

BEFORE THE HORSERACING INTEGRITY AND SAFETY AUTHORITY'S ANTI-DOPING AND MEDICATION CONTROL PROGRAM ARBITRATION PANEL

ADMINISTERED BY JAMS, CASE NO. 1501001014

In the Matter of the Arbitration Between:

HORSERACING INTEGRITY WELFARE UNIT (“**HIWU**” or “**Claimant**”),
Claimant

v.

EFREN LOZA, JR. (“**Mr. Loza**” or “**Respondent**”),
Respondent.

FINAL DECISION

I, THE UNDERSIGNED ARBITRATOR, having been designated, and having been duly sworn, and having duly heard the allegations, arguments, submissions, proofs, and evidence submitted by the Parties, after a full evidentiary hearing occurring in person in Miami, Florida on April 17, 2025, pursuant to the Horseracing Integrity and Safety Act of 2020 and its implementing regulations, do hereby FIND and DECIDE as follows:

I. INTRODUCTION

1.1 This case involves allegations of Use of the Banned Substance Clenbuterol by a trainer of thoroughbred racehorses.

1.2 HIWU is the United States government-recognized entity responsible for sample collection and results management in the anti-doping testing of thoroughbred racehorses in the United States, pursuant to the Horseracing Integrity Act of 2020, 15 U.S.C. secs. 3051-3060. HIWU was represented by Allison Farrell, Esq. and Geneva N. Gnam, Esq.

1.3 Mr. Loza Jr. is a trainer of thoroughbred racehorses, represented in these proceedings by Enric Ripoll, Esq. of ER Sports Law & Arbitration, based in Miami, Florida.

1.4 Throughout this Final Award, HIWU and Mr. Loza shall be referred to individually as “Party” and collectively as “Parties.”

II. THE FACTS

2.1 Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Arbitrator has considered all of the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Arbitrator refers in this Final Decision only to the submissions and evidence the Arbitrator considers necessary to explain her reasoning. Further, findings are based on credibility assessments made by the Arbitrator and reasonable inferences drawn therefrom.

The Facts According to HIWU

2.2 On March 3, 2023, Mr. Loza registered as the Responsible Person for Lucago in the HISA Portal, which predated the May 22, 2023, effective date of the ADMC Program. He remained Lucago's Responsible Person for more than fifteen months, until Mr. Loza transferred Lucago in the HISA Portal to Trainer Luis Ramirez on June 20, 2024.

2.3 On August 5, 2024, an Out of Competition hair Sample #H100792373 ("OOC Sample 1") was collected from Lucago at Gulfstream Park in Hallandale Beach, Florida.

2.4 On August 19, 2024, Industrial Laboratories ("Industrial") in Denver, Colorado issued a Certificate of Analysis ("COA 1") for OOC Sample 1 reporting an Adverse Analytical Finding ("AAF") for Clenbuterol. Industrial did not perform segmental analysis on OOC Sample 1.

2.5 On September 3, 2024, an Out of Competition hair Sample #H100700582 ("OOC Sample 2") was collected from Lucago, again at Gulfstream Park.

2.6 On September 20, 2024, Industrial issued a Certificate of Analysis for OOC Sample 2 ("COA 2") reporting an AAF for Clenbuterol. Unlike the analysis in Sample 1, this time, Industrial's analysis of OOC Sample 2 included segmental analysis.

2.7 Industrial prepared a Laboratory Documentation Package ("LDP") documenting its analysis of OOC Sample 2, which contained the estimated concentration of Clenbuterol detected in each segment.

2.8 In connection with Industrial's LDP, Ms. Petra Hartmann, Director of Drug Testing Services at Industrial, compiled a bar graph of the estimated concentrations in each segment and sent it to HIWU's Chief of Science Dr. Mary Scollay, in an email dated 20 September 2024.

2.9 On October 31, 2025, HIWU served Mr. Loza with an Equine Anti-Doping ("EAD") Notice of Alleged Anti-Doping Rule Violation (the "Presence EAD Notice") for two potential violations of ADMC Program Rule 3212, Presence of a Banned Substance, related to Lucago's OOC Sample 1 and OOC Sample 2.

2.10 In response to the Presence EAD Notice, Mr. Loza provided an explanation and asserted that he had “*nothing to do with both cases*” as he had “*no responsibility for the horse Lucago... since [he] was suspended for a similar violation on Apr[il] 22 2024*”. Mr. Loza further stated that Lucago “*was transferred to another trainer via the HISA portal on June 20, 2024.*”

2.11 Because Mr. Loza was not the Responsible Person for Lucago the day that OOC Sample 1 was collected and the Presence of Clenbuterol was detected, HIWU served Mr. Loza with a Withdrawal of EAD Notice of Alleged Anti-Doping Rule Violation (“Presence EAD Withdrawal Letter”) on November 14, 2024. The Presence EAD Withdrawal Letter informed Mr. Loza that while the Presence EAD Notice was being withdrawn, he was contemporaneously being served with an EAD Notice Letter for the Use of the Banned Substance Clenbuterol in Lucago.

2.12 HIWU served Mr. Loza with an EAD Notice of Alleged Anti-Doping Rule Violation (the “Use EAD Notice Letter”) on November 14, 2024. The Use EAD Notice Letter contained both an invitation to provide a written explanation regarding the AAF and to request analysis of Lucago’s B Sample. The deadline for the B Sample request was November 19, 2024, at 5pm CST. The deadline to provide a written explanation was November 21, 2024, at 5pm CST. Neither a request for B Sample analysis nor a written explanation were provided, and thus the B sample was deemed waived.

2.13 On December 12, 2024, HIWU served Mr. Loza with an EAD Charge of Anti-Doping Rule Violation (“Use EAD Charge Letter”) for Use of the Banned Substance Clenbuterol in Lucago. The Charge Letter detailed Mr. Loza’s ability to request a hearing before the Arbitral Body and provided a deadline for that request of December 19, 2024, at 5pm CST. On the evening of December 19, 2024, following the expiration of that deadline, Mr. Loza requested a hearing. Mr. Loza also asserted that he “*consider[ed] [sic] unfair that a sanction or accusation against me regarding Lucago that wasn’t under my care or custody be imposed against me, when the horse wasn’t even under my care and much less when I am already serving a suspension*”.

The Facts According to Mr. Loza

2.14 On March 3, 2023, Mr Loza was registered in the HISA Portal as the Responsible Person for Lucago. Mr. Loza remained as the Responsible Person for Lucago in the HISA Portal until he transferred the Covered Horse to Trainer Luis Ramirez on June 20, 2024.

2.15 On February 14, 2024, a horse trained by Mr. Loza (Mexicoffee) underwent a doping test.

2.16 On March 13, 2024, Investigators from HIWU served Mr. Loza at Nelson Jones Farm and Training Center in Ocala, Florida with an EAD Notice Letter for an alleged AAF for Clenbuterol arising from a Sample collected from the Covered Horse “Mexicoffee”. In connection with the service of the EAD Notice Letter, HIWU Investigators thoroughly searched

Mr/ Loza's car and the areas of the barn Mr. Loza's identified as his.

2.17 On April 17, 2024, Mr. Loza was provisionally suspended for 16 months as of that date. He was further notified that he could be subject to a two-year period of Ineligibility due to the violation.

2.18 On April 22, 2024, Mr. Loza signed an Early Admission of Equine ADRV and Acceptance of Consequences Form, which reduced his period of Ineligibility from two years to 18 months.

2.19 After the notification of the provisional suspension, Mr. Loza's license was suspended. As such he was not allowed to be involved with the Covered Horses in any way and was prohibited from training or being present in the barn. Mr. Loza therefore flew to Mexico to take care about a personal matter and stayed there until the end of August 2024.

2.20 Mr. Loza returned all his Covered Horses to their respective owners except for Lucago whose owner did not indicate where to send him. Therefore, during this time, Lucago remained in Mr. Loza's barn until Mr. Auricchio, owner of Auricchio and Jacobson LLC, contacted Gulfstream Park.

2.21 Lucago was sent to Gulfstream Park on June 26, 2024, and received by Trainer Luis Ramírez who gave the horse on June 29, 2024 to Trainer Mark Passley.

2.22 Lucago raced on July 6, 2024, July 13, 2024, July 20, 2024, August 2, 2024, August 5, 2024, August 18, 2024, August 29, 2025, and September 6, 2024.

2.23 Lucago did not race for Mr. Loza in 2024.

2.24 On August 5, 2024, OOC Sample 1 was collected from Lucago at Gulfstream Park in Hallandale Beach, Florida.

2.25 On August 19, 2024, Industrial issued COA 1 for OOC Sample 1 reporting an AAF for Clenbuterol. Industrial did not perform segmental analysis on OOC Sample 1.

2.26 On September 3, 2024, OOC Sample 2 was collected from Lucago. Mr. Loza was not in the country when this sample was taken.

2.27 On September 20, 2024, Industrial issued COA 2 reporting an AAF for Clenbuterol. Industrial's analysis of OOC Sample 2 included segmental analysis and the LDP was prepared documenting the analysis of OOC Sample 2.

2.28 HIWU served Mr. Loza with a Use EAD Notice Letter on November 14, 2024.

2.29 In regards to the analysis, it is confirmed that as per the documents provided, there was a concentration of 1.58 ng/g at approx. 150 days, 1.9ng/g at approx. 120 days, 1.19 ng/g at approx. 90 days, 0.793 ng/g at approx. 60 days, and 0.247 ng/g at approx. 30 days prior to the

collection. Considering that Sample 2 was collected on September 3rd, this means that the aforementioned concentrations correspond to April 3rd, May 3rd, June 3rd, July 3rd and August 3rd, respectively.

The Stipulated Facts

2.30 On April 15, 2025, the Parties submitted the following joint stipulation of facts:

“1. HISA’s Anti-Doping and Medication Control (“ADMC”) Program came into effect on May 22, 2023.

2. Trainer Loza, a Trainer of Thoroughbred racehorses, is both a “Covered Person” and a “Responsible Person” under the ADMC Program.

3. On March 3, 2023, Trainer Loza registered in the HISA Portal as the Responsible Person (Trainer) for Covered Horse “Lucago.”

4. On March 13th, 2024 Investigators from HIWU served Trainer Loza at Nelson Jones Farm and Training Center in Ocala, Florida with an EAD Notice Letter for an alleged Adverse Analytical Finding (“AAF”) for Clenbuterol arising from a Sample collected from Covered Horse Mexicoffee. In connection with the service of the EAD Notice Letter, HIWU Investigators thoroughly searched the areas of the barn Trainer Loza identified as his as well as his car.

5. On April 17th, 2024 Trainer Loza was served with an EAD Charge Letter for the Anti-Doping Rule Violation involving Mexicoffee and he was Provisionally Suspended as of April 17, 2024; he was further notified in the Charge letter that he could be subject to a two-year period of Ineligibility due to the Violation.

6. On April 22, 2024, Trainer Loza signed an Early Admission of Equine Anti-Doping Rule Violation and Acceptance of Consequences Form, which reduced his period of Ineligibility from two years to 18 months.

7. Once Trainer Loza was Provisionally Suspended on April 17, 2024, he was not allowed to train or post Timed and Reported Workouts but he was allowed to care for his Covered Horses.

8. Once Trainer Loza’s Provisional Suspension converted to a final period of Ineligibility on April 25, 2024, he was not allowed to be involved with Covered Horses in any way.

