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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

IN THE MATTER OF **ERIN THOMPSON,** **Appellant.**	**DOCKET NO. 9453**

APPELLANT'S REPLY FINDINGS OF FACT, CONCLUSIONS OF LAW, AND SUPPORTING LEGAL BRIEF

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REPLY FINDINGS OF FACT

1. Undisputed.[1]

2. Undisputed.[2]

3. Undisputed.[3]

4. Undisputed.[4]

5. Undisputed.[5]

6. Undisputed.[6]

7. Undisputed.[7]

8. Undisputed.[8]

9. Undisputed.[9]

10. Undisputed.[10]

11. Undisputed.[11]

12. Undisputed.[12]

13. Undisputed.[13]

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[1] AB 1045.
[2] AB 1045.
[3] AB 1045.
[4] AB 1045.
[5] AB 1045.
[6] AB 1045.
[7] AB 1045.
[8] AB 1045.
[9] AB 1046.
[10] AB 1046.
[11] AB 1046, 1071 ¶ 3.1–2.
[12] AB 1046, 1071–72 ¶ 3.9–11.
[13] AB 1105, 1120–22.

14. Thompson does not dispute that Motion to Adjourn did not display any symptoms of clenbuterol exposure during the 48 hours prior to its race.[14] Thompson also does not dispute that Motion to Adjourn was housed in her shed row, which was equipped with cameras, but clarifies that the time frame in her testimony was the 48 hours before the race.[15] Further, Thompson testified that the horse was shipped to Belterra Park the same day as the race and had to arrive four hours before the race.[16] Finally, Thompson testified that in her shed row in the 48 hours before the race the only people who had contact with the horse were Brian Schling and her exercise riders.[17]

15. Thompson does not dispute that she was familiar with clenbuterol through her previous work with quarter horses.[18] Thompson also testified that she understood that the withdrawal time for clenbuterol in the blood and urine of a horse was at least three weeks, but that it was very unpredictable in the hair of the horse based on her experience.[19]

16. Thompson does not dispute that the conditions in the stalls at Belterra Park were substandard.[20] Thompson also did not request a different stall, but that was because the condition of all the stalls was the same.[21] Further, Thompson

[14] AB 1106.
[15] AB 1106.
[16] AB 1122.
[17] AB 1101, 1106.
[18] AB 1111, 1113.
[19] AB 1112.
[20] *See* AB 1115–16, 1123–24.
[21] AB 1124–25.

testified that she generally does not clean the stalls at tracks because they are prepared when she arrives.[22] Thompson does not dispute that Motion to Adjourn was in the stall for about four hours on the day of Race 7.[23]

17. Thompson testified that she suspects Motion to Adjourn's positive test for clenbuterol was the result of contamination at Belterra Park.[24] Thompson does not dispute that she was unaware of any other clenbuterol positive tests at Belterra Park in 2025.[25]

18. Thompson does not dispute the contents of the arbitrator's Final Decision.[26]

19. Undisputed.[27]

20. Undisputed.

21. Undisputed. [28]

[22] AB 1124.
[23] AB 1125.
[24] AB 1125–26.
[25] AB 1126.
[26] AB 1068–93.
[27] AB 1092–93.
[28] July 27, 2026 Order on Application for Review and Motion for Stay.

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REPLY CONCLUSIONS OF LAW

1. Undisputed.

2. Disputed. The Authority does not fully state the proof required to establish liability under Rule 3212.

3. Disputed. Thompson established under the balance of probabilities standard that Motion to Adjourn was exposed to clenbuterol at Belterra Park.[29]

4. Disputed. Under Rule 3225, Thompson established under the balance of probabilities standard that Motion to Adjourn was exposed to clenbuterol at Belterra Park. Moreover, considering all the facts and circumstances, Thompson's level of objective and subjective fault is light, and her suspension should be reduced to time served.[30]

5. Disputed. The Arbitrator applied the wrong standard for determining Thompson's fine—instead of exercising his full discretion, he applied Rule 3225 (which is limited to reductions of suspensions).[31] Additionally, the Arbitrator's application of Rule 3225 to the length of Thompson's suspension was arbitrary and capricious and an abuse of discretion because he did not give reasonable consideration to the evidence under the balance of probabilities standard and rejected that source could be proven through logical inference.[32]

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[29] Appellant's Proposed Findings of Fact, Conclusions of Law, Proposed Order, and Supporting Legal Brief at 19–22 (Oct. 16, 2026).
[30] *Id.*
[31] *Id.* at 15–19.
[32] *Id.* at 19–22.

