UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9443

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

IN THE MATTER OF:

DR. LARRY OVERLY, DVM **APPELLANT**

THE AUTHORITY'S LEGAL BRIEF ON REMAND

Comes now the Horseracing Integrity and Safety Authority, Inc. ("**HISA**" or the "**Authority**") pursuant to the Administrative Law Judge's ("**ALJ**") Order Granting Leave to Submit Briefs on Remand, dated July 24, 2026, and submits the following Legal Brief on Remand.

CERTIFICATE OF SERVICE

Pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), a copy of the Authority's Legal Brief on Remand is being served on August 5, 2026, via Administrative E-File System and by emailing a copy to the below listed. I further certify that no portion of the filing was drafted by generative artificial intelligence ("**AI**") and any language in the filing that was drafted by generative AI was checked for accuracy by human attorneys or paralegals using printed legal reporters or online legal databases.

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I. Introduction

1. Pursuant to the Administrative Law Judge's ("**ALJ**") *Order Granting Leave to Submit Briefs on Remand* concerning the Federal Trade Commission's ("**FTC**") *Order Granting Petition for Review, Vacating Administrative Law Judge's Decision, and Remanding for Further Consideration* dated July 21, 2026 ("Remand Order"), the Authority respectfully submits this brief addressing the *Decision of the Commission on Review Under U.S.C. §3058(c)(1)* issued on June 30, 2026 *In the Matter of Philip Serpe*, Docket No. 9441, wherein the FTC held "the ALJ may grant only the relief requested by the applicant for review . . . absent extraordinary circumstances that Article III courts have recognized necessary to justify departure from th[e] longstanding rule" "against 'alter[ing] a judgment to benefit a nonappealing party.'"[1] The Commission vacated the *Administrative Law Judge Decision on Application for Review* dated January 27, 2026 ("ALJ Overly Decision") in the instant matter, which in relevant part, increased the sanction imposed on Appellant from one period of Ineligibility of twenty-three months and a fine of $25,000, to two periods of Ineligibility of twenty-four months each (for a total period of Ineligibility of forty-eight months) and two fines of $25,000 each (for a total fine of $50,000).

2. For the reasons set forth below and consistent with its prior appellate filings, the Authority asks the ALJ to uphold the arbitrator's determination that Appellant committed two ADRVs and adopt the Arbitrator's Fault analysis, and partially remand this matter to the Arbitral Body for further consideration of the applicability of the proportionality principle in light of the ALJ's findings on this singular issue.

[1] Decision of the Commission *In the Matter of Philip Serpe*, Docket No. 9441 at p. 15, 2026 WL 1906387 (F.T.C. June 30, 2026).

II. Relevant Facts

3. After a full evidentiary hearing on May 28, 2025, Arbitrator Laura Abrahamson issued a *Corrected Final Award* ("*Final Award*") in this matter on August 21, 2025, finding that Dr. Overly committed two Anti-Doping Rule Violations ("**ADRVs**") for Possession of the Banned Substances Testosterone and Isoxsuprine on July 23, 20[2]4 at a Covered Racetrack in violation of Rule 3214(a).[2]

4. The Arbitrator further found that Dr. Overly was not entitled to a reduction in sanction under the No Fault defense, and was only entitled to a modest reduction under No Significant Fault ("**NSF**") based on her conclusion that there was no evidence that Dr. Overly possessed the Banned Substances with an intention to "cheat."[3]

5. The Arbitrator also applied the principle of proportionality articulated *In the Matter of Dr. Scott Shell, DVM*, Docket No. 9439, Administrative Law Judge Decision on Application for Review (March 6, 2025) ("***Shell II***") and concluded that Dr. Overly's sanctions for the two ADRVs should be combined into one.[4]

6. The *Final Award* ordered a period of Ineligibility of twenty-three months less 169 days credit for time served, a fine of $25,000, and a contribution towards arbitration costs of $15,000.[5]

7. Not satisfied, Dr. Overly obtained new counsel and filed his *Application for Stay of Final Civil Sanction and Notice of Appeal and Application for Review* on September 24, 2025.

8. Upon consideration of the parties' appellate arguments, which are not summarized here in the interest of brevity, the ALJ rejected the Arbitrator's application of NSF and the proportionality principle and issued the ALJ Overly Decision increasing Dr. Overly's sanction to comprise two

[2] AB 6723-6724.
[3] AB 6722.
[4] AB 6717.
[5] AB 6724.

periods of Ineligibility totaling forty-eight months and two fines totaling $50,000, in addition to affirming the $15,000 sanction of adjudication costs.[6]

9. Dr. Overly appealed to the FTC on February 26, 2026.

10. Before the FTC granted review in this case, it issued its June 30 decision in the *Serpe* case, holding in relevant part, 1) that "…if the Authority declines to impose a fine, neither the ALJ nor the Commission are authorized to impose one,"[7] and 2) based on the principle of party-presentation "the ALJ may only grant the relief requested by the applicant for review."[8]

11. Five days after the ALJ distinguished another pending horseracing case from the FTC's *Serpe* decision,[9] the FTC issued its Remand Order in this case reiterating its holding that: "…the ALJ may grant only the relief requested by the applicant for review . . . absent the extraordinary circumstances that Article III courts have recognized necessary to justify departure from th[e] longstanding rule" "against 'alter[ing] a judgment to benefit a nonappealing party."[10]

III. The Authority's Legal Position on Remand

12. Given the FTC's direction, the Authority asks the ALJ to uphold the arbitrator's determination that Appellant committed two ADRVs and adopt the Arbitrator's Fault analysis, but partially remand this matter to the Arbitral Body for further consideration of the applicability of the proportionality principle in light of the ALJ's findings on this singular issue.