9. Trainer Loza remained the Responsible Person for Lucago in the HISA Portal until he transferred Lucago to Trainer/Responsible Person Luis Ramirez on June 20, 2024.

10. On August 5, 2024, an Out of Competition hair Sample #H100792373 (“OOC

Sample 1”) was collected from Lucago at Gulfstream Park in Hallandale Beach, Florida.

11. On August 19, 2024, Industrial Laboratories (“Industrial”) in Denver, Colorado issued a Certificate of Analysis (“COA 1”) for OOC Sample 1 reporting an Adverse Analytical Finding for Clenbuterol. Industrial did not perform segmental analysis on OOC Sample 1.

12. On September 3, 2024, an Out of Competition hair Sample #H100700582 (“OOC Sample 2”) was collected from Lucago, again at Gulfstream Park.

13. On September 20, 2024, Industrial issued a Certificate of Analysis for OOC Sample 2 (“COA 2”) reporting an Adverse Analytical Finding for Clenbuterol. Industrial’s analysis of OOC Sample 2 included segmental analysis and a Laboratory documentation package was prepared documenting the analysis of OOC Sample 2.

14. HISA Portal Records reflect that Lucago does not have a treatment history or prescription for Clenbuterol.

15. On October 31, 2025, HIWU served Trainer Loza with an Equine Anti-Doping (“EAD”) Notice of Alleged Anti-Doping Rule Violation (the “Presence EAD Notice”) for two potential violations of ADMC Program Rule 3212, Presence of a Banned Substance, arising from Lucago’s OOC Sample 1 and OOC Sample 2.

16. HIWU served Trainer Loza with a Withdrawal of EAD Notice of Alleged Anti-Doping Rule Violation (“Presence EAD Withdrawal Letter”) on November 14, 2024.

17. HIWU served Trainer Loza with an EAD Notice of Alleged Anti-Doping Rule Violation (the “Use EAD Notice Letter”) on November 14, 2024.

18. On December 12, 2024, HIWU served Trainer Loza with an EAD Charge of Anti-Doping Rule Violation (“Use EAD Charge Letter”) for Use of the Banned Substance Clenbuterol in Lucago.

19. Trainer Loza requested a hearing on December 19, 2024.

20. On December 20, 2024, in accordance with ADMC Program Rule 7060(a), HIWU initiated binding arbitration for this matter and Judge Nancy Holtz was appointed as the sole arbitrator to preside over the arbitration”.

III. PROCEDURAL HISTORY

3.1 On November 14, 2024, HIWU issued its EAD notice to Mr. Loza asserting a charge for Use of the Banned Substance Clenbuterol.

3.2 On December 12, 2024, HIWU issued its charging letter to Mr. Loza asserting a charge for Use of the Banned Substance Clenbuterol.

3.3 On March 11, 2025, the Arbitrator issued Procedural Order No. 1, providing in pertinent part as follows:

“Appearing in this matter on behalf of HIWU is Allison Farrell, Esq. and Geneva Gnam, Esq., and appearing on behalf of Mr. Loza is Enric Ripoll, Esq. (individually, Claimant and Respondent shall be referred to herein as “Party” and collectively as “Parties”).

By agreement of the Parties (the Parties met and conferred and agreed the dates and hearing location as set forth herein) and Order of the Arbitrator, the following is now in effect:

1. Regarding Briefs and Exhibits

a. *Each party shall serve and file electronically a prehearing Brief on all significant disputed issues, setting forth briefly the party’s positions and the supporting arguments and authorities, on the dates specified below:*

- i. *Respondent’s Pre-Hearing Brief: **March 2025, 2025;** and*
- ii. *Claimant’s Response Brief: **April 8, 2025.***

b. *The parties shall submit their exhibits to be used at the hearing, electronically to the Arbitrator and the other party **on the dates their respective initial pre-hearing briefs are due.** The parties also shall include with their respective submissions an index to the exhibits. **All briefs, and any witness statements, shall be transmitted electronically to the Arbitrator.***

c. *To the extent that one party has submitted an exhibit that another party also intends to use (such as the World Anti-Doping Code, the USADA Protocol, or the HISA Regulations), the other party should not include a second copy of that document in its own exhibits but should otherwise refer to the exhibit submitted by the other side. The Parties shall endeavor to agree on a joint set of exhibits to minimize duplication. If possible, to make the hearing proceed more smoothly electronically, the Parties shall file their exhibits as an indexed .pdf file such that the Arbitrator and any Party can access the index and be taken directly to the exhibit within the .pdf file of all exhibits.*

2. Regarding Stipulations of Uncontested Facts and Procedure

- a. *The Parties shall submit a Stipulation of Uncontested Facts **on or before April 15, 2025.***
- b. *The Parties shall, in advance of the hearing, and **no later than 48 hours before the hearing,** agree upon and submit to the Arbitrator the order of witnesses to testify at the hearing that they have been able to agree upon; if the Parties are unable to so agree, they shall submit their respective positions by said deadline.*

3. *Regarding Witnesses*

- a. *Claimant shall serve and file a disclosure of all witnesses reasonably expected to be called by Claimant **on or before the due date of its prehearing brief.***
- b. *Respondent shall serve and file a disclosure of all witnesses reasonably expected to be called **on or before the due date of its initial pre-hearing brief.***
- c. *The disclosure of witnesses shall include the full name of each witness, a short summary of anticipated testimony sufficient to give notice to the other side of the general areas in which testimony shall be given. Copies of experts' reports and a written C.V. of any experts shall also be provided at the same time. If certain required information is not available, the disclosures shall so state. Each party shall be responsible for updating its disclosures as such information becomes available. The duty to update the information continues up to and including the date that hearing(s) in this matter terminate. The Arbitrator encourages the Parties to submit sworn witness statements which would constitute their direct testimony, requiring only cross-examination after a witness confirms their witness statement.*
- d. *The parties shall coordinate and decide to schedule the attendance of witnesses at the Hearing (defined below) so that the case can proceed with all due expedition and without any unnecessary delay.*

4. *Regarding the Hearing*

*The Hearing in this matter will commence before the Arbitrator in person on **April 17, 2025** starting at **9:00am** local time at JAMS, One Biscayne Tower, 2 South Biscayne Boulevard, Suite 3600, Miami, FL 33131.*

5. *Regarding Submission of Documents*

All documents due to be submitted hereunder shall be submitted electronically using the JAMS Access system. The Parties shall not communicate with the Arbitrator directly and alone; all communications with the Arbitrator are to be copied to the other side, and the JAMS case manager, at the same time as the communications are made to the Arbitrator and in the same form.

6. *Further Disputes Process*

*To the extent any dispute arises between the Parties beyond what has been stated already, any Party wishing to bring that dispute to the attention of the Arbitrator shall do so **promptly** after such dispute arises by sending a brief email to the Arbitrator, copied to the other side and JAMS (and filing on the JAMS Access system), outlining in basic, brief, general terms the nature of the dispute, their position thereon, and the relief being requested with relation thereto. The other side shall file a response, distributed to the same email list (and file with JAMS Access) and in line with the original email **shortly thereafter** briefly outlining in basic, general terms the nature of the dispute and their position thereon. There shall be no response to that email. The Arbitrator will, based on these two emails, determine the next steps with respect to resolving the dispute.*

7. *Miscellaneous Provisions*

- a. *All deadlines and requirements stated herein will be strictly enforced. Any deviation requires the permission of the Arbitrator based on a showing of good cause by the Party seeking an extension of time.*
- b. *This order shall continue in effect unless and until amended by subsequent order of the Arbitrator.*
- c. *Unless specified otherwise herein, for all deadlines for any Party to take any action under this Order, the time by which such action shall be due for each such designated action shall be **midnight Eastern Time** on the date given.*
- d. *The Parties' attention is drawn to the relevant provisions of the procedural rules that limit the liability of the Arbitrator in these proceedings. The Arbitrator agrees to participate in these proceedings on the basis that, and in reliance on the fact that, those provisions apply and the Parties agree to be bound by them. If any Party disagrees that those provisions apply here, they must notify the Arbitrator **within seven (7) days of the date of this order** in writing”.*

The Parties complied with the deadlines and other requirements set forth in Procedural Order No. 1.

3.4 On March 27, 2025, Mr. Loza requested to subpoena to HIWU to identify the

inspectors that conducted the search of Mr. Loza's premises. Additionally, Mr. Loza requested that HIWU be compelled to have Dr. Patricia A. Marquis, HIWU Director of Equine Medical Resources, and Dr. Mary Scollay HIWU Chief of Science, testify at the hearing. Mr. Loza's basis for the request was that "*considering the inspectors where the ones who searched unannounced Mr. Loza's premises, they are in position to testify about what Mr. Loza had or not in his premises, his behavior and availability during search, etc*" and "*regarding Dr. Marquis and Dr. Scollar, they are in the best position to respond to questions about the science behind the prohibited substance and its pharmacokinetics*".

3.5 On March 31, 2025, HIWU submitted a motion to compel a witness statement from Mr. Loza pursuant to Rule 7170(c) in the event that he intended to testify on direct examination at the hearing.

3.6 On March 31, 2025, HIWU also objected to Mr. Loza's request for subpoenas. However, it agreed to call and produce a witness statement from HIWU Investigator. Mr. Gregory T. Pennock, who was present at the Nelson Jones Farm on the day of the search.

3.7 On March 31, 2025, the Arbitrator denied the Mr. Loza's request for subpoena, but noted that Mr. Pennock, per HIWU's agreement, would testify at the hearing.

3.8 On April 10, 2025, HIWU requested a pre-trial conference to be held on April 14, 2025, to address the issue of the independent translator prior to the scheduled hearing. HIWU noted that the name of an independent translator had not yet been identified by Mr. Loza and that he was having trouble securing one. HIWU was concerned that, absent identification of an independent translator prior to the hearing, would result in the matter being continued.

3.9 On April 14, 2025, the Parties had a pre-hearing conference, in which counsel for Loza described the credentials of the interpreter. At that time, it was determined that the Arbitrator would conduct a colloquy with the interpreter at the time of the hearing to ensure competency and independence. Upon such a finding, Loza's chosen interpreter would be utilized.

3.10 On April 15, 2025, Mr. Loza submitted a witness statement, declaring as follows:

"In the last 16 months lots of things have happened to me. In February a horse of which I was responsible took a doping test and from then on everything went downhill. Unbeknown to me the horse offered a positive test, which end[ed] up with me sanctioned for 18 months. HIWU notified me [of] the positive and inspected my barn and my car, and 1 month later I got sanctioned. Obviously from the moment I was sanctioned I never had contact with my horses again, and now I am facing another positive because apparently a different horse was tested in September 2024. The horse's name is Lucago and I never raced him due to his physical history, and I have no knowledge of him being in contact with any prohibited substance".

3.11 On April 16, 2025, the Arbitrator, in agreement with the Parties, issued the proposed hearing schedule.

3.12 On April 8, 2025, HIWU submitted a list of anticipated witnesses for the hearing, listing Mr. Pennock, Ms. Hartmann and Dr. Heather K. Knych.

3.13 The evidentiary hearing proceeded in Miami, Florida, commencing at 9am local time, on 17 April 2025.

3.14 At the conclusion of the evidentiary hearing, both parties confirmed that they had been given a full, fair, and equal opportunity to present their case. No objections were made seeking to introduce any additional evidence or other witnesses nor did either side request any opportunity to submit further evidence. The evidence was thus closed as of this date.