6. Disputed. Thompson's level of objective and subjective fault is light, her suspension should be reduced to time served, and under the appropriate full discretion standard, Thompson's fine should be reduced to $5,000.[33]

7. Disputed. Thompson's fine was not in accordance with law because the Arbitrator erroneously applied Rule 3225 to set the amount instead of exercising his full discretion under Rule 3223(b).[34] Additionally, the Arbitrator's application of Rule 3225 to Thompson's suspension was arbitrary and capricious and an abuse of discretion because he did not give reasonable consideration to the evidence under the balance of probabilities standard and rejected that source could be proven through logical inference.[35]

8. Disputed. The Arbitrator's Final Decision should be reversed because Thompson's adjudication is unconstitutionally structured.[36] Additionally, her sanctions were improperly imposed and, if the Arbitrator's Final Decision is not reversed on constitutional grounds, her sanctions should at least be reduced to a fine of $5,000 and a suspension length of time served.[37]

[33] *Id.* at 15–22.
[34] *Id.* at 15–19.
[35] *Id.* at 19–22.
[36] *Id.* at 22–35.
[37] *Id.* at 15–22.

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REPLY LEGAL BRIEF

Trainer Erin Thompson's sanctions for violating Rule 3212 must be reversed or at least reduced. Thompson's Horseracing Integrity and Welfare Unit (HIWU) arbitration and this appeal are unconstitutionally structured, which invalidates the sanctions against her.[38] Short of reversal, Thompson's fine and suspension must be reduced to $5,000 and time served respectively because the Arbitrator applied the wrong standard for setting the fine and improperly analyzed the evidence of the source of the clenbuterol.

Rule 3223 does not require Thompson to prove the source of the clenbuterol to receive a reduced fine. Both the Arbitrator's Final Decision and the Authority's Opening Brief misstate the legal standard by requiring Thompson to prove the source of the clenbuterol in Motion to Adjourn's test to receive a fine less than the $25,000 maximum.[39] But Rule 3223(b) says no such thing; instead, it authorizes a fine "*up to* $25,000" and allows the Arbitrator to consider all the facts and circumstances.[40] Here, the facts and circumstances show that Thompson should be assessed a reduced fine. Moreover, they establish that the source of the clenbuterol was likely at Belterra Park and that Thompson's fault is light, requiring a reduced suspension.

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[38] Appellant's Supporting Legal Br. at 22–35.
[39] AB 1092 ¶ 8.29; The Authority's Proposed Findings of Fact, Conclusions of Law, Order, and Supporting Legal Brief at 15–17 (Aug. 10, 2026).
[40] HISA Rule 3223(b) (emphasis added); *In re Jim Iree Lewis*, No. 9434, 2024 WL 5078296, at *5 (FTC ALJ Oct. 17, 2024).

I. The Arbitrator Applied the Wrong Standard for Determining the Fine

Contrary to the Arbitrator's assertions (as supported by the Authority), there is no "threshold requirement" that Thompson must prove the source of the clenbuterol in order to receive a fine lower than the maximum.[41] Under "the plain language of HISA Rule 3223(b)," the Arbitrator may issue a "[f]ine of *up to* $25,000 or 25% of the total purse (whichever is greater)" for banned substance presence violations.[42] In determining the appropriate fine, arbitrators may consider "[t]he degree of fault, among other facts and circumstances, ... in exercising [their] discretion."[43] While this allows the Arbitrator to issue a $25,000 fine when appropriate, it does not allow the Authority to rewrite Rule 3223(b) to make a $25,000 fine "the 'starting point' from which a fine may be reduced."[44]

Nor do any other rules support the Authority's interpretation. The Authority stated that, pursuant to Rules 3224 and 3225, Thompson is only entitled to reduced consequences if she can show that "she acted with No Fault or No Significant Fault" by proving "the source of the Banned Substance."[45] But Rules 3224 and 3225 do not impose such a standard for fines. Rule 3224 largely speaks to suspensions and not fines, as it is titled "Elimination of the Period of Ineligibility Where There Is No Fault or Negligence."[46] To the extent it speaks to the fine, it provides that "[i]f a Covered

[41] AB 1092 ¶ 8.29; The Authority's Supporting Legal Br. at 17.
[42] HISA Rule 3223(b) (emphasis added); *Lewis*, 2024 WL 5078296, at *10 n.19.
[43] *Id.* at *5.
[44] *Id.* at *10 n.19.
[45] The Authority's Supporting Legal Br. at 14.
[46] HISA Rule 3224.

