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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chair**
 Mark R. Meador

IN THE MATTER OF:

JASON SCOTT, DVM,

Appellant.

Docket No. 9449

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

Comes now the Horseracing Integrity and Safety Authority, Inc. (“**HISA**” or the “**Authority**”) pursuant to 16 CFR §1.147 and submits the following response to Appellant’s Application for Review, dated September 28, 2026.

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR §1.146(a) and 16 CFR §4.4(b), a copy of this Response to Appellant's Application for Review is being served on October 8, 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. Overview

Dr. Jason Scott's application to the Commission is premature and none of the issues raised warrant the Commission's review. Administrative Law Judge Jay L. Himes remanded this case to the Arbitrator for re-sanctioning after dismissing one of the two Anti-Doping Rule Violations ("ADRVs"). Taking this case up now, before the matter is fully ripe, would invite piecemeal review and require the Commission to consider a matter without a final civil sanction. Moreover, Dr. Scott's arguments are not novel. His arguments concerning lack of jurisdiction, his burden under the Compelling Justification test, and public-nondelegation and rulemaking arguments have all been repeatedly litigated and require straightforward application of the statute and rules. This Application for Review should be denied.

II. Procedural History

On February 12, 2026, an Arbitrator issued a decision under HISA's Anti-Doping and Medication Control Program ("ADMC Program") finding that Dr. Scott committed two first-time ADRVs under Rule 3214(a) for Possessing two Banned Substances—Pitcher Plant and Adenosine Monophosphate ("AMP"). The Arbitrator imposed a backdated 18-month period of Ineligibility, a \$25,000 fine, and \$5,000 in adjudication costs.

Dr. Scott timely appealed. After additional briefing following the Commission's decision in *In the Matter of Philip Serpe*,¹ the ALJ issued a decision on August 31, 2026. The ALJ dismissed the AMP violation, upheld the violation for Pitcher Plant, and remanded the matter to the Arbitrator for re-sanctioning.

Before any hearing or decision on remand from the Arbitrator, Dr. Scott filed an Application for Review with the Commission on September 28, 2026.

¹ See *In the Matter of Philip Serpe*, FTC Docket No. 9441 (June 30, 2026).

III. The Application is Premature While the Remand Proceeding is Pending

Dr. Scott's application is premature. The ALJ remanded this matter, and no final sanction is currently in place. As the Commission recognized in *Serpe*, the ALJ is statutorily authorized to remand the matter to the Authority for further proceedings.² Commission review while the remand proceeding is ongoing would result in piecemeal adjudication and thwart judicial economy. Additionally, the statutory authorization under 15 U.S.C. § 3058 describes "review of final decisions of the Authority." But Dr. Scott currently has no final sanction. The underlying process through the Authority should proceed before the Commission's final review. Review of the appeal at this stage would necessarily be incomplete, and no prejudice comes from first resolving the proceeding on remand. Indeed, the Commission recently followed a similar course in *In the Matter of Larry Rickman Overly*,³ remanding the matter for further consideration in light of *Serpe* rather than prematurely addressing the appeal. The Commission should do the same here, allow the remand proceeding to resolve, and consider review only on a full and final record.

IV. Dr. Scott Identifies No Issue Warranting Commission Review

In any event, Dr. Scott's application satisfies none of the factors for Commission review under 16 CFR §1.147(b)(4)(ii). His arguments are neither novel nor require anything other than straightforward application of the statute and FTC-approved rules.

Dr. Scott, for example, argues the Authority has no jurisdiction. But Dr. Scott was indisputably a Covered Person, at a Covered Racetrack, on a day when only Covered Horses were racing. By statute, the ADMC program "is applicable to all covered horses, *covered persons*, and covered horseraces."⁴ He conflates jurisdiction with his own burden to affirmatively prove he had

² See *Serpe* at 14; 15 U.S.C. § 3058(b)(3).

³ *In the Matter of Larry Rickman Overly*, FTC Docket No. 9443 (July 21, 2026).

⁴ 15 U.S.C. § 3055(a)(1) (emphasis added).

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a compelling justification to possess the Banned Substance. And his parade of horrors about a veterinarian banned for a mint julep at the Kentucky Derby is make-believe. In actuality, Dr. Scott had a Banned Substance on his veterinary truck shortly after he treated a Covered Horse at a Covered Racetrack.⁵

In addition, he disputes the ALJ's finding that he did not meet his burden to prove compelling justification. Contrary to Dr. Scott's assertion, his explanation was not "undisputed" and was the source of extensive litigation at arbitration and before the ALJ. As the ALJ found, he offered "limited, self-selected veterinary records" that risked "distorting or garbling the true nature of the veterinarian's practice."⁶ And those records showed entries for another medication "seemingly in violation of [New Mexico Racing Commission] rules."⁷ He claims the ALJ required an evidentiary "audit of *all* medical records (regardless of relevance)."⁸ Yet the ALJ did no such thing; rather, the ALJ expressly reserved whether "something less than 'complete' records may be sufficient proof, depending on the facts."⁹

Further, Dr. Scott's arguments that the Possession rule is invalid under the "public nondelegation" doctrine and rulemaking requirements are without merit.¹⁰ Finally, his argument that the ALJ had no authority to remand the matter contradicts the statute and the Commission's decision in *Serpe*.¹¹

⁵ Appeal Book 6312:9-6313:16 (Testimony of Dr. Scott).

⁶ ALJ Order at 62.

⁷ *Id.* at 43-44.

⁸ App. for Review at 3.

⁹ ALJ Order at 57.

¹⁰ ALJ Order at 88 (as to rulemaking, Dr. Scott is "simply wrong" and "ignores not only the process that preceded the Authority submitting the proposed ADMC Rules to the FTC, but also the ADMC's very fabric, of which the Possession rule is only a part"); *id.* at 101 (As to public nondelegation, "Dr. Scott does not mention this unanimous body of federal court rulings adverse to the very argument he makes."); *id.* at 101 fn. 389 (listing cases).

¹¹ See *Serpe* at 14 ("[S]hould the ALJ or Commission think imposed sanctions are too lenient, we are authorized to 'remand' the matter to the Authority for further proceedings.").

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For these reasons, Dr. Scott's application fails to meet the Commission's applicable factors for review and should be denied.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 8th Day of October, 2026.

/s/Bryan H. Beauman

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