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[6] *In the Matter of Dr. Larry Overly*, Docket No. 9443, Administrative Law Judge Decision on Application for Review, at pp. 94-95 (A.L.J. January 27, 2026).
[7] Decision of the Commission *In the Matter of Philip Serpe*, Docket No. 9441 at p. 12, 2026 WL 1906387 (F.T.C. June 30, 2026).
[8] Decision of the Commission *In the Matter of Philip Serpe*, Docket No. 9441 at p. 15, 2026 WL 1906387 (F.T.C. June 30, 2026).
[9] *In the Matter of Jason Scott, DVM*, Docket No. 9449, Order Denying Appellant's Objection And Motion To Strike The Authority's Dispositive Brief And Reply Brief, 2026 WL 2111924 (A.L.J. July 16, 2026).
[10] *In the Matter of Larry Rickman Overly*, Docket No. 9443, FTC Remand Order (F.T.C. July 21, 2026).

13. As set forth in its prior appellate filings, the Authority agreed with the Arbitrator's conclusions regarding all questions of law and fact, save for her application of the proportionality principle to combine Dr. Overly's sanction.

14. The Authority maintains that the Arbitrator erroneously applied the proportionality principle in this case for all the reasons set forth in its prior filings before the ALJ.[11]

15. In the now-vacated Administrative Law Judge Decision on Application for Review issued in this case, the ALJ concurred with the Authority's position on proportionality: "In Dr. Overly's case, the Arbitrator ruled that the *Shell II* analysis applied and thus awarded a combined sanction. I disagree. Much the contrary, facts matter."[12]

16. The ALJ cautioned that "the proportionality principle is a case law derived *exception*. As such, it should not become the norm."[13]

17. The ALJ then detailed the multiplicity of facts that distinguish *Shell II* from the instant case.[14]

18. "Taking account of all the evidence in this case," the ALJ concluded that there is no "basis for applying the proportionality principle to favor Dr. Overly" in this case.[15] The Authority agrees with the ALJ's conclusion.

19. To resolve a case, the ALJ may "make any finding or conclusion that, in the judgment of the Administrative Law Judge, is proper and based on the record" and may "affirm, reverse,

[11] *See* Authority's Proposed FOF, COL and Legal Brief at 16, 25-27 (Dec. 15, 2025) and Authority's Reply Proposed FOF, COL and Legal Brief at 21-22 (Dec. 26, 2025).
[12] *In the Matter of Dr. Larry Overly*, Docket No. 9443, Administrative Law Judge Decision on Application for Review, at p. 63 (January 27, 2026).
[13] *In the Matter of Dr. Larry Overly*, Docket No. 9443, Administrative Law Judge Decision on Application for Review, at p. 64 (January 27, 2026) (emphasis in original).
[14] *In the Matter of Dr. Larry Overly*, Docket No. 9443, Administrative Law Judge Decision on Application for Review, at pp. 64-66 (January 27, 2026).
[15] *In the Matter of Dr. Larry Overly*, Docket No. 9443, Administrative Law Judge Decision on Application for Review, at pp. 66 (January 27, 2026).

modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction of the Authority."[16]

20. In the FTC's June 30 *Serpe* decision, the FTC determined that, absent extraordinary circumstances, the ALJ and FTC may not add a sanction on an appeal by an aggrieved person. In instances in which the ALJ or FTC concludes that a sanction is too lenient, the Commission explained that the ALJ and Commission are authorized to remand the matter to the Authority for further proceedings.[17] The Authority believes that course is now appropriate here in light of the FTC's *Serpe* decision and the ALJ's prior findings in this case.

IV. Conclusion

21. In accordance with the FTC's direction *In the Matter of Serpe*, the Authority asks the ALJ to uphold the arbitrator's determination that Appellant committed two ADRVs and adopt the Arbitrator's Fault analysis, but partially remand this matter to the Arbitral Body for further consideration of the applicability of the proportionality principle in light of the ALJ's findings on that singular issue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 5th day of August, 2026.

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[16] 15 U.S.C. 3058 § 1.146(d)(3)(ii).
[17] Decision of the Commission *In the Matter of Philip Serpe*, Docket No. 9441 at p. 12, 2026 WL 1906387 (F.T.C. June 30, 2026).

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