Person establishes ... that [] she bears No Fault or Negligence ..., the otherwise applicable period of Ineligibility and other Consequences for such Covered Person *shall be eliminated*."[47] But Rule 3224 does not negate the discretion Rule 3223(b) grants to the Arbitrator to set the fine "up to" the maximum.[48] Similarly, Rule 3225 is titled "Reduction of the Period of Ineligibility Where There Is No Significant Fault or Negligence," and does not apply to fines or other consequences.[49] Thus, both the Arbitrator and the Authority are incorrect that Thompson was required to prove the source of the clenbuterol to receive a fine lower than $25,000.

The Authority's interpretation has also been rejected by FTC ALJs in prior cases. *Lewis* upheld a $10,000 reduction in the fine for a trainer who cooperated with the investigation and had a clean record.[50] There, the ALJ directly stated that "[b]ased on the plain language of [] Rule 3223(b) ... the Authority's argument that $25,000 is the 'starting point' from which a fine may be reduced is unpersuasive."[51] Similarly, *In re Jeffrey Poole* upheld a $15,000 fine reduction partly because there was neither "wrongful intent" nor a benefit to the charged party.[52]

[47] *Id.* at 3224(a) (emphasis added).
[48] HISA Rule 3223(b).
[49] HISA Rule 3225.
[50] *Lewis*, 2024 WL 5078296, at *10, *12.
[51] *Id.* at *10 n.19.
[52] No. 9417, 2023 WL 8435860, at *5, *7 (FTC ALJ Nov. 13, 2023).

Thus, the fine is "not in accordance with law."[53] The ALJ should exercise its statutory authority to "modify" the sanction based on a "de novo review" of the facts and significantly reduce Thompson's fine.[54]

II. Thompson's $25,000 Fine Should Be Reduced

The facts here show that Thompson's fine should be reduced from the $25,000 maximum amount.[55] First, there is no evidence that Thompson personally administered clenbuterol to Motion to Adjourn. Besides the positive test, the Authority and the Arbitrator were unable to point to a single piece of affirmative evidence that showed Thompson did so, relying solely on her supposed inability to conclusively prove where it came from.[56] In unrebutted testimony, Thompson stated that she did not administer clenbuterol to the horse, that she did not possess clenbuterol at Belterra Park, and that there was no clenbuterol at the same location as Motion to Adjourn in the 48 hours before the horse arrived at Belterra Park.[57]

Second, nor did anyone connected to Thompson administer the drug. No one else besides Thompson and her partner transported the horse to Belterra Park.[58] After receiving the positive test, Thompson performed her own investigation into the source and confirmed with her veterinarian, partner, and staff that none of them administered clenbuterol to Motion to Adjourn.[59] She also reviewed the camera

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[53] 15 U.S.C. § 3058(b)(2)(A)(iii).
[54] *Id.* § 3058(b)(1), (3)(A)(ii).
[55] *See Lewis*, 2024 WL 5078296, at *5.
[56] AB 1087–92; The Authority's Supporting Legal Br. at 16–17.
[57] AB 1105.
[58] AB 1122.
[59] *See* AB 1086 ¶ 7.17, 1121–22.

footage from her Indiana barn where Motion to Adjourn was housed for two weeks prior to the race, and did not find any unusual activity that suggested the horse received clenbuterol.[60] While the Arbitrator referred to this as a "somewhat cursory investigation," HIWU investigators performed a similar investigation by searching her facilities (which Thompson cooperated with).[61] That investigation did not lead to a charge for possession of clenbuterol that was pursued through adjudication.[62] This supports Thompson's credibility and conclusion that no one else connected to her administered the drug, and undercuts the inference that her efforts at determining the source were "cursory."[63]

Third, it is highly likely that Motion to Adjourn was exposed to the clenbuterol at Belterra Park, given the limited possibilities of where the exposure could have come from. The stalls at the receiving barn there, including Motion to Adjourn's, were each soaked with the urine of past horses.[64] Because the stalls were interchangeable in this respect, Thompson considered it pointless to move the horse to another stall.[65] Under such conditions, it is not only plausible, but probable that a horse, like Motion to Adjourn, would ingest urine-soaked hay that could be contaminated with clenbuterol. Here, the horse tested positive for 2,500 picograms per milliliter, a high

[60] AB 1121, 1127.
[61] AB 1091 ¶ 8.23, 1106, 1114, 1121.
[62] AB 0180, 1106, 1121.
[63] AB 1091 ¶ 8.23.
[64] AB 1123–24.
[65] AB 1124.

amount that shows that the horse likely ingested it close to the time of the race in the urine-soaked stall at Belterra Park.[66]

