

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

ADMINISTERED BY JAMS, CASE NO. 1501000587

In the Matter of the Arbitration Between:

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

v.

REED SALDANA (“**Mr. Saldana**” or
“**Respondent**”), Respondent.

CORRECTED 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 Irvine, California on November 1, 2023, 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 an Adverse Analytical Finding (“AAF”) and Anti-Doping Rule Violation (“ADRV”) for the presence of the Prohibited Substance Diisopropylamine found in the urine Sample of a single horse. The Respondent was the trainer for the horse, and admits he was so.

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 at the hearing by Allison Farrell, Esq., Senior Litigation Counsel of HIWU and Carlos Sayao, Esq., of Tyr, LLP, of Toronto, Canada.

1.3 Mr. Saldana is a high-level trainer of thoroughbred racehorses based currently in California. Mr. Saldana appeared *in pro per* in these proceedings, representing himself without counsel.

1.4 Throughout this Final Decision, HIWU and Mr. Poole 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 Award only to the submissions and evidence the Arbitrator considers necessary to explain his reasoning. Except as noted, the facts are generally not in dispute, though the legal effect of those facts might be.

2.2 The facts are largely not in dispute in this case. There are questions of possible contamination by hand sanitizer used in the barn where the samples were taken, and issues raised about the inclusion of the prohibited substance at issue in the case, but the underlying facts are not in dispute.

The Parties' Stipulated Facts

2.3 Thankfully for the Arbitrator, on October 26, 2023, the Parties agreed on and submitted the following "Uncontested Stipulation of Fact":

- "1. Reed Saldana is the Trainer of the Covered Horse Ice Queen.*
- 2. On June 16, 2023, Ice Queen finished third in Race #1 at Santa Anita Park in Arcadia, California. Ice Queen earned a purse of \$4,560.*
- 3. A Post-Race urine sample was collected from Ice Queen on June 16, 2023. The urine sample was collected under the code #U100141449.*
- 4. On June 29, 2023, the Kenneth L. Maddy Equine Analytical Chemistry Lab in Davis, California ("UC Davis Lab") reported an Adverse Analytical Finding ("AAF") for Diisopropylamine in respect of sample #U100141449.*
- 5. On July 6, 2023, Trainer Saldana was notified that Ice Queen's A Sample had returned an AAF for Diisopropylamine.*
- 6. A Provisional Suspension was imposed on Trainer Saldana effective July 6, 2023.*
- 7. On July 21, 2023, HIWU issued a Charge Letter to Trainer Saldana pursuant to ADMC Program Rule 3248 asserting that an anti-doping rule violation ("ADRV") had been committed.*
- 8. Trainer Saldana originally waived the B Sample analysis. Pursuant to changes to the Provisional Suspension Rule of the ADMC Program announced on July 28, 2023, Trainer Saldana was provided a second opportunity to request the B Sample analysis and have his Provisional Suspension temporarily lifted pending the B Sample's confirmation of the A Sample.*

9. *On July 29, 2023, Trainer Saldana made the request for B Sample analysis.*
10. *On August 29, 2023, the University of Chicago at Illinois Forensic Analysis Laboratory in Chicago, Illinois (“UIC Lab”) reported the results of the B Sample Analysis, confirming the presence of Diisopropylamine.*
11. *On August 30, 2023, Trainer Saldana was charged with an ADRV for the Presence of Diisopropylamine in Ice Queen’s urine Sample. His Provisional Suspension was reinstated effective that same day.*
12. *On or about September 4, 2023, Trainer Saldana requested to proceed to a hearing on the merits before Stacy La Scala, Esq. as Arbitrator. The hearing was set for November 17, 2023 by way of Arbitrator La Scala’s Procedural Order 1 dated September 14, 2023.*
13. *Trainer Saldana subsequently objected to proceeding with the hearing on November 17, 2023 in reliance on Rule 7170(f) of the ADMC Program which states that ‘The hearing should take place no more than 60 days from the date the last Covered Person requested a hearing in a particular case.’*
14. *On or around October 17, 2023, Mr. La Scala withdrew as Arbitrator, given his limited availability to preside over a hearing prior to November 17, 2023.*
15. *On October 17, 2023, Arbitrator Jeffrey Benz, Esq. was appointed as Arbitrator to replace Mr. La Scala. On agreement of the parties and pursuant to Procedural Order 2, Arbitrator Benz set the hearing for November 1, 2023, which is within 60 days from the last date that Mr. Saldana requested a hearing in this case.”*

