PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D09438

ADMINISTRATIVE LAW JUDGE:

IN THE MATTER OF:

MICHAEL HEWITT **APPELLANT**

THE AUTHORITY'S RESPONSE TO APPELLANT'S APPLICATION FOR REVIEW

PUBLIC

CERTIFICATE OF SERVICE

Pursuant to 16 C.F.R. 1.146(a) and 16 C.F.R. 4.4(b), a copy of the Authority's Response is being served on October 17, 2024, via Administrative E-File System and by emailing a copy to:

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/s/ *Bryan Beauman*
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The Horseracing Integrity and Safety Authority (the "**Authority**") files this Response to Appellant's Application for Review of the Amended Final Decision issued by the Internal Adjudication Panel (the "**IAP**") under the Anti-Doping and Medication Control ("**ADMC**") Program. The Commission should uphold this Decision and deny Appellant's request for an evidentiary hearing, as it is unnecessary to supplement or contest the record. Pursuant to 16 C.F.R. 1.146(c)(3), the appeal should be limited to briefing and/or oral argument, as Appellant has failed to provide *any* supplemental evidence. If the Administrative Law Judge ("**ALJ**") determines that an evidentiary hearing should be held, the Authority requests that it be permitted to submit evidence and witnesses on its behalf be permitted to testify.

First, Appellant has not put forth *any* additional evidence that he would proffer at an evidentiary hearing. In fact, he states that the Amended Final Decision's "findings are against the clear weight of the evidence." See Application for Review at Par. 1. Appellant's challenge is clearly limited to the factual and legal conclusions made by the IAP, and there is no additional evidence that Appellant was precluded from submitting below or seeks to submit in a hearing before an ALJ. This includes the IAP's determination that Appellant's testimony, with respect to whether he received oral notice of the B Sample opening from HIWU, was "not credible." See Amended Final Decision at pg. 2.

Second, Appellant incorrectly claims that there are "rules specifically requiring HIWU provide the Covered Person written notice." See Application for Review at Par. 1. This statement is completely inaccurate, as the ADMC Program Rules (the "**Rules**") do not, in fact, require that notification of the Covered Person's right to attend the opening of a B Sample be given in writing. The Rules do not specify that a Responsible Person be given *written* notice of the B Sample opening. Rule 3345(a)(4)(iii) requires that the *ECM Notice Letter* include a written explanation that the Responsible Person and Owner *will be notified* of the date, time and place where the B

Sample will be analyzed. The Rules are silent as to the method of such notification and do not "specifically require written notice" as asserted by Appellant. His challenge is clearly based upon his incorrect legal position that "written notice of the time of B Sample opening is a strict proof requirement for HIWU and a condition precedent to the finding of a rule violation." See Application for Review at Par. 2. Appellant has provided *absolutely no* legal authority at all for this position.

In fact, under Rule 3250(b), notification to a Covered Person under the ADMC Program "may be accomplished either through actual or constructive notice," and "actual notice may be accomplished *by any means*." (emphasis added). Here, the IAP found that the Appellant was advised orally of the information relating to the opening of the B Sample. Without a specific requirement in the Rules that such notice be provided in writing (such as for an ECM Notice itself under Rule 3345), this finding was clearly in compliance with the Rules.

Third, HIWU met its burden to the *comfortable satisfaction of the hearing panel* that Appellant violated Rule 3312 with respect to the Class B Controlled Medication that was detected in his Covered Horse's Sample. (*See* Rule 3121(a)). Appellant provided *no* evidence below to establish that he should have the default sanctions under Rule 3323 reduced under the standards for No Fault or Negligence (Rule 3324) or No Significant Fault or Negligence (Rule 3325). In addition, at the hearing, Appellant provided no evidence challenging either the Presence of Capsaicin in the Covered Horse's Sample or the actual integrity of the Sample. As a result, the IAP properly imposed the default sanctions against Appellant.

In sum, Appellant has not identified any new supplemental evidence which he was prohibited from submitting or which the IAP failed to consider, and the appropriate legal standards

were applied. The Authority therefore moves the ALJ to uphold the Amended Final Decision and limit the review of this matter to briefing and/or oral argument.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 17th day of October, 2024.

/s/*Bryan H. Beauman*

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