Fourth, Thompson had no incentive to cheat in this case. The estimated winnings would have been low, about $5,000.[67] Nor did Thompson bet on the race.[68] Further, the horse itself was slow, having won only one race in 27 outings.[69] Through her extensive experience training horses, Thompson knew that administering clenbuterol would risk career-ending penalties.[70] And due to her experience, Thompson knew that clenbuterol had a three-week withdrawal window.[71]

Lastly, Thompson has an almost entirely clean record. Since Motion to Adjourn's positive test, virtually all of her horses have been tested, without a single adverse finding, and Thompson's only other medication-related violations were in 2019 for an overage of a therapeutic drug that the horse never properly metabolized.[72]

Because of this evidence, and the similarities between Thompson's case and *Lewis* and *Poole*, a reduced fine of at most $5,000 is warranted. At a minimum, the $25,000 fine should be vacated and the case should be remanded to the Arbitrator for reconsideration of the fine under the appropriate standard.[73]

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[66] *See* AB 0366, 1050–52, 1056, 1123–24.
[67] AB 1086 ¶ 7.14, 1134.
[68] AB 1104.
[69] AB 1104.
[70] AB 1113–14.
[71] AB 1050–52, 1056, 1112.
[72] AB 1102–03.
[73] *See Lewis*, 2024 WL 5078296, at *5.

III. Thompson's Suspension Should Be Reduced

Thompson's suspension should be reduced as well. Under the balance of probability, Motion to Adjourn was most likely exposed to clenbuterol at Belterra Park.[74] And there is extensive evidence that Thompson's level of subjective and objective fault is light.[75] That evidence supports a holding that she "bears No Significant Fault or Negligence."[76] Thus, the Arbitrator's decision to suspend her for two years was arbitrary and capricious and an abuse of discretion because it did not give reasonable consideration to this evidence.

IV. Thompson's Adjudication is Unconstitutionally Structured

Separately, the Arbitrator's decision should be reversed because this adjudication process is unconstitutionally structured. As discussed in Thompson's opening brief, the Authority and HIWU are private entities unconstitutionally exercising government enforcement power against Thompson.[77] Further, the presence claim is common law and equitable in nature requiring adjudication in an Article III court with a jury.[78]

CONCLUSION

For the foregoing reasons, and the reasons stated in Appellant's Opening Brief, the Arbitrator's Final Decision should be set aside and all sanctions against Thompson reversed.

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[74] Appellant's Supporting Legal Br. at 19–22.
[75] *Id.*
[76] *Id.*; HISA Rule 3225(a).
[77] Appellant's Supporting Legal Br. at 22–35.
[78] *Id.*

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Respectfully submitted,

/s/ Joshua M. Robbins

BRADFORD J. BEILLY
Bradford J. Beilly, P.A.
1144 S.E. 3rd Avenue
Ft. Lauderdale, FL 33316
Phone: (954) 763-7000
Fax: (954) 525-0404
brad@beillylaw.com

JOSHUA M. ROBBINS
Pacific Legal Foundation
3100 Clarendon Blvd., Suite 1000
Arlington, VA 22201
(202) 945-9524
JRobbins@pacificlegal.org

JACOB HAAS
Pacific Legal Foundation
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
(916) 419-7111
JHaas@pacificlegal.org

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CERTIFICATE OF SERVICE

Pursuant to 16 C.F.R. § 4.4(b), I certify that on October 28, 2026, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of the filing. A courtesy copy will be sent via email to the following:

April Tabor Office of the Secretary Federal Trade Commission 600 Pennsylvania Avenue NW Suite CC-5610 Washington, DC 20580 electronicfilings@ftc.gov	Hon. Dania L. Ayoubi Acting Chief Administrative Law Judge Office of Administrative Law Judges Federal Trade Commission 600 Pennsylvania Ave. NW Washington, DC 20580 oalj@ftc.gov electronicfilings@ftc.gov
Bryan H. Beauman Rebecca C. Price Sturgill Turner Barker & Moloney, PLLC 333 W. Vine St., Ste. 1500 Lexington, KY 40507 bbeauman@sturgillturner.com rprice@sturgillturner.com *Counsel for HISA*	Janelle L. Winston Christy Heath Geneva N. Gnam Horseracing Integrity & Welfare Unit 4801 Main Street, Suite 350 Kansas City, MO 64112 (816) 291-1864 jwinston@hiwu.org cheath@hiwu.org ggnam@hiwu.org *Counsel for HIWU*

/s/ Joshua M. Robbins
JOSHUA M. ROBBINS
Counsel for Appellant Erin Thompson