III. PROCEDURAL HISTORY

3.1 On June 16, 2023, Ice Queen competed at Santa Anita Park in Arcadia, California. Ice Queen finished third in Race 1 and earned a purse of \$4,560.

3.2 Following the race, Ice Queen was required to provide a Post-Race Sample. A urine Sample was collected bearing code #U100141449. Analytical testing on the A Sample was conducted by the Kenneth L. Maddy Equine Analytical Chemistry Lab in Davis, California, and resulted in a reported AAF for Diisopropylamine. Under the ADMC Program, Diisopropylamine is a category S0 Banned Substance not subject to any screening limit or concentration minimum.

3.3 On July 6, 2023, Mr. Saldana, as trainer for Ice Queen, was notified that Ice Queen’s A Sample had returned an AAF for Diisopropylamine. As Diisopropylamine is not a Specified Substance under the ADMC Program’s Prohibited List, a Provisional Suspension was imposed effective immediately.

3.4 On July 21, 2023, HIWU issued a Charge Letter to Mr. Saldana pursuant to Rule 3248 asserting that an ADRV had been committed. Specifically, Mr. Saldana is charged with violating Rule 3212 (Presence of a Banned Substance).

3.5 Mr. Saldana initially waived the B Sample analysis. Pursuant to changes to the Provisional Suspension Rule of the ADMC Program announced by the Authority on July 28, 2023, Mr. Saldana was provided with a second opportunity to request the B Sample analysis and have his Provisional Suspension temporarily lifted pending the B Sample's confirmation of the A Sample. On July 29, 2023, Mr. Saldana made that request. He was therefore Provisionally Suspended between July 6, 2023, and July 28, 2023.

3.6 The University of Chicago at Illinois Forensic Analysis Laboratory reported the results of the B Sample Analysis on August 29, 2023, confirming the presence of Diisopropylamine in Ice Queen's B Sample.

3.7 On August 30, 2023, the Agency issued a further Charge Letter to Mr. Saldana advising that the B Sample Analysis had confirmed the A Sample, that he was charged with an ADRV for the Presence of Diisopropylamine in Ice Queen's urine Sample, and that his Provisional Suspension was reinstated effective that same day.

3.8 Mr. Saldana requested a Provisional Hearing under the ADMC Program but later waived his right to a Provisional Hearing, and decided instead to proceed to a hearing on the merits before arbitrator Stacey La Scala, Esq.

3.9 On September 15, 2023, following a case management conference conducted that day, the prior arbitrator issued Procedural Order No. 1, setting for the schedule for this arbitration proceeding providing in pertinent part as follows:

“Pursuant to the HIWU Anti-Doping Medication Control Program Rules 7290 (Arbitration Procedures) a preliminary hearing was held by Zoom on September 15, 2023 before sole arbitrator Stacy La Scala (“Arbitrator”). Appearing at the hearing on behalf of HIWU was Allison Farrell, Esq., and Mr. Saldana appeared in pro per (individually, HIWU and Mr. Saldana shall be referred to herein as “Party” and collectively as “Parties”).

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

1. Mr. Saldana has waived his right to a Provisional Hearing and has chosen to proceed to a hearing on the merits before the Arbitrator.

2. 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. Mr. Saldana's Pre-Hearing Brief: September 29, 2023; and

ii. *HIWU's Pre-Hearing Brief: October 13 , 2023.*

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 in MS Word versions 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 or the USADA Protocol), the other 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 could click on the index and be taken directly to the exhibit within the .pdf file of all exhibits.

