UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. D-9444

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

IN THE MATTER OF:

EUSABIO JUAREZ-RUFINO **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 ALJ's Order Granting Leave to Submit Briefs on Remand concerning the Commission's Order of Remand dated July 21, 2026, the Authority respectfully submits this brief addressing the Commission's holding in the matter of Philip Serpe, Docket No. 9441, wherein the Commission found "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.'" The remand concerns the ALJ's decision to increase the $10,000 fine imposed by the Authority by order of the Arbitrator on Respondent to $25,000.[1]

II. Procedural History

2. On July 21, 2026, the Commission issued an Order Granting Petition for Review, Vacating Administrative Law Judge's Decision, and Remanding for Further Consideration. The Commission found that, on April 28, 2026, the ALJ in this matter set aside and modified the sanctions imposed on Appellant by the Authority, increasing the $10,000 fine imposed to $25,000. Appellant timely petitioned the Commission for review, and the Commission vacated and remanded the ALJ's April 28, 2026, decision for further consideration consistent with the Commission's decision in the matter of Philip Serpe, D.9441, 2026 WL 1906387 (F.T.C. June 30, 2026).

3. On July 24, 2026, ALJ Jay L. Himes granted the Parties leave to submit briefs "setting out their views on how the Commission's *Serpe* decision and [ALJ Himes'] subsequent *Scott* Order may affect the relief ordered on this review." The ALJ provided copies of the Commission's decision in *Matter of Serpe* and *Matter of Scott*, Docket 9449, for the Parties' consideration.

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[1] Decision of the Commission *In the Matter of Philip Serpe*, D.9441, 2026 WL 1906387 (F.T.C. June 30, 2026).

III. Statement of Facts on Remand

4. Evidence in the record demonstrates that:

   a. On October 2, 2025, Hon. David M. Benck, Arbitrator, found Appellant committed his first Violation of HISA Anti-Doping Rule 3214(a) for Possession of a Banned Substance.[2] Arbitrator Benck further determined Appellant had not demonstrated he was entitled to a finding of No Fault or No Significant Fault, and that Appellant's subjective and objective levels of fault were "in the uppermost range."[3]

   b. As a result, Arbitrator Benck ordered a period of Ineligibility of twenty-four (24) months for Appellant; a fine of $10,000; and contribution of $8,000 toward HIWU's share of the arbitration costs.[4]

   c. Appellant petitioned for appellate review, arguing in part that Arbitrator Benck excluded "a necessary defense witness," Mr. Luis Terrazas, from the merits hearing.

   d. Assigned ALJ Himes granted Appellant's petition for review and ordered an evidentiary hearing, as ALJ Himes determined Mr. Terrazas' testimony "was the centerpiece of [Appellant's] entire case."

   e. An evidentiary hearing was held on February 19, 2026, in which Mr. Terrazas testified before ALJ Himes. Based on the testimony of Mr. Terrazas—which was rife with inconsistencies—ALJ Himes determined the "'centerpiece' [of Appellant's case] [was] simply a mirage."[5] ALJ Himes opined Mr. Terrazas'

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[2] In the Matter of Eusebio Juarez-Ruffino, JAMS No. 1501001087 at p. 22 (Oct. 2, 2025).
[3] In the Matter of Eusebio Juarez-Ruffino, JAMS No. 1501001087 at p. 20 (Oct. 2, 2025).
[4] In the Matter of Eusebio Juarez-Ruffino, JAMS No. 1501001087 at p. 22 (Oct. 2, 2025).
[5] In the Matter of Eusebio Juarez-Ruffino, Docket No. 9444 at p. 41 (Apr. 28, 2026).

"inability to testify credibly on matters—whether big or small—is a telltale sign of fabrication. His lack of credibility infects [Appellant's] own defense."[6]

f. ALJ Himes determined Arbitrator Benck's analysis of Appellant's Fault to be correct; however, ALJ Himes determined "the fine should 'follow'—that is, 'be commensurate with'—the fault."[7] Thus, ALJ Himes determined Arbitrator Benck had no basis to reduce the fine from $25,000 to $10,000.

g. Based on the evidence and ALJ Himes' "*de novo* assessment of the veracity of the evidence [Appellant] introduced," ALJ Himes determined there was no reason to "provide any cognizable offset against the $25,000 maximum fine." Therefore, ALJ Himes' "modif[ied]" the sanctions imposed on Appellant from $10,000 to $25,000 and concluded that the judgment was proper and "based on the record."[8]

h. On May 28, 2026, Appellant appealed to the FTC for review of ALJ Himes' decision, and on July 21, 2026, the FTC granted Appellant's petition and vacated ALJ Himes' decision to increase the fine against Appellant. The FTC "remand[ed] [the] matter to the ALJ for further consideration consistent with [their] decision in *Serpe*," where the FTC held "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.'"[9]

[6] In the Matter of Eusebio Juarez-Ruffino, Docket No. 9444 at p. 41 (Apr. 28, 2026).
[7] In the Matter of Eusebio Juarez-Ruffino, Docket No. 9444 at p. 50 (Apr. 28, 2026).
[8] In the Matter of Eusebio Juarez-Ruffino, Docket No. 9444 at p. 52 (Apr. 28, 2026).
[9] Decision of the Commission *In the Matter of Philip Serpe*, D.9441, 2026 WL 1906387 (F.T.C. June 30, 2026).