3.15 On May 9, 2024, the parties submitted their respective post-hearing briefs as agreed at the hearing.

3.16 Upon the adjournment of the hearing, and the closing of the evidence, the Arbitrator commenced writing this Final Decision, which issued within the time required by the applicable rules.

IV. JURISDICTION

4.1 *The Horseracing Integrity and Safety Act of 2020*, 15 U.S.C. §§ 3051-3060 (the “Act”) recognizes the Horseracing Integrity and Safety Authority (“HISA”), a private non-profit organization for “*purposes of developing and implementing a horseracing anti-doping medication and control program and a racetrack safety program for covered horses, covered persons, and covered horseraces.*” 15 U.S.C § 3052(a). The program contemplated by the Act is commonly referred to as the “ADMC Program.”

4.2 The Horseracing Integrity & Welfare Unit (“HIWU” or the “Agency”) was created pursuant to the Horseracing Integrity and Safety Act of 2020 and is charged with administering the rules and enforcement mechanisms HISA’s ADMC Program. The ADMC Program was created pursuant to the Act, approved by the Federal Trade Commission on March 27, 2023, and implemented on May 22, 2023. *See* 88 Fed. Reg. 5084-5201 (January 26, 2023). The ADMC Program sets out the applicable rules that govern this proceeding and ground the jurisdiction of the Panel over all participants.

4.3 The ADMC Program sets out the applicable rules (“Rules”) that govern this Arbitration and the jurisdictional grounds of the Panel over all participants. For example, Rule Series 1000 contains general provisions, including Rules relating to interpretation and definitions. Rule Series 3000 establishes the Equine Anti-Doping and Controlled Medication Protocol (“Protocol”). And Rule Series 7000 – Arbitration Procedures – establishes a disciplinary process for hearing and adjudicating violations of the rules and related offenses.

4.4 Rule 3010(b) provides in part the Protocol “*has been developed and issued by the Authority as part of that mandate*” and “*contains or incorporates by reference rules, standards,*

and procedures to improve and protect the integrity and safety of horseracing in the United States by deterring and penalizing the improper administration or application of Prohibited Substances and Prohibited Methods to Covered Horses”.

4.5 Rule 3010(d) notes that the ADMC Program reflects and incorporates the fundamental principal that *“Covered Horses should compete only when they are free from the influence of medications, other foreign substances and treatment methods that affect their performance”.*

4.6 The Agency’s implementation and enforcement power is set out in the ADMC Program which provides that *“[t]he Protocol will be implemented and enforced on behalf of the Authority by [the Agency]”* (Rule 3010(e)).

4.7 The ADMC Program has a broad application to the Thoroughbred racing industry across the United States. It *“applies to and is binding on”* all Thoroughbred horses at any horserace *“that has a substantial relation to interstate commerce,”* as well as to all *“Trainers, Owners, Breeders, Jockeys, Racetracks, Veterinarians...and any other horse support personnel who are engaged in the care, treatment, training, or racing of Covered Horses”* (Rule 3020).

4.8 Rule 1020 defines “Covered Horses” as follows:

“any Thoroughbred horse, or any other horse made subject to the Act by election of the applicable State Racing Commission or the breed governing organization for such horse under section 3054(l), during the period: (A) beginning on the date of the horse’s first Timed and Reported Workout at a Racetrack that participates in Covered Horseraces or at a training facility; and (B) ending on the date on which the horse is deemed retired pursuant to Rule 3050(b)”.

4.9 Rule 1020 also defines “Covered Persons” as follows:

“Covered Person means all Trainers, Owners, Breeders, Jockeys, Racetracks, Veterinarians, Persons licensed by a State Racing Commission, and the agents, assigns, and employees of such Persons; any other Persons required to be registered with the Authority; and any other horse support personnel who are engaged in the care, treatment, training, or racing of Covered Horses”.

4.10 Rule 1020 also defines *“EAD Violations means Anti-Doping Violations arising out of the Rule 3000 Series and violations of Rule 3229.”*

4.11 Rule 3030 provides, in pertinent part, that:

“Responsible Person means the Trainer of the Covered Horse. If the Covered Horse does not have a Trainer, the Responsible Person shall be the Owner of the Covered Horse. The Responsible Person shall be personally liable for his or her Covered Horse(s) as set out under the Protocol”.

4.12 In this matter, there is no dispute that “Lucago” is a “Covered Horse.” There is also no dispute that Mr. Loza was the Covered Horse’s Trainer until June 20, 2024 and that he is required to be - and is - registered with the HISA. As such, Mr. Loza was both a “Responsible Person” until June 20, 2024, and a “Covered Person” to date and is bound by and subject to the ADMC Program.

4.13 The Rule 7000 Series of the ADMC Program sets out the arbitration procedures governing a charged violation of the ADMC Program, providing as follows:

“Rule 7010. Applicability. The Arbitration Procedures set forth in this Rule 7000 Series shall apply to all adjudications arising out of the Rule 3000 Series”.

4.14 Rule 7020 provides:

“Delegation of Duties (a) Subject to Rule 3249, Anti-Doping Rule Violations arising out of the Rule 3000 Series and violations of Rule 3229 (together, ‘EAD Violations’) shall be adjudicated by an independent arbitral body (the ‘Arbitral Body’) in accordance with the Rule 3000 Series and these Arbitration Procedures. The Arbitral Body may also adjudicate any other matter referred to it under the Protocol, and any other matter that might arise from time to time under the Protocol that the Agency considers should be determined by the Arbitral Body”.

4.15 Where HIWU issues a Charge Letter effecting charges on a Covered Person, arbitral proceedings are initiated pursuant to Rule 7060:

“Unless Rule 3249 applies, if the Agency charges a Covered Person with an EAD Violation, the Agency shall initiate proceedings with the Arbitral Body. If a Covered Person is charged with both an EAD Violation and an ECM or Other Violation, the procedures for EAD Violations apply. The parties to the proceeding shall be the Agency and the Covered Person(s) charged. The Owner and the Authority shall be invited to join in the proceedings as observers and, if accepted as such, receive copies of the filings in the case. In the context of EAD Violation cases, the Owner may be permitted to intervene and make written or oral submissions”.

4.16 In this case, arbitration proceedings were commenced before JAMS, the designated arbitration provider. Mr. Loza had notice of the charge against him. Mr. Loza did not raise any objection to the Arbitrator’s jurisdiction or the arbitrability of any issues raised in this arbitration, including all issues related to the Use ADRV. HIWU also fully participated in this Arbitration without any objection to the Arbitrator’s jurisdiction or the arbitrability of any issues raised in this arbitration, including all issues related to the Use ADRV.

4.17 As consent is the benchmark of arbitral jurisdiction, there is ample evidence of consent and no evidence of objection to arbitral jurisdiction here.

4.18 Accordingly, the Arbitrator finds that jurisdiction is proper here.

V. RELEVANT LEGAL STANDARDS

5.1 Rule 3213 of the ADMC Program – “*Use or Attempted Use of a Banned Substance or a Banned Method*” – provides as follows:

“(a) Subject to Rule 3213(c), the Use or Attempted Use of a Banned substance or Banned Method in relation to a Covered Horse constitutes an Anti-Doping Rule Violation. The success or failure of that Use or Attempted Use is not material. For a Rule 3213 violation to be committed it is sufficient that the Banned Substance or Banned Method was Used or Attempted to be Used.

(b) It is the personal and non-delegable duty of the Responsible Person to ensure that no Banned Substance or Banned Method is Used in relation to his or her Covered Horse. The Responsible Person is therefore strictly liable for any Use of a Banned Substance or Banned Method in relation to his or her Covered Horse(s). Accordingly, it is not necessary to demonstrate intent, Fault, negligence of knowing Use on the part of the Responsible Person, in order to establish that the Responsible Person has committed a Rule 3213 Anti-Doping Rule Violation of Use. However, in accordance with the definition of Attempt, it is necessary to show intent on the part of the Responsible Person in order to establish that the Responsible Person has committed a Rule 3213 Anti-Doping Rule Violation of Attempted Use.

(c) The presence of a Prohibited Substance or of evidence of Use or a Prohibited Method in the Covered Horse’s Sample or other evidence of Use of such Prohibited Substance or Prohibited Method shall not be considered an Anti-Doping Rule Violation if it is determined to have resulted from Use of the Banned Substance or Banned Method prior to the horse becoming a Covered Horse. However, any such Use is subject to Rule 3040(b)(9) and may be reported to the relevant State Racing Commission”.

5.2 “Use” means “*the utilization, application, ingestion, injection, or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method in relation to a Covered Horse*” (Rule 1020).

5.3 Pursuant to Prohibited List Rule 4114(b), Clenbuterol is a category S3 Banned Substance on the Prohibited List and Technical Document–Prohibited Substances, unless it is prescribed to a Covered Horse in the context of a valid veterinarian-client-patient relationship as a bronchodilator, and meets other certain conditions set forth therein. Said rule provides:

“The following substances, and other substances with similar chemical structure or similar biological effect(s), are prohibited at all times: all selective and non-selective beta-2 agonists, including all optical isomers. Notwithstanding the above, the following are not prohibited under this section S3:

(...)

(b) clenbuterol when prescribed by a Veterinarian (in the context of a valid veterinarian-patient-client relationship) for a duration not to exceed 30 days in a 6-month period and provided that, following administration of clenbuterol, the Covered Horse shall be placed on the Veterinarians' List and shall not be eligible to participate in any Timed and Reported Workout or Covered Horserace until a urine and a blood Sample have been collected from it by or on behalf of the Agency, and analysis by a Laboratory of those Samples does not detect the presence of clenbuterol or its Metabolites or Markers”.

5.4 Pursuant to Rule 3121, the burden of proof is on HIWU to establish that a violation of the ADMC Program has occurred to the comfortable satisfaction of the Panel: *“This standard of proof is higher than a balance of probabilities but lower than clear and convincing evidence or proof beyond a reasonable doubt”* (Rule 3121).

5.5 The World Anti-Doping Code (“WADC”) provides the framework for a harmonious international anti-doping system and is widely used in international sports and expressly acknowledged as the basis for the ADMC Program. Rule 3070 provides in pertinent part that:

“(b) Subject to Rule 3070(d), the Protocol shall be interpreted as an independent and autonomous text and not by reference to existing law or statutes. . . .

(d) The World Anti-Doping Code and related International Standards, procedures, documents, and practices (WADA Code Program), the comments annotating provisions of the WADA Code Program, and any case law interpreting or applying any provisions, comments, or other aspects of the WADA Code Program, may be considered when adjudicating cases relating to the Protocol, where appropriate.”

5.6 The definition of Use of a Banned Substance in the ADMC Program is substantively identical to the definition of Use in the WADC (*see* Article 2.2).

5.7 Rule 3040 sets out certain obligations of a trainer such as Mr. Loza, as both a Covered Person and a Responsible Person, in pertinent part as follows:

“(A) Responsibilities of All Covered Persons

It is the personal responsibility of each Covered Person:

(1) to be knowledgeable of and to comply with the Protocol and related rules at all times. All Covered Persons shall be bound by the Protocol and related rules, and any revisions thereto, from the date they go into effect, without further formality. It is the responsibility of all Covered Persons to familiarize themselves with the most up-to-date version of the Protocol and related rules and all revisions thereto; . . .

(B) Additional Responsibilities of Responsible Persons

In addition to the duties under Rule 3040(a), it is the personal responsibility of each Responsible Person:

(...)

(3) to ensure that treatments and medications administered to his or her Covered Horses...do not contain a Banned Substance or involve a Banned Method; and (v) do not otherwise violate the Protocol...

