ 6.41.
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).
- HISA disagrees; Appellant told HIWU investigators she had been driving the car for “a few weeks” and the Arbitrator acknowledged that there was evidence in the car “that could have belonged to Trainer Lynch which would indicate use of the automobile longer than one day,” but declined to make a finding either way. JX1 at 43 ¶ 6.46, 464 ¶ 8(b).
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).



- HISA agrees that Appellant did not own the Honda; she told Investigators she had been driving the car for several weeks. JX1 at 464 ¶ 8(b).
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).
- HISA does not agree Appellant was "interrogated."
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.
- Agreed.
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.
- Agreed.
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).
- HISA agrees the car had many items but disagrees that any of the items belonged to Appellant's mother. JX1 at 43 ¶ 6.46, 464 ¶ 8(c).
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).
- HISA agrees there was a small quantity of Thyro-L but disagrees there is "no evidence" that Appellant was aware of it. Appellant told HIWU investigators that she was in the process of moving barns and put the

Thyro-L in her trunk during the move, intending to throw it out. JX 1 at 464 ¶ 8(d) – (e), 2964:3–14 (Pennock).

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).
- HISA disagrees; when the Thyro-L was found in the trunk, Appellant told investigators she had put it in the trunk and intended to throw it out. JX 1 at 464 ¶ 8 (d)–(e).
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](http://www.lloydinc.com/media/filer_private/2017/05/11/thyro-l_ss_special_050917.pdf)
- This is not in the evidentiary record.
116. Natalia had not received any violations before she was served with the Presence violation on July 20, 2023. JX1 at 87, ¶ 60.
- HISA agrees Appellant had no prior violations under the ADMC Program.
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.
- Agreed.
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>

- This is not in the evidentiary record.
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.
- Agreed.

*/s/ Bryan H. Beauman*  
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**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**

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**AFFIDAVIT OF JANA RUTHBERG**

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STATE OF NEW YORK     )

COUNTY OF NEW YORK   )

**Jana Ruthberg**, being first duly sworn, deposes and says:

1. I am an associate at Proskauer Rose LLP (“Proskauer”) who has worked on this litigation on behalf of Appellee Horseracing Integrity & Safety Authority (“HISA” or the “Authority”).

2. I am duly authorized by the Authority to make this affidavit in support of the Authority’s Opposition to Appellant’s Motion to Strike HISA’s Reply Proposed Findings of Fact and Reply Conclusions of Law filed on August 28, 2024.

3. To the best of my knowledge, information, and belief, the facts stated in this affidavit are true.

4. On August 26, 2024, prior to the Authority’s submission of its Supporting Reply Legal Brief (“Reply Brief”), Reply to Appellant’s Proposed Findings of Fact (“Reply FOF”), and Reply to Appellant’s Proposed Conclusions of Law (“Reply COL”), to ensure compliance with the Authority’s understanding of the Order on Proposed Findings of Fact, Conclusions of Law and Supporting Briefs dated July 17, 2024 (“July 17 Order”), and in conjunction with 16 C.F.R. §§

1.146(c)(4)(ii) and 1.147(c)(3)(iv), I undertook to calculate the number of words in the Authority’s Reply FOF.

5. It appeared that the most efficient way to calculate the number of words in the Reply FOF was to (i) take the word count for the entire Reply FOF document and then (ii) subtract the word count of Appellant’s Proposed Findings of Fact.

6. However, Appellant had filed a document combining *both* her Proposed Findings of Fact and Conclusions of Law. When I went to subtract the word count of Appellant’s Proposed Findings of Fact from the total Reply FOF word count, I mistakenly used the combined sum of the total words—i.e., the entire document, Doc. No. 611465—thereby over-calculating the number to be subtracted, and under-calculating the difference. Appellant’s Proposed Findings of Fact and Conclusions of Law contained the following number of words:


<b>Appellant’s Proposed Findings of Fact and Conclusions of Law</b>	
<i>Total Word Count in Document</i>	7,401
<i>Findings of Fact Word Count</i>	6,853
<i>Conclusions of Law Word Count</i>	548

Thus, I made an erroneous calculation that the Authority’s document was 2,455 words long, when I should have calculated that it was 3,003 words long. As a result, the document as filed was 503 words overlength.

<b>Calculations of Word Count</b>	<b>Author-ity’s Reply Proposed Findings of Fact</b>	<b>Appellant’s Proposed Findings of Fact</b>	<b>Calculated Word Count (difference between columns 2 and 3)</b>	<b>Words Over 2,500</b>
<b>Erroneous Calculation</b>	9,856	7,401	2,455	N/A
<b>Correct Calculation</b>	9,856	6,853	3,003	503

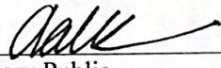
7. I regret the error, which was unintentional and not designed to gain any advantage.

IN WITNESS WHEREOF, I have hereunto signed my name as of August 28<sup>th</sup>, 2024.

By:   
Name: Jana Ruthberg

STATE OF NEW YORK        )  
  ) ss:  
COUNTY OF New York    )

On the 28<sup>th</sup> day of August, 2024, before me, the undersigned notary public, personally appeared Jana Ruthberg, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity, and that by his or her signature on the instrument, the individual, or the person or entity upon behalf of which the individual acted, executed the instrument.

  
Notary Public

**Aallyah L Brown**  
**Notary Public - State of New York**  
**Registration No. 01BR0013668**  
**Qualified in New York County**  
**Commission Expires Sept. 20, 2027**