3. Regarding Stipulations of Uncontested Facts and Procedure

a. In each case, if they are able to agree, the Parties shall submit a Stipulation of Uncontested Facts one week before the date of the hearing.

4. Regarding Witnesses

a. Both parties shall serve and file a disclosure of all witnesses reasonably expected to be called by each Party on or before the due date of each respective pre-hearing brief.

b. 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 the written C.V. of any experts. 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.

c. The parties shall coordinate and schedule the attendance of witnesses at the hearing so that the case can proceed with all due expedition and without any unnecessary delay.

5. Regarding the Hearing

The hearing in this matter will commence before the Arbitrator in person on Friday, November 17, 2023 starting at 9:00 am local time (PST) at JAMS Orange County, 5 Park Plaza, Suite 400, Irvine, CA 92614.

The Parties are ordered to meet and confer and convey to the Arbitrator seventy-two (72) hours before the hearing a joint schedule for the hearing setting forth their proposed schedule for opening statements, witnesses, and closing statements, including timings.

6. Regarding Submission of Documents

All documents due to be submitted hereunder shall be submitted both electronically by email to the Arbitrator at stacylascale@gmail.com and submitted 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.

7. 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.

8. 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 5:00 pm Pacific Standard 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. In particular, Rule 7410 (e) provides:

“None of the Authority, Agency, Arbitral Body, Internal Adjudication Panel, arbitrators, or IAP members shall be liable to any party for any act or omission in connection with any proceedings conducted under these Arbitration Procedures.”

The Arbitrator agrees to participate in these proceedings on the basis that, the above 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.”

3.10 Mr. Saldana subsequently insisted on his right to have the hearing heard earlier than November 17, 2023, under the relevant rules, and, as a result, arbitrator La Scala was forced to step aside because his calendar could not accommodate that request. The Arbitrator was appointed as a result and no Party objected to or challenged that appointment.

3.11 On October 24, 2023, following a further case management conference, the Arbitrator issued Procedural Order No. 2 confirming and amending parts of Procedural Order No. 1, providing in pertinent part as follows:

“Pursuant to the HIWU Anti-Doping Medication Control Program Rules 7290 (Arbitration Procedures) a further preliminary hearing was held by Zoom on September 15, 2023, before recently appointed sole arbitrator Jeffrey G. Benz (who replaced former sole arbitrator Stacy La Scala) (“Arbitrator”). Appearing at the hearing on behalf of HIWU was Allison Farrell, Esq., and Mr. Saldana appeared in pro per (individually, HIWU and Mr. Saldana shall be referred to herein as “Party” and collectively as “Parties”).

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

- 1. All pre-hearing deadlines provided for in Procedural Order No. 1 have passed and the Parties have filed their pre-hearing briefs, evidence, and other required documents. I understand from the Parties that there are no open procedural issues that need to be addressed.*
- 2. The hearing in this matter will commence before the Arbitrator **in person** on **Friday, November 1, 2023**, starting at **9:00 am** local time (PST) at **JAMS Orange County, 5 Park Plaza, Suite 400, Irvine, CA 92614**. The Parties are ordered to meet and confer and convey to the Arbitrator not less than forty-eight (48) hours before the hearing a joint schedule for the hearing setting forth their proposed schedule for opening statements, witnesses, and closing statements, including timings. The Arbitrator encourages the Parties to endeavor to agree upon a joint statement of agreed facts if possible.*
- 3. HISA has given notice of having observer status in this case through certain individuals it has appointed, which status appears to be automatic as a matter of right under the relevant HIWU rules. No objection has made to the notice that has been given. To avoid any doubt the Arbitrator hereby grants such observer status as notified.*
- 4. All capitalized terms or abbreviations used herein shall have the same meaning as attributed to them in Procedural Order No. 1. All aspects and terms of Procedural Order No. 1 not specifically modified herein shall remain with full force and effect.*