(...)

(6) to bear strict liability for any violations of the Protocol by such Covered Persons (including Veterinarians), employees, personnel, agents, and other Persons involved in the care, treatment, or racing of his or her Covered Horses;

(7) to file and update as necessary with the Authority information identifying what Covered Horses he or she is the Responsible Person for”.

5.8 Pursuant to ADMC Program Rule 3223, the ineligibility, and financial penalties for a first ADRV of Rule 3213 (Use) is “2 years” and a “*Fine of up to \$25,000 or 25% of the total purse (whichever is greater)*”, as well as “*Payment of some or all of the adjudication costs and the Agency's legal costs*”.

5.9 Pursuant to ADMC Program Rule 3228, the ineligibility, and financial penalties for a second ADRV of Rule 3213 (Use) is:

- (a) The period of Ineligibility shall be the greater of: (a) a 6-month period of Ineligibility; or (b) a period of Ineligibility in the following range, taking into account the entirety of the circumstances and the Covered Person's degree of Fault with respect to the second violation:
 - i) the sum of the period of Ineligibility imposed for the first Anti-Doping Rule Violation, plus the period of Ineligibility otherwise applicable to the second Anti-Doping Rule Violation treated as if it were a first violation; and

- ii) twice the period of Ineligibility otherwise applicable to the second Anti-Doping Rule Violation treated as if it were a first violation

- (b) Fine of up to \$50,000 or 50% of the total purse (whichever is greater), and payment of some or all of the adjudication costs and the Agency's legal costs.

5.10 According to Rule 3223(c)(2), any Consequences imposed for an ADRV are to be served consecutively: “[w]here a Covered Person is already serving a period of Ineligibility for another violation of the Protocol, any new period of Ineligibility shall start to run the day after the original period of Ineligibility ends”.

5.11 Where a Violation of the ADMC Program is established, the Respondent *may* be entitled to a mitigation of the applicable Consequences, only where he establishes on a balance of probabilities, that he acted with either No Fault or Negligence, or No Significant Fault or Negligence. Fault is defined in the ADMC Program as:

“any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Covered Person’s degree of Fault include (but are not limited to) the Covered Person’s experience and special considerations such as impairment, the degree of risk that should have been perceived by the Covered Person, and the level of care and investigation exercised by the Covered Person in relation to what should have been the perceived level of risk.

With respect to supervision, factors to be taken into consideration are the degree to which the Covered Person conducted appropriate due diligence, educated, supervised, and monitored Covered Persons (including Veterinarians), employees, personnel, agents, and other Persons involved in any way with the care, treatment, training, or racing of his or her Covered Horses, and created and maintained systems to ensure compliance with the Protocol.

In assessing the Covered Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Covered Person’s departure from the expected standard of behavior. Thus, for example, the fact that the Covered Person would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Covered Person or Covered Horse only has a short time left in a career, or the timing of the horseracing calendar, would not be relevant factors to be considered in reducing the period of Ineligibility based on degree of Fault.”

5.12 ADMC Program Rule 3224 permits the reduction of sanctions where there is No Fault or Negligence, as follows:

“Rule 3224. Elimination of the Period of Ineligibility Where There Is No Fault or Negligence

(a) If a Covered Person establishes in an individual case that he or she bears No Fault or Negligence for the Anti-Doping Rule Violation(s) charged, the otherwise applicable period of Ineligibility and other Consequences for such Covered Person shall be eliminated (except for those set out in Rule 3221(a) and Rule 3620)...

(b) Rule 3224 only applies in exceptional circumstances...”

5.11 No Fault or Negligence is defined by the ADMC Program as:

“the Covered Person establishing that he or she did not know or suspect, and could not reasonably have known or suspected, even with the exercise of utmost caution, that he or she had administered to the Covered Horse (or that the Covered Horse’s system otherwise contained) a Banned Substance or a Controlled Medication Substance, or that he or she had Used on the Covered Horse a Banned Method or a Controlled Medication Method, or otherwise committed an Anti-Doping Rule Violation or Controlled Medication Rule Violation. For any violation of Rule 3212 or Rule 3312, the Covered Person must also establish how the Prohibited Substance entered the Covered Horse’s system in order to establish No Fault or Negligence.”

5.13 ADMC Program Rule 3225 also allows for the reduction of sanctions where there is No Significant Fault or Negligence, as follows:

“Rule 3225. Reduction of the Period of Ineligibility Where There Is No Significant Fault or Negligence

Reductions under this Rule 3225 are mutually exclusive and not cumulative, i.e., no more than one of them may be applied in a particular case.

(a) General rule.

Where the Covered Person establishes that he or she bears No Significant Fault or Negligence for the Anti-Doping Rule Violation in question, then... the period of Ineligibility shall be fixed between 3 months and 2 years, depending on the Covered Person’s degree of Fault.”

5.14 No Significant Fault or Negligence is defined in the ADMC Program as:

“the Covered Person establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the Anti-Doping Rule Violation or Controlled Medication Rule Violation in question”

VI. THE PARTIES' CONTENTIONS AND CLAIMS FOR RELIEF

6.1 The Parties asserted various arguments in their pre-hearing briefs and at the hearing. The below is an effort to summarize their fundamental positions. To the extent necessary, the Arbitrator will address the various arguments that were made in the Analysis section below.

HIWU's Contentions

6.2 HIWU's pre-hearing brief may be summarized as follows:

- (a) Mr. Loza committed an ADRV by engaging in the Use of the Banned Substance Clenbuterol on the Covered Horse, Lucago, before transferring this horse to another trainer on June 20, 2024.
- (b) There is no dispute that Lucago was exposed to Clenbuterol outside the requirements of Prohibited List Rule 4114(b).
- (c) The timing of Lucago's exposure to Clenbuterol dates back to the timeframe when Mr. Loza was the Responsible Person for Lucago, specifically April - June 20, 2024. Indeed, Industrial, an ISO/IEC 17025-2017 accredited laboratory, completed segmental of Lucago's OOC Sample 2, cutting it into five one-inch segments and analyzing each of those individual segments, to find that Clenbuterol was "*confirmed to be present in all five one-inch segments of hair*".
- (d) The expert, Dr. Knych, concurs with the timeline established by Industrial's segmental analysis, opining that the presence of Clenbuterol at the reported concentration in Segment 5 of Lucago's hair Sample #H100700582 indicates exposure 150 days prior to collection of the sample. As discussed by Dr. Knych, equine hair grows approximately 1 inch per month and based upon scientific data and peer-reviewed studies, it follows that the segments identified by Industrial correspond to the following time frame(s) prior to Sample Collection:
 - Segment 1 corresponds to 0-30 days, or up to 1 month prior to September 3, 2024 (approx. August 3, 2024-September 3, 2024);
 - Segment 2 corresponds to 30-60 days, or between 1 and 2 months prior to September 3, 2024 (approx. July 3, 2024-August 3, 2024);
 - Segment 3 corresponds to 60-90 days, or between 2 and 3 months prior to September 3, 2024 (approx. June 3, 2024-July 3, 2024);
 - Segment 4 corresponds to 90-120 days, or between 3 and 4 months prior to September 3, 2024 (approx. May 3, 2024-June 3, 2024); and

- Segment 5 corresponds to 120-150 days, or between 4 and 5 months prior to September 3, 2024 (approx. April 3, 2024-May 3, 2024).

In Dr. Knych's opinion, "*Lucago was exposed to Clenbuterol five months, or 150 days, prior to the September 3, 2024 collection of Sample #H100700582, which makes the date in or about the beginning of April 2024.*"

- (e) Mr. Loza was the sole Responsible Person for Lucago during the time frame correlating with Segments 4 and 5. For Clenbuterol to be detected in said segments, it had to have been Used on Lucago prior to June 3, 2024.
- (f) It is irrelevant that Mr. Loza was not the Responsible Person for Lucago at the time the Sample was collected on September 3, 2024. Mr. Loza was the Responsible Person at the time the Clenbuterol was used.
- (g) Proof of an ADRV can be established by any reliable means. In this instance, Mr. Loza's Use ADRV is established by Industrial's LDP, its supporting reliable analytical data, and the interpretation of that data by Dr. Knych. The ADRV is bolstered by Mr. Loza's own evidence from Dr. Vautier and Mr. Dominguez that Mr. Loza continued to direct the training and care of Lucago through May 2024. The ADRV is further supported by the fact that Mr. Loza committed a prior ADRV for the Presence of the same substance, Clenbuterol, in a different Covered Horse's Sample collected from Mexicoffee on February 14, 2024. Mexicoffee's Sample collection occurred approximately six weeks prior to the first evidence of Use in Lucago, and during a timeframe when both horses were stabled at Nelson Jones Farm and Training Center.
- (h) As Mr. Loza was the role Responsible Person for Lucago prior to June 20, 2024, he is strictly liable for the Use of Clenbuterol on the Covered Horse Lucago during April and May 2024 up until June 20, 2024.
- (i) Where, as here, an ADRV is established, the burden shifts to Mr. Loza to attempt to mitigate the default Consequences by establishing on a balance of probabilities that he acted with either No Fault or No Significant Fault.
- (j) To establish No Fault, Covered Persons must establish that despite that exercise of the utmost caution they could not have reasonably known or suspected that they were committing an ADRV. It is a commonly established principle in the *lex sportiva* that No Fault applies only in the most extreme and exceptional circumstances (Rule 3224(b)). A Covered Person must demonstrate that it was nearly impossible for them to be able to reasonably suspect, or know, that they may be committing or at risk of committing an ADRV.
- (k) The concept of "Fault," as defined in the ADMC Program (and consistent with the *lex sportiva*) is focused on the specific conduct of the individual in question and is not concerned with the impact of the penalties that might be imposed on

them. Pursuant to this definition, corollary considerations such as the ex-post economic impact on Covered Persons of the imposed sanctions are irrelevant to reducing potential Ineligibility based on degree of Fault. The CAS has also consistently held that the concept of No Significant Fault is also reserved for exceptional circumstances.

- (l) Mr. Loza has not met his burden to establish that he is entitled to a reduction in Consequences under No Fault or No Significant Fault:
- Mr. Loza argues that because he was already serving a period of Ineligibility for a prior Clenbuterol ADRV, he could not possibly have been the Responsible Person for Lucago during the relevant time period of April – June 20, 2024.
 - However, Mr. Loza agreed to be bound by the ADMC Program Rules by way of his participation in Thoroughbred horseracing and, despite his bare insistence that he was not the Responsible Person for Lucago, HIWU's evidence proves that he was.
 - Mr. Loza registered himself with HISA as the Responsible Person for Lucago on March 3, 2023 and, pursuant to Rule 3030(c), was required to “*keep such designation and registration up-to-date*”. Moreover, Mr. Loza remained as the Responsible Person for Lucago until a valid transfer was made which, pursuant to Rule 3229(b)(1), required that “(i) *the transfer must be registered with the Authority in accordance with its procedures, and (ii) the Covered Horses must also be physically relocated to facilities under the care or control of a Covered Person who is not affiliated with the suspended Trainer (and failure to comply may constitute an Anti-Doping Rule)*”.
 - Although Mr. Loza's period of Ineligibility for his prior Clenbuterol ADRV began on April 17, 2024, it is undisputed that he did not transfer Lucago to another Trainer until June 20, 2024. Under Rule 3229(b)(1), there was no valid transfer of Lucago until this date.
 - Mr. Loza's own submissions do nothing to bolster his claim that he was not responsible for Lucago during the relevant time frame. Rather, they undercut his claim, as both Mr. Dominguez and Dr. Vautier confirm that he continued to communicate with them *via* telephone to give instructions regarding the horses.
 - Despite Trainer Loza's argument that “*he wasn't even in the country,*” Mr. Loza's physical presence in the barn is irrelevant to his obligations as the Responsible Person for Lucago. As described by his own witnesses, Mr. Loza was still acting as the Responsible Person for his Covered Horses by directing their training and veterinary care through May and had a responsibility pursuant to Rule 3040(b), “*to adequately supervise all Covered Persons (including Veterinarians), employees, personnel, and other Persons involved in any way*

in the care, treatment, training, and/or racing of his or her Covered Horses”.