IV. Argument

5. Pursuant to the Commission's decision in *Serpe*, the ALJ should partially remand Appellant's case for a determination of financial penalties consistent with the ALJ's evidentiary determinations. The remand should further account for the ALJ's explanation of "commensurate" penalties, i.e., the penalties that should have been applied based upon the Arbitrator's determination that Appellant's Fault was subjectively and objectively considerable.

6. As set forth in 15 U.S.C. 3058 § 1.146, an ALJ has the discretion to determine whether the record for review should be supplemented through evidence presented in a hearing,[10] which includes an inherent duty and necessary power to conduct fair and impartial hearings[11] and issue decisions.[12] Decisions by an ALJ "must be based on a consideration of the whole record relevant to the issues decided and must be supported by reliable and probative evidence."[13] To dispose a case, the ALJ may "affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the final civil sanction of the Authority;"[14] and may "make any finding or conclusion that, in the judgment of the Administrative Law Judge, is proper and based on the record."[15]

7. *In the Matter of Philip Serpe*, the Commission made clear: 1) Congress did not authorize it or the ALJ to "add a species of sanction the Authority declined to impose;"[16] and 2) the ALJ can only grant relief requested by the applicant for review absent extraordinary circumstances.[17] In *Serpe*, though the Authority had not sought a monetary fine against Appellant, the ALJ ordered one in response to Appellant's application for appeal. Upon review, the Commission explained that

[10] 15 U.S.C. 3058 § 1.146(c)(4).
[11] *Id.* at § 1.146(c)(1)(i).
[12] *Id.* at § 1.146(c)(1)(i)(H).
[13] *Id.* at § 1.146(d)(2).
[14] *Id.* at § 1.146(d)(3)(i).
[15] *Id.* at § 1.146(d)(3)(ii).
[16] In the Matter of Philip Serpe, 2026 WL 1906387 (2026) *10.
[17] In the Matter of Philip Serpe, 2026 WL 1906387 (2026) *11.

an ALJ is not authorized to impose a civil penalty not imposed by the arbitrator and not requested by any party.[18] The Commission further elucidated that "modify" does not authorize the ALJ to make an upward variance of imposed penalties sans extraordinary circumstances.[19] In instances in which the ALJ or Commission believes a sanction is too lenient, the Commission explained that the ALJ and Commission are authorized to "remand" the matter for further proceedings.[20]

8. In the current matter, while the ALJ did not add a species of sanction not requested by the Authority, the ALJ did increase the financial penalty to the detriment of Appellant.[21] This decision, as explained by the ALJ, was premised on the notion of "commensurate" penalties.[22] The Arbitrator determined Appellant's Fault to be both subjectively and objectively considerable and therefore sanctioned Appellant to a period of Ineligibility of twenty-four (24) months.[23] However, this penalty was offset by a reduced fine of $10,000 based upon the Arbitrator's determination that the Agency had not introduced evidence to show Appellant intended to use the Banned Substance for wrongdoing.[24]

9. In his decision, the ALJ explained that "intent and actual or potential benefit are irrelevant as a matter of law except insofar as either may bear on the NF or NSF analysis. Lack of a bad intent, or the absence of individual benefit, are simply part of the 'utmost caution' or 'totality of the circumstances' analyses that NF or NSF take into account."[25] Further, the ALJ opined that the evidence presented to him by Appellant—which he determined to be fabricated—weighed so

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[18] In the Matter of Philip Serpe, 2026 WL 1906387 (2026) *10.
[19] In the Matter of Philip Serpe, 2026 WL 1906387 (2026) *10.
[20] In the Matter of Philip Serpe, 2026 WL 1906387 (2026) *10.
[21] In the Matter of Eusebio Juarez-Ruffino, Docket No. 9444 at p. 56 (Apr. 28, 2026).
[22] In the Matter of Eusebio Juarez-Ruffino, Docket No. 9444 at p. 50 (Apr. 28, 2026).
[23] In the Matter of Eusebio Juarez-Ruffino, JAMS No. 1501001087 at p. 20 (Oct. 2, 2025).
[24] In the Matter of Eusebio Juarez-Ruffino, JAMS No. 1501001087 at p. 21 (Oct. 2, 2025).
[25] In the Matter of Eusebio Juarez-Ruffino, Docket No. 9444 at a p. 51 (Apr. 28, 2026).

heavily against Appellant that it provided no "cognizable offset against the $25,000 maximum fine."[26]

10. Thus, based upon the reasons outlined above, namely the ALJ's determination that the financial penalties assessed by the Arbitrator were not applied in accordance with the No Fault and No Significant Fault Rules or commensurately based upon the Arbitrator's Fault determination, as well as the ALJ's determination that the supplemental evidence introduced by Appellant during a hearing before the ALJ was "more likely than not false" and was "offered in an effort to influence the fact-finding process,"[27] the case should be remanded so a financial penalty can be assessed consistent with the ALJ's determinations.

V. CONCLUSION

11. In accordance with the Commission's Decision *In the Matter of Philip Serpe*, the ALJ should partially remand this matter to the Arbitrator for a determination of financial penalties consistent with the ALJ's evidentiary determinations, as well as the ALJ's explanation of "commensurate" penalties as it relates to the Arbitrator's Fault determination.

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

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[26] In the Matter of Eusebio Juarez-Ruffino, Docket No. 9444 at p. 51 (Apr. 28, 2026).
[27] In the Matter of Eusebio Juarez-Ruffino, Docket No. 9444 at p. 51 (Apr. 28, 2026).

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