5. As Mr. Saldana is proceeding pro se (representing himself without counsel) and has no legal background, the Arbitrator wishes to bring the following to the attention of both parties, and in particular to the attention of Mr. Saldana:
- a. All communications with the Arbitrator shall copy counsel and party representatives for all other Party(ies) and all observers, and vice versa. Ex parte (unilateral to the exclusion of any or all of the other Parties and observers) communications with the Arbitrator are not permitted.
 - b. The following shall apply:

‘As the Arbitrator, my ultimate responsibility is to make a decision that will settle all claims between the Parties. You have granted me the authority to act in this capacity by agreeing to arbitrate under the rules of JAMS. It is my desire and aim to hear all the evidence that may be relevant, reliable, necessary and of value in resolving the issues between the Parties. In order for me to make a just decision, I will do my best to provide both parties an impartial hearing. To the extent ethically and procedurally permissible, I will provide you with whatever guidance and direction I deem necessary to ensure that both parties receive a fair hearing. I will not and cannot be an advocate for either party, nor can I offer legal advice or recommend a specific course of action. The JAMS Rules say that I can grant any remedy or relief that I deem just and equitable within the scope of your arbitration agreement. I can only decide the issues that you have brought before me. I cannot decide any other issues. My decision will be in the form of a written award. The terms of the award will be clear and definite, leaving no doubt as to the rights and responsibilities of each party. Also, once my decision has been issued, my authority ceases. I play no role in the enforcement of the award and I am not to be involved in any post-award activity unless directed to do so by either JAMS or the courts. Also, as noted above, to the extent you communicate with me, you must copy all other parties to this case as well as JAMS so there are no impermissible ex parte contacts. To the extent you have any questions, please let me know.’” (emphasis in original)

3.12 The Arbitrator conceived the following schedule after giving the Parties an opportunity to provide input and propose a joint schedule (they were unable to agree), and the hearing largely kept to this schedule:

<u>TIME</u>	<u>EVENT</u>	<u>BY VIDEO CONFERENCE</u>
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NOVEMBER 1, 2023

All time estimates are indicative only. It is proposed that the Witness Statement of Kitten Lee and exhibits thereto be admitted into evidence without having Ms. Lee testify.

<u>TIME</u>	<u>EVENT</u>	<u>BY VIDEO CONFERENCE</u>
9:30 – 9:40 AM	Housekeeping/Introductions (10 mins)	
9:40 – 9:50 AM	Opening Statement of HIWU (10 mins)	
9:50 – 10:00 AM	Chief of Jose Hernandez (10 mins)	
10:00 – 10:20 AM	Cross of Jose Hernandez (20 mins)	
10:20 – 10:30 AM	Chief of Sergio Chavez (10 mins)	
10:30 – 10:50 AM	Cross of Sergio Chavez (20 mins)	
10:50 – 11:00 AM	Chief of Dr. Lara Maxwell (10 mins)	X
11:00 – 11:30 PM	Cross of Dr. Lara Maxwell (30 mins)	X
BREAK		
11:45 – 11:55 AM	Opening Statement of Mr. Saldana (10 mins)	
11:55 – 12:15 PM	Chief of Mr. Saldana (20 mins)	
12:15 – 12:45 PM	Cross of Mr. Saldana (30 mins)	
LUNCH		
1:30 – 2:00 PM	Rebuttal Evidence of HIWU, if any (30 min)	
2:00 – 2:35 PM	Closing of HIWU (35 min)	
2:35 – 3:20 PM	Closing of Mr. Saldana (45 mins)	
3:20 – 3:30 PM	Rebuttal of HIWU (10 mins)	
3:30 – 3:40 PM	Final remarks of Mr. Saldana, if any	
3:40 – 3:45 PM	Final remarks of arbitrator and adjournment	

3.13 The full evidentiary hearing was held on the date set forth in Procedural Order No. 2.

3.14 On November 13, 2023, HIWU submitted a recently issued case, *HIWU v. Lynch*, for consideration by the Arbitrator. As a result, on November 20, 2023, the Arbitrator granted Mr. Saldana until the evening of November 21, 2023, to respond.

3.14 The Final Decision issued in accordance with the required time