- Moreover, as the Responsible Person for Lucago from March 3, 2023 to June 20, 2024, even if Mr. Loza delegated someone else to care for Lucago prior to his transfer on June 20, 2024, he nonetheless was “*personally liable for his [] Covered Horse(s) as set out under the Protocol*” (Rule 3030(a)), and did not have the right to delegate his liability or obligations under the Protocol as a Responsible Person to other “[c]overed persons (including Veterinarians), employees, personnel, agents, [or] other Persons involved in any way with the care, treatment, training, or racing” of his Covered Horses (Rule 2040(b)).

6.3 In support of its position, HIWU submitted the following witness statement and expert report:

- (a) Witness statement from Ms. Petra Hartmann, Director of Drug Testing Services at Industrial Laboratories in Denver, Colorado:

“The hair Sample bearing HIWU code #H100792373 was collected on August 5, 2024, was received by Industrial on August 6, 2024, and was assigned the internal identification number 240806035-001.

The hair Sample #H100792373 screening tests were conducted from August 6, 2024 to August 13, 2024, and confirmatory testing on this sample was conducted on August 13-14, 2024. Testing resulted in a reported Adverse Analytical Finding (AAF) for Clenbuterol in hair. Industrial issued a Certificate of Analysis to this effect on August 19, 2024.

HIWU subsequently asked me if Industrial could perform segmental analysis on hair Sample #H100792373, but there was not enough hair left to submit to segmental analysis.

The hair Sample bearing HIWU code #H100700582 was collected on September 3, 2024, was received by Industrial on September 4, 2024, and was assigned the internal identification number 240904007-001.

HIWU requested that hair Sample #H100700582 be segmentally analyzed.

Hair Sample #H100700582 was cut into five one-inch segments and each segment was analyzed.

The hair Sample #H100700582 screening tests were conducted from September 4, 2024 to September 10, 2024, and confirmatory testing on this sample was conducted on September 17-18, 2024. Testing resulted in a reported Adverse Analytical Finding for Clenbuterol in hair. Industrial issued a Certificate of Analysis to this effect on September 20, 2024.

As set forth in the Certificate of Analysis, Clenbuterol was confirmed to be present in all five one-inch segments of hair Sample #H100700582.

The estimated concentrations of Clenbuterol in each segment, per Qualitative Analysis, are:

- a. First segment, 0-1": 0.247 ng/g*
- b. Second segment, 1-2": 0.793 ng/g*
- c. Third segment, 2-3": 1.19 ng/g*
- d. Fourth segment, 3-4": 1.90 ng/g*
- e. Fifth segment, 4-5": 1.58 ng/g*

The estimated concentrations of each segment of hair Sample #H100700582 are set forth on page 16 of the A Sample laboratory document packet, but I also sent them by separate email to Dirk Hunt and Mary Scollay at HIWU, with cc to Timothy Krueger of Industrial, on September 20, 2024 at 8:55 P.M. A copy of this email is attached hereto as Exhibit D.

Based on my knowledge of the average rate of hair growth in horses, which is generally one-inch per month, I set forth in my email the timetable of segment growth. Specifically, each segment correlates with approximately 30 days of hair growth, meaning that segment five represents growth approximately 150 days prior to Sample collection..."

- (b) Expert report from Dr. Heather Knych, Professor of Clinical Veterinary Pharmacology and Pharmacology Section Head at K.L. Maddy Equine Analytical Chemistry Lab at the University of California, Davis:

"Clenbuterol remains detectable in hair for a long period of time, relative to the detection window for Clenbuterol in plasma (blood) or urine.

The half-life of elimination of a therapeutic or "low" dose of Clenbuterol in plasma as reported in the 2014 study was 10.4 + 4.4 hours, which was consistent with previous studies; Clenbuterol plasma concentrations were below detectable levels by Day 7 in all 22 horses studied at the therapeutic dose and were below the limit of quantification by Day 7 in 5 of 6 horses receiving the "escalating dosing" protocol.

In urine, Clenbuterol was below the laboratory's limit of detection (2 pg/mL) between Days 21 and 28, following the final administration, for horses receiving the "low" or therapeutic dose. Clenbuterol was below the limit of detection of the assay between Days 21 and 28 in 5 of 6 of the horses administered the escalating dosing regimen.

In contrast, Clenbuterol can be detected in both mane and tail hair for one year after a 10-day administration of the therapeutic "low" dose.

(...)

The study conducted by Schlupp and colleagues demonstrated that clenbuterol deposits in equine hair (both mane and tail) and is detectable for an extended period (minimum of 360 days depending on the hair segment tested). As the hair grows and increases in length, the amount of clenbuterol in hair segments closer to the root decreases as the segments containing clenbuterol move away from the root. Therefore, segments further away from the root, contain more drug over time. The specific segment containing clenbuterol at any given time, correlates with the rate of hair growth (approximately 1-inch/month).

(...)

Industrial Laboratories analyzed hair Sample #H100700582 and this time, subjected the Sample to segmental analysis.

The hair Sample was cut into five, one-inch segments.

Industrial Laboratories determined that Clenbuterol was present in each one-inch segment in the following estimated concentrations:

*First segment, 0-1": 0.247 ng/g
Second segment, 1-2": 0.793 ng/g
Third segment, 2-3": 1.19 ng/g
Fourth segment, 3-4": 1.90 ng/g
Fifth segment, 4-5": 1.58 ng/g*

Horse mane and tail hair grows at a very uniform rate of 0.56 and 0.57 cm/week, respectively, which converts to a growth rate approximating one-inch per month.

Based on the uniform growth rate of horse hair, and the Clenbuterol concentrations reported in the Schlupp study, it is my opinion that the presence of Clenbuterol at the reported concentration in segment 5 of Lucago's hair Sample #H100700582 indicates exposure 150 days prior to collection of the Sample. This timeframe is further supported by comparison of the reported concentrations from segments 1-4 from Sample #H100700582, and those reported in the Schlupp paper.

Based on all the above, it is my opinion that Lucago was exposed to Clenbuterol five months, or 150 days, prior to the September 3, 2024 collection of Sample #H100700582, which makes the exposure date in or about the beginning of April 2024".

6.4 On 31 March 2025, HIWU also submitted the witness statement of Mr. Gregory T. Pennock, HIWU Investigator, in which he declared *inter alia*:

"In March, 2024, it was brought to my attention that an EAD Notice of Alleged Anti-Doping Rule Violation ("EAD Notice") was to be served on Trainer Efren Loza, Jr.

(“Trainer Loza”). EAD Notices are usually personally served upon Responsible Persons.

On March 13, 2024, I served an EAD Notice of Alleged Anti-Doping Rule Violation upon Trainer Loza. The March 13, 2024 EAD Notice arose from a Post-Race urine Sample, identified as Sample #U100599455, collected from Covered Horse Mexicoffee on February 14, 2024, at Gulfstream Park in Hallandale, Florida.

The service was completed on March 13, 2024, at the Nelson Jones Farm and Training Center, located at 2500 SW 125th Avenue, Ocala, Florida (“Nelson Jones Farm”).

Nelson Jones Farm is a private training facility with a number of barns and a training track.

Upon arrival at Nelson Jones Farm, Trainer Loza was not present, so we contacted the farm manager who provided us with a phone number for Trainer Loza. I called Trainer Loza, who agreed to return to Nelson Jones Farm to be served with the EAD Notice.

Upon Trainer Loza’s arrival at Nelson Jones Farm, I went over the contents of the EAD Notice with him. Trainer Loza stated that he was the primary caretaker for Covered Horse Mexicoffee. He stated he did not know where the positive finding for Clenbuterol could have originated. Trainer Loza also stated that he had given Mexicoffee some kind of “throat spray” and did not know if that could have caused the positive finding. Trainer Loza no longer had the bottle for the throat spray he said he used on Mexicoffee.

Trainer Loza told me that he rented multiple stalls in Barn 3 at Nelson Jones Farm but only had three horses stabled there at the time, being the Covered Horses Mexicoffee, Banker’s Hours, and Lucago.

He told me that he shared the barn with another Trainer and he identified two tack room areas that he said he shared with the other Trainer.

HIWU Investigators, including myself, conducted a search of the areas in Barn 3 that he identified and his vehicle; no Banned Substances were found.

There were areas of the barn, including what appeared to be a living area or a small residence, that we did not access or search as Trainer Loza did not identify them as his.

The service of the EAD Notice and the search of Trainer Loza’s facilities at Nelson Jones Farm lasted approximately one hour.

The March 13, 2024 search at Nelson Jones Farm was the only search HIWU conducted of Trainer Loza’s premises; no search was conducted in connection with the current matter involving the Adverse Analytical Finding for Lucago.

In connection with the Use ADRV, I reviewed Lucago's "Person History" in the HISA Portal, which confirmed that Trainer Loza registered as Lucago's Responsible Person on March 3, 2023. The Person History indicated that Trainer Loza did not transfer Lucago to Trainer Luis Ramirez until June 20, 2024.

In connection with the Use ADRV, I also reviewed the "Horse Health Records" for Lucago in the HISA Portal.

HISA regulations require all veterinary treatment records for Covered Horses to be uploaded to the HISA Portal.

If Lucago had been validly prescribed and treated with Clenbuterol sometime I 2024 there should have been a record of it in the HISA Portal but there was no record of a valid prescription or treatment history for Clenbuterol associated with Lucago".

6.5 HIWU's post-hearing brief may be summarized as follows:

- (a) HIWU's evidence in support of the ADRV is unchallenged, unrebutted, reliable and replete. Unlike a Presence case, where the violation is established solely by laboratory analysis, a Use violation can be established by any reliable means.
- (b) HIWU is not required to demonstrate intent, fault, negligence or knowing Use on the part of the Responsible Person. For HIWU to establish that a Use violation was committed it is sufficient that the Banned Substance was Used (Rule 3213(a)). Further, the Responsible Person is strictly liable for any Use in relation to his Covered Horses (Rule 3213(b)).
- (c) HIWU has carried its burden of establishing to the standard of comfortable satisfaction that Mr. Loza committed a Use violation. In particular, the ADRV has been proven by the fact that:
 - Lucago was exposed to Clenbuterol. This is evident from (i) the COA 2, which included a segmental analysis five one-inch segments of Lucago's hair with each segment containing Clenbuterol, and (ii) Dr. Kynch's interpretation of said analysis, which is unrebutted.
 - There is no evidence that Lucago had a valid prescription for Clenbuterol. In fact, Mr. Pennock confirmed in his review of Lucago's veterinary treatment records in the HISA Portal that Lucago had no treatment for a prescription of Clenbuterol.
 - Lucago's exposure to Clenbuterol occurred when Mr. Loza was his Responsible Person, as evident from the testimony of Mr. Pennock, Ms. Petra Hartmann, Dr. Kynch and Mr. Loza:

- Mr. Pennock testified that he had reviewed Lucago's HISA Portal Personal History and HISA Portal Health Records and confirmed that Mr. Loza was Lucago's Responsible Person from March 3, 2023, until he was transferred to Mr. Ramirez on June 20, 2024.
 - Ms. Hartmann testified that Lucago's two samples, collected on August 5, 2024 and September 3, 2024 were both positive for Clenbuterol. She also testified that the OOC Sample 2 was segmentally analyzed and Clenbuterol was present in each of the five one-inch segments that the laboratory analyzed. She added that segment 5 represented hair growth five months prior to the sample collection, which would be in the beginning of April 2024.
 - Dr. Knych opined – based on the *Schlupp* study and her own 2014 administration study involving Clenbuterol – that based upon Industrial's segmental analysis of OOC Sample 2 and the average rate of equine hair growth of one inch per month, Lucago was most likely exposed to Clenbuterol approximately 150 days, or five months, prior to the hair collection of OOC Sample 2 on September 3, 2024. Dr. Knych testified that Lucago was most likely exposed to Clenbuterol in or about the beginning of April 2024.
 - Dr. Vautier testified that he served as Lucago's attending veterinarian between April and June 2024. Dr. Vautier confirmed that – although he understood Mr. Loza was subject to a period of Ineligibility on April 17, 2024, Mr. Loza continued to direct the veterinary care of his Covered horses through May 2024, including Lucago.
 - Mr. Dominguez confirmed that Mr. Loza continued giving him instructions regarding the training of his Covered Horses, including Lucago, until the end of April 2024.
 - Mr. Loza's prior ADRV also involved Clenbuterol and was the result of a sample collected from a Covered Horse stabled at the same location as Lucago a mere six weeks prior to the timeframe of Lucago's exposure.
- (d) Concomitantly, Mr. Loza has failed to meet his burden to establish, on a balance of probabilities, that he acted with either No Fault or No Significant Fault of Negligence. In order to establish that he bears No Fault or No Significant Fault, Mr. Loza had to establish how the Clenbuterol entered Lucago's system (Rule 1020). However, Mr. Loza failed to present any actual evidence, credible or not, regarding the Clenbuterol's source and, in fact, claims he does not know the source. Mr. Loza's mere denial of knowledge of the source, even if credible, does not satisfy his burden. Because he has not proven source, Mr. Loza has simply not laid the ground for an intelligible assessment of his degree of fault and it is simply unfeasible to discuss a reduction. Mr. Loza's denial does not relieve him of his duties under the

ADMC Program as the Responsible Person, which he remained as until June 20, 2024 when he effectively transferred Lucago pursuant to Rule 3229(b)(1). Mr. Loza also cannot evade his duties under the ADMC Program by claiming he was not in the country since it is the “*personal and non-delegable duty of the Responsible Person to ensure that no Banned Substance... is Used in relation to his... Covered Horses*” (Rule 3213(b)) and “*to ensure that treatments and medications administered to his or her Covered Horses... do not contain a Banned Substance*” (Rule 3040(b)(3)).

6.6 HIWU seeks the following relief:

- “a. A period of Ineligibility of up to fourteen (14) months for Lucago beginning on April 3, 2024, pursuant to ADMC Program Rule 3222;*
- b. A period of Ineligibility of four (4) years for Trainer Loza, as the Responsible Person for Lucago at the time of the ADRV, to run consecutively to his previously imposed period of Ineligibility pursuant to ADMC Program Rule 3228;*
- c. A fine of \$50,000 for Trainer Loza, as the Responsible Person for Lucago at the time of the ADRV, pursuant to ADMC Program Rule 3228; and*
- d. Payment of some or all of the adjudication costs and HIWU’s legal costs, pursuant to ADMC Program Rule 3228”.*

Mr. Loza’s Contentions

6.7 Mr. Loza’s pre-hearing brief read in the relevant part as follows:

- (a) Mr. Loza was not in charge Lucago when the sample was collected on September 3, 2024.
- (b) After HIWU imposed his period of Ineligibility on April 13, 2024, Lucago remained in Mr. Loza’s barn until Mr. Auricchio contacted Gulfstream Park. On June 20, 2024, Mr. Loza registered Lucago under a different Trainer.
- (c) During his period of Ineligibility, Mr. Loza was not in charge of Lucago. In fact, once he was suspended, Mr. Loza flew to Mexico to take care of a personal matter and stayed there until the end of August 2024.
- (d) The argument presented by HIWU is not realistic – that Mr. Loza, while under suspension, and despite having gone through an unannounced search by HIWU’s officials related to the case of Mexicofee and allowing them to inspect and control the facilities, was using Clenbuterol on Lucago.
- (e) It is “*and implausible that a coach that is already sanctioned for 16 months for an AAF, continues to provide prohibited substances to a covered horse that was*

not competing”.

- (f) The segment analysis *“shows that the prohibited substance kept building up in the hair sample between April 3 and May 3, which is implausible when the coach had already been notified from an AAF in March 13 and no traces of prohibited substances were found by HIWU inspectors during their investigation”.*
- (g) Imposing a 4-year sanction of Mr. Loza would mean the end of his career. Considering that the ban would have to be served after the 16-month sanction being currently served, this would result in Mr. Loza being suspended until September 2029.
- (h) The lack of access to Lucago due to his suspension related to Mexicoffee and the evidence available *“suggests he was not the person in charge of Lucago”.*
- (i) Mr. Loza cannot be held responsible for the Clenbuterol that entered into Lucago’s system *“while he was not allowed to get close to him”.*

6.8 In support of his position, Mr. Loza submitted the following affidavits:

- Dr. Gustavo Vautier: *“I have known Mr. Efrén Loza Jr. for over 12 years and have had a professional relationship with him in my capacity as Veterinarian, I wish to state that during the period from late February 2024 to May 2024, all communication between us was conducted by phone, as Mr. Loza, to the best of my knowledge, was not present at the barn due to personal reasons”.*
- Mr. Christian Dominguez: *“I have known trainer Efrén Loza Jr. for more than five years. I started a working relationship with him in November 2023, which lasted until May 1, 2024. During this time, I worked as an exercise rider at the Nelson Jones Training Center, located in the same city as Ocala, Florida. It is worth mentioning that, approximately from March through May, Efrén Loza stopped attending the stable. I am aware of the reasons; however, he consistently communicated with me via telephone to give instructions regarding the training of the horses”.*

6.9 In Mr. Loza’s post-hearing brief, he added the following:

- (a) According to the evidence presented by HIWU, particularly the report by Dr. Knych, a 10-day oral treatment in a horse can leave traces of the substance in the horse’s hair for up to 360 days. Although Dr. Knych did not give a definitive answer, Table 1 on page 7 of her report shows a pattern of accumulation, pointing to repeated use rather than a one-time incident.
- (b) As the hair grows, the segment containing the maximum concentration of the substance shifts along the hair shaft at a rate of approximately one inch per month, maintaining its relative position corresponding to the time of exposure. Dr. Knych explained that results can vary by hair sample and horse, but she did

not clearly address whether a concentration could rise from the 1st to 2nd inch and then decrease from the 3rd to 5th inch of hair.

- (c) The Clenbuterol level detected in Lucago's hair, peaking at 1.9 ng/g around 120 days before sampling (May 3, 2024), is compatible with three scenarios. The first possibility is that the horse received treatment approximately one year prior, as low concentrations of the substance can persist and remain detectable for several months following administration. The second possible explanation is that the hair was sampled soon after the horse was exposed to the substance, since in the early stages after contact, the substance may not have reached peak levels yet, so low concentrations are detected while the substance is still accumulating in the hair. A third explanation is accidental contamination of the horse with Clenbuterol.
- (d) HIWU must prove the violation to the standard of a comfortable satisfaction. Scenario one (treatment one year prior) can be ruled out because HIWU has not produced any positive test results for Lucago over the past year, including a negative test on October 22, 2023. Scenario two is also unlikely because Clenbuterol would have continued to increase if it had been administered close to the sampling date, but instead it disappeared within three months. Scenario three – accidental contamination – is the most plausible since (a) Lucago had not competed since November 2023 and had repeatedly tested negative, suggesting no Clenbuterol treatment occurred between November 2023 and March 2024, and (b) the detected concentration is consistent with either residual traces of past treatment (already ruled out) or accidental contamination, making the latter the more reasonable conclusion.
- (e) The term “use” is not precisely defined in ADMC Program. According to the Oxford English Dictionary, “use” refers to employing, applying, or utilizing something. Based on this definition, HIWU must prove that Mr. Loza intentionally administered or applied Clenbuterol to Lucago. However, the evidence presented does not prove that Mr. Loza administered Clenbuterol to Lucago. HIWU has only shown that Clenbuterol was present in the horse's hair but has not demonstrated that Mr. Loza was responsible for its application.
- (f) Because Mr. Loza was charged with “use” rather than “presence” of a banned substance, and HIWU has not proven he used Clenbuterol on Lucago, no violation can be found and no sanction can be imposed.
- (g) HIWU must prove the violation to the standard of a comfortable satisfaction, while Mr. Loza only has to show, by a preponderance of the evidence, that he did not use the substance.
- (h) Dr. Knych's report only concludes that Lucago was “exposed to Clenbuterol” and does not state that Mr. Loza administered it. Even if contamination occurred from Mexicoffee, that would not justify sanctioning Mr. Loza in this case. This is because in the Mexicoffee case, Mr. Loza accepted a sanction because he

could not prove how the Clenbuterol entered the horse's system (i.e. he chose to accept the penalty rather than contest it without evidence). His acceptance, however, was not an admission of guilt of using Clenbuterol, and an unannounced search of his premises yielded no further evidence of this.

- (i) Even if Mr. Loza had intentionally administered Clenbuterol to Mexicoffee (which is denied), it is still more plausible that Lucago was inadvertently contaminated through contact with Mexicoffee, which would explain the detected concentrations. The very low clenbuterol level in Lucago, coupled with prior negative tests, makes contamination – likely linked to the Mexicoffee case – a more reasonable explanation than deliberate administration by Mr. Loza.

6.10 Mr. Loza seeks the following relief:

“[W]e request the Horseracing Integrity & Welfare Unit to determine that Mr. Lozada bears no fault or negligence in this case and therefore no sanction shall be imposed following the applicable regulations”.

VII. TESTIMONY OF WITNESSES AND EXPERTS

7.1 The following is a summary of the testimony of the witnesses called in the present arbitration:

For Claimant:

(a) Mr. Gregory T. Pennock:

- Mr. Pennock was the lead investigator in the Mr. Loza's case involving the horse *Mexicoffee*. When serving the EAD Notice Letter, he conducted a search of Mr. Loza's barn at Nelson Jones Farm and Training Center. He was accompanied by HIWU Investigators Matt Meye, Robby Mckellis, Kevin O'Donnell, and Florida State Investigator Leon Rounds. Mr. Pennock introduced himself to Mr. Loza and explained (i) the context of the EAD Notice Letter, and (ii) the reason for the visit, including the intent to conduct a search of the barn and Mr. Loza's vehicle. Mr. Pennock proceeded to conduct the search. Mr. Pennock only searched the areas of the barn belonging to Mr. Loza who was very cooperative.
- During the search, Mr. Loza claimed that he did not know how Clenbuterol got into *Mexicoffee*. Mr. Loza indicated that he had used a throat spray on *Mexicoffee* which might have contained Clenbuterol; however, he was unable to produce the spray.
- Neither Clenbuterol nor a valid prescription for Clenbuterol were found on the premises during the search. At the time of the search, Mr. Loza had three horses: *Mexicoffee*, *Bankers Hours*, and *Lucago*. The search lasted approximately one hour.

- According to the HISA Portal, (i) Mr. Loza was listed as the Responsible Person for Lucago until June 20, 2024, and (ii) Lucago had no prescription or treatment history for Clenbuterol.

(b) Mr. Petra Hartmann:

- A segmental analysis was performed on 5 x 1-inch segments on OOC Sample 2 and all five segments tested positive for Clenbuterol, with concentrations increasing from root to tip (most recent to oldest exposure). Each inch represented approx. 1 month of hair growth. In this respect, Mr. Hartmann testified that based on scientific literature, equine hair growth is fairly uniform and that there was only a 5-day margin of error in estimating monthly growth.
- The concentrations detected in this sample were 10–20x higher than a so-called “trace amount”, i.e. than the amount that the test is capable of finding. The detection limit is approx. 0.1 ng/g and here the highest detected in sample is 1.9 ng/g (segment 4).
- Mr. Hartmann did not note any issues or deviations noted in chain of custody, handling, testing and analysis.

(c) Dr. Heather Knych:

- Clenbuterol is primarily administered orally. The way it is deposited into hair is by moving from the blood into the point where the hair meets the skin. The Clenbuterol goes into the hair follicle and is essentially trapped there in a particular region of the hair shaft. Thereafter, as the hair grows, the Clenbuterol moves with it along the length of the hair. As that segment is pushed further from the root by new growth, it carries the substance with it. Consequently, over time, segments farther from the root begin to contain higher concentrations of Clenbuterol. This pattern allows one to correlate the location of the substance within the hair shaft with the rate of hair growth, providing an estimate of when the substance was administered relative to the timing of the sample collected.
- If Clenbuterol were administered over a longer treatment period, one would expect to detect the substance in the earlier hair segments for a prolonged time. However, one would still observe its presence in the later, more distal segments, reflecting prior administrations.
- Based on the *Schlupp* study, Clenbuterol is detectable in hair for up to a year – very prolonged relative to blood and urine.
- In the *Schlupp* study, they gave the horse a therapeutic dose of 1.6 micrograms per kilogram per day (two doses of 0.8 micrograms) for 10 days and this was detectable for a year.
- The segmental hair analysis of OOC 2 showed detectable levels in all five 1-inch segments, indicating exposure over five months.
- Moving from segment 1 (nearest the root) to segment 5 (farthest from the root), it can be observed that the concentration in segment 1 is the lowest, with levels

increasing progressively in the subsequent segments. This pattern reflects the natural growth of hair: as the hair grows outward, the segment containing the incorporated substance moves further from the root. Segment 4 shows a slightly higher concentration than segment 5, which could simply indicate variability in sample collection or that the growth progression has not fully shifted the substance concentration to segment 5 yet. It is also important to consider that each hair segment comprises multiple strands, which may not all grow uniformly. As a result, some strands within a segment may contain slightly higher or lower concentrations than others, accounting for minor fluctuations between segments.

- Based on hair growth rates, Dr. Knych opined exposure occurred at least 150 days (or more) prior to collection of OOC 2, placing it around April 2024. The slight increase in Segment 4 does not undermine this conclusion.
- Dr. Knych's analysis was aimed at estimating the timing of exposure not concentration levels.

For Respondent:

(a) Mr. Loza:

- During the search of the barn in connection with the service of the EAD Notice Letter for Mexicoffee, HIWU investigators asked Mr. Loza whether he knew how many horses he had at the premises and whether Clenbuterol or any other non-controlled substances had been administered to his Covered Horses (Mexicoffee, Lucago, and Banker's Hours). Mr. Loza replied that no such substances were administered to his Covered horses. The investigators proceeded to search the areas of the barn rented by Mr. Loza (six stalls) as well as his vehicle. Mr. Loza fully cooperated with the search.
- Mr. Loza transferred Lucago to another trainer in June, though he is uncertain of the exact date.
- Upon receiving the notification of ineligibility, Mr. Loza fired his employees and returned to Mexico to take care of a family matter. At this time Lucago remained his only horse stabled in his the barn.
- Mr. Loza does not know the source of Clenbuterol in Lucago or Mexicoffee. He does not have proof or evidence thereof. For Mexicoffee, he had theories of the source, but he could not prove any. The first theory was that Clenbuterol may have been administered by a disgruntled former employee. The second theory was contamination from a nasal spray; however, he later confirmed that the spray he used on Mexicoffee did not contain Clenbuterol. The third theory was that another trainer had accidentally administered Clenbuterol to Mexicoffee; however, he considered this unlikely, as each section of the barn contained six stalls, and his horses were grouped separately from the others.
- Mr. Loza was aware that as the trainer, he is ultimately responsible for the actions of anyone working for him and that he had to supervise his employees. Mr. Loza was also aware that Clenbuterol was a banned substance under the ADMC

Program, unless prescribed by a veterinarian and meeting the other requirements of Rule 4114.

- Mr. Loza confirmed that he communicated with Dr. Vautier from March to May 2024 and with Mr. Dominguez from March to the end of April 2024, to monitor his horses.

(b) Dr. Gustavo Vautier:

- Dr. Vautier a veterinarian for Lucago and Mexicoffee. He never prescribed Clenbuterol to either horse. Between March and May 2024, Mr. Loza left the country. However, Dr. Vautier still had communication with him during that time via phone to discuss the care of his Covered Horses, including Lucago. Dr. Vautier was aware that Mr. Loza was under period of ineligibility.

(c) Mr. Christian Dominguez:

- Mr. Dominguez was the exercise rider to Trainer Loza and, as such, was in charge of trotting and galloping Lucago. From March until he was fired at the end of April 2024, Mr. Dominguez communicated with Mr. Loza via text to receive training instructions for his Covered Horses, including Lucago. Mr. Dominguez was not aware of Mr. Loza's period of ineligibility before his employment ended.

VIII. ANALYSIS

8.1 The only charge at issue in this case is one of Use under the ADMC Program. Mr. Loza disputes that the elements of that charge have been met and the Parties disagree on any applicable punishment should the elements of the charge of Use be found to have been met by HIWU.

Use

8.1 The Respondent, Mr. Loza, is alleged to have breached ADMC Program Rule 3213, under which the Use of a Banned Substance in relation to his Covered Horse, Lucago, is a strict liability offense for which the "*intent, Fault, negligence, or knowing Use on the part of the Responsible Person*" is not required to establish a violation.

8.2 Use is defined under the ADMC Program as "*[T]he utilization, application, ingestion, injection, or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method in relation to a Covered Horse*".

8.3 The Use of Clenbuterol is only permitted pursuant to Rule 4114 if prescribed by a Veterinarian for a duration not to exceed 30 days in a 6-month period and provided that to return to competition the Covered Horse presents a clean urine and blood sample, i.e. with no Clenbuterol detected.

8.4 HIWU must demonstrate that the elements of the definition of Use have been met and that Mr. Loza was the Responsible Person for Lucago at the time of the Use of the Prohibited Substance.

8.5 If established to be the Responsible Person, and if no prescription for Clenbuterol is established, Mr. Loza shall be held in breach of Rule 3213.

8.6 HIWU has the burden of establishing a Use violation to the “comfortable satisfaction” of the Arbitrator (Rule 3121).

8.7 To prove Use to said standard, “*any reliable means*” may be used. Indeed, the WADA Code provides – in its Comment to Article 2.2 – that “*it has always been the case that Use... of a Prohibited substance... may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1 [Presence], Use... may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information which does not otherwise satisfy all the requirements to establish “Presence” of a Prohibited Substance under Article 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other sample*”.

8.8 In consideration of the above comment, circumstantial evidence may be used to prove an ADRV, provided that the totality of the evidence leads the adjudicator to be comfortably satisfied that the violation occurred (see e.g. CAS 2017/A/5422 at para. 680 *et seq.*). As held in *WADA v. ICF and Aleksandra Dupik*: “*This rule gives greater leeway to anti-doping organisations to prove violations, so long as they can comfortably satisfy a tribunal that the means of proof is reliable. As a result, it is not even necessary that a violation be proven by a scientific test itself. Instead, a violation may be proved through admissions, testimony of witnesses, or other documentation evidencing a violation*”.

8.9 In summary, in application of the ADMC Program, to establish a Use violation against Mr. Loza for the Banned Substance Clenbuterol in relation to Lucago, HIWU must be prove by any reliable means to the comfortable satisfaction of the Arbitrator that (a) the substance was used, applied, ingested, injected or consumed in related to the Covered Horse by any means whatsoever; (b) Mr Loza did not have a valid prescription for the Covered Horse pursuant to Rule 4114, and (c) Mr. Loza was the Responsible Person to the Covered Horse at the time of the Clenbuterol’s use, regardless of intent, Fault, negligence, or knowledge, in accordance with the strict liability standard.

8.10 Having established the above, the Arbitrator notes that the following is not disputed:

- a. Mr. Loza was the Responsible Person of Lucago from March 2, 2023 until June 20,

2024, when he transferred the horse to Trainer Luis Ramirez.

- b. Lucago remained in his barn until that time.
- c. During the period of Ineligibility imposed on him in relation to the Mexicofee, Mr. Loza continued to direct the training and care of Lucago through May 2024. Mr. Loza provided these instructions via text or phone call since he was in Mexico taking care of a personal matter.
- d. Clenbuterol was not prescribed to Lucago by a Veterinarian. No such evidence was introduced by Mr. Loza. Furthermore, Mr. Pennock confirmed no prescription for Clenbuterol for Lucago was recorded in the HISA Portal.
- e. Mr. Loza had committed a prior ADRV for the Presence of the Clenbuterol in relation to another one of his Covered Horses – Mexicofee – who was stabled in Nelson Jones Farm and Training Center with Lucago.¹

8.11 The Arbitrator further observed – as is also undisputed – that the segmental hair analysis of OOC Sample 2 revealed that presence of Clenbuterol in the five one-inch segments of hair as follows:

First segment, 0-1”: 0.247 ng/g
Second segment, 1-2”: 0.793 ng/g
Third segment, 2-3”: 1.19 ng/g
Fourth segment, 3-4”: 1.90 ng/g
Fifth segment, 4-5”: 1.58 ng/g

8.12 In this respect, the Arbitrator finds the segmental hair analysis of OOC Sample 2 to be reliable analytical data, and that Dr. Knych’s expert report and testimony is likewise reliable, supported by scientific studies (specifically the *Schlupp* study and Dr. Knych’s 2014 administration study involving Clenbuterol) and unrebutted by Mr. Loza, who has not presented any expert or scientific evidence to contradict Dr. Knych’s findings. In fact, Mr. Loza has explicitly accepted that HIWU has “*demonstrate[d] the presence of clenbuterol in the cover[ed] horse's hair*” (see para. 33 of the Post-Hearing Brief).

8.13 As such, the Arbitrator accepts as true and accurate Dr. Knych’s findings, and, particularly, that (i) Clenbuterol remains detectable in hair for a long period of time, relative to the detection window of Clenbuterol in blood or urine, (ii) Clenbuterol can be detected in both mane and tail hair for one year after a 10-day administration of therapeutic “low” dose, (iii) as hair grows and increases in length, the amount of Clenbuterol in the hair segments close to the root decreases as the segments containing Clenbuterol move away from the root, resulting in the segments further away from the root containing more drug over time, (iv) horse mane and tail hair grows at a very uniform rate of approx. 0.56 and 0.57 cm/week, (v) considering the

¹ In this respect, the Arbitrator notes that, contrary to Mr. Loza’s contention, the signing “*Early Admission of Equine ADRV and Acceptance of Consequences*” in the Mexicofee case, was indeed an admission of guilt of using Clenbuterol in relation to Mexicofee. The reason for Mr. Loza’s acceptance – whether due to an alleged inability to establish the source of the Clenbuterol – is immaterial.

average rate of equine hair growth of one inch per month, the reported concentration in segment 5 indicates exposure 150 days prior to collection of the Sample, meaning that the exposure date was on or about the beginning of April 2024.

8.14 The Arbitrator further finds that based on Dr. Knych's findings, the fourth segment would correspond to 90-120 days before September 3, 2024, i.e. approximately May 3, 2024 to June 3, 2024 and the fifth segment would correspond to 120-150 days prior to September 3, 2024, i.e. approximately April 3, 2024 to May 3, 2024. This would mean that, based on sound scientific reasoning – and common sense - Lucago's exposure to Clenbuterol had to have occurred prior to June 3, 2024, at which time, he was still the Responsible Person of the Covered Horse.

8.15 The Arbitrator takes note of Mr. Loza's issue regarding the observed increase in concentration from the fifth to the fourth segment, prior to its subsequent decrease across the next three segment. However, as convincingly explained by Dr. Knych during the hearing, this increase is attributable to the fact that a segmental analysis involves multiple strands of hair within each segment and that while hair is generally assumed to grow at a uniform rate of approximately one inch per month, individual strands within the same segment may exhibit different growth phases – with some actively growing and others remaining relatively quiescent. According to Dr. Knych, this intra-segment variability can sometimes result in unexpectedly higher concentrations appearing in an earlier segment. Dr. Knych further confirmed unequivocally that the increase in the fourth segment did not undermine her conclusion that Clenbuterol was present five months prior to the collection of Sample 2. Importantly, Mr. Loza did not submit any evidence to demonstrate how this increase in the fourth segment disproves Dr. Knych's findings.

8.16 Notwithstanding his acceptance that the segmental analysis demonstrates the presence of Clenbuterol, Mr. Loza advances the theory that, the most plausible cause of the presence of Clenbuterol in the horse's hair is accidental contamination since (i) Lucago had not competed since November 2023, (ii) Lucago had repeatedly tested negative, (iii) no Clenbuterol was found in his barn in the search conducted on March 13, 2024, and (iv) the detected concentration is low and consistent with contamination.

8.17 However, Mr. Loza only speculates and has not provided any concrete evidence to substantiate this theory. He has not identified a specific source of the alleged contamination, nor has he presented any expert analysis or documentation supporting how or when such contamination could have occurred or establishing that it can be considered low. Therefore the Arbitrator finds that Mr. Loza has not established, on a balance of probabilities, that the presence and progression of Clenbuterol in Lucago's hair was the result of contamination.

8.18 Turning to responsibility, Mr. Loza argues that he cannot be held liable under Rule 3212 because he was not in charge of Lucago when Sample 2 was collected on September 3, 2024. The present case, however, concerns "Use" not "Presence". Therefore, it is irrelevant whether Mr. Loza was Lucago's Responsible Person at the time of sample collection. What matters is whether the Banned Substance was Used in relation to the Covered Horse while Mr. Lucago was still the Responsible Person (as will be analyzed below).

8.19 Mr. Loza also argues that he cannot be held liable under Rule 3212 because (i) during his period of Ineligibility, he was out of the country and (ii) it has not been demonstrated that Mr. Loza was responsible for the application of Clenbuterol, i.e. that he himself used, employed or utilized the Banned Substance.

8.20 In this respect, the Arbitrator notes that pursuant to the ADMC Program, Mr. Loza, as the Responsible Person since March 2, 2023, was required to keep his designation and registration up-to-date (Rule 3030(c)). Furthermore, as from the period of Ineligibility, in order to transfer Lucago to another Trainer, Mr. Loza had to register the transfer on the HISU Portal in accordance with the relevant procedures and physically relocate the horse to facilities under the care or control of a Covered Person not affiliated to him (Rules 3229(b)(1)). As previously mentioned, it is undisputed that Mr. Loza did not validly transfer Lucago pursuant to the aforementioned rules until June 20, 2024 and, therefore, remained as the Responsible Person for the horse until that date. As the Responsible Person between March 2, 2023 and June 20, 2024, Mr. Loza was not entitled to delegate his liability or obligations under the ADMC Program to others Covered Persons, including Veterinarians, employees and other personnel involved in the care, treatment or racing of Lucago (Rule 3040). Mr. Loza remained strictly liable for any violations committed by such persons (*Idem*).

8.21 It follows from the above that it is irrelevant in terms of finding a Use violation whether Mr. Loza was in the country and himself applied the Clenbuterol or instructed its application. Under the ADMC Program, Mr. Loza was strictly liable for the Use of Banned Substances by his Covered Horses. The Arbitrator's conclusion is buttressed by the fact that, in any case, as confirmed by the testimony of Mr. Loza, Dr. Vautier and Mr. Dominguez, he continued to direct the training and care of Lucago through May 2024.

8.22 In light of the foregoing, the Arbitrator concludes that the direct scientific evidence, together with the circumstantial evidence, establish – to a comfortable satisfaction – that Mr. Loza Used Clenbuterol on Lucago while he was the Covered Horse's Responsible Person. Therefore, Mr. Loza is in breach of Article 3213.

No mitigation Based on Fault or Significant Fault

8.23 Where a Violation of the ADMC Program is established, the Respondent may be entitled to a mitigation of the applicable Consequences where he is able to establish on a balance of probabilities that he acted with either No Fault or Negligence, or No Significant Fault or Negligence.

8.24 In both cases, as a threshold issue before considering the degree of fault in a particular case, the Covered Person must “*establish how the Prohibited Substance entered the Covered Horse's system*”, which is also known as the requirement to prove the source. This requisite evidentiary standard needed to establish source has been confirmed by *HIWU v. Lynch*, which acknowledged that “[t]he Rules expressly place the burden on the Covered Person to establish how the prohibited substance entered the horse's system,” and that “*competent evidence*” rather than “*mere speculation*” is required to meet this burden.

8.25 The Arbitrator finds, however, that Mr. Loza has not advanced any evidence regarding the source Clenbuterol. On the contrary, Mr. Loza has admitted that he does not know how the Banned Substance entered Lucago's system. Mr. Loza has only advanced a theory of contamination without providing source or how that contamination may have come to be. The Arbitrator considers it insufficient to "*suggest possibilities*" or "*speculate*" and instead, Mr. Loza "*has a stringent requirement to offer persuasive evidence*" on source (*HIWU v. Wong*).

8.26 Based on the above, the Arbitrator holds that Mr. Loza cannot benefit from mitigated consequences since he has failed to prove how the Clenbuterol entered Lucago's system. Therefore, his sanction should be the maximum appropriate period of Ineligibility.

Punishment-Ineligibility

8.27 In application of Rule 3228, the period of Ineligibility for a second ADRV of Rule 3213 is "*twice the period of Ineligibility otherwise applicable to the second Anti-Doping Rule Violation treated as if it were a first violation*". Considering that the period of Ineligibility for a first violation of Rule 3213 is two years (Rule 3223) and that this is Mr. Loza's second ADRV for such a violation, the Arbitrator finds that Mr. Loza must be sanctioned with a period of Ineligibility of four (4) years for the Use of Clenbuterol in Lucago. Furthermore, the Arbitrator finds that in accordance with Rule 3223(c)(2), this period of Ineligibility shall commence on the date after the original period of Ineligibility ends, i.e. October 15, 2025.

8.28 As for Lucago, the Arbitrator finds that in application of Rule 4310, its period of Ineligibility is fourteen (14) months as Clenbuterol is an "S3 BANNED Substances-beta-2 agonists". The Arbitrator further finds that Lucago's period of Ineligibility shall commence on April 3, 2024, as this is the earliest date on which the hair analysis indicates the presence of the substance, and is therefore deemed the date of the Use violation (Rule 3222).

Punishment-Fine, Payment Toward Legal Fees and Arbitration Costs

8.29 Under the ADMC Program, the punishment includes, in addition to a period of Ineligibility, a, "*Fine up to \$50,000*" (Rule 3228(b)). These consequences appear to be mandatory in their application; in other words, upon finding a violation, the Arbitrator must also make a finding on the applicable fine and the payment of the adjudication costs and HIWU's legal costs. Here, HIWU has requested some or all of the adjudication costs and HIWU's legal costs.

8.30 As the fine follows the fine, the amount of the fine under the range allowed of "up to \$50,000" should be commensurate with the amount of fault found.

8.31 From reading Rule 3228(b), it is clear that the use of "and" after the statement of the period of Ineligibility is conjunctive, and requires the Arbitrator to issue a fine of some amount "*up to \$50,000*". The amount of this fine, however, appears to be entirely discretionary with the Arbitrator, though some amount of fine appears to be mandatory. This Arbitrator is of the view that the notion that the fine should follow the fault is a useful convention for assessing

a fine in any particular case arising under the ADMC Program generally, particularly in cases involving Use or Presence, violations requiring intent, or violations that resulted in some performance enhancing effect on the results of a particular race.

8.32 Here, the Arbitrator determines that, considering that Mr. Loza has been found guilty of the charged ADRV and that he has been unable to adduce any evidence of the source of the Clenbuterol or to prove to a balance of probability that he acted with either no Fault of Negligence or No Significant Fault or Negligence, the **fine should be set at \$30,000**, to be paid by the end of his period of ineligibility.

8.33 With respect to issues of costs to be assessed, the Arbitrator notes that HIWU has not requested reimbursement of or contribution to its legal fees in this case. However, HIWU does seek contribution to the costs of the arbitration proceeding pursuant to Rule 3228. While the assessment of some portion of costs appears to be mandatory given the conjunctive language used in Rule 3223(b), the amount of the contribution toward the arbitration costs appears, like the fine, to be purely discretionary with the Arbitrator.

8.34 Using the same factual and equitable considerations for assessing the fine above, the Arbitrator determines that Mr. Loza should make a **contribution to the arbitration costs of HIWU of \$ 8,000.00**, to be paid by the end of his period of Ineligibility.

IX. AWARD

9.1 On the basis of the foregoing facts, legal analysis, and conclusions of fact, the Arbitrator renders the following decision:

a. Mr. Efren Loza Jr. is found to have committed a second anti-doping rule violation. As a result:

1. Lucago is suspended for a period of Ineligibility of (14) months beginning on April 3, 2024, pursuant to ADMC Program Rule 3222.
2. Mr. Loza is suspended for a period of Ineligibility of four (4) years, commencing October 16, 2025, the date on which his pending suspension in relation to Mexicofee ends, and ending on October 16, 2029;
3. Mr. Loza is fined \$30,000 to be paid to HISU by the end of the period of Ineligibility; and
4. Mr. Loza is required to pay a contribution of \$8,000 toward HIWU's share of the arbitration costs of this proceeding by the end of his period of Ineligibility.

b. This Decision shall be in full and final resolution of all claims and counterclaims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

IT IS SO ORDERED AND AWARDED.

Dated: May 28, 2025



Hon. Nancy Holtz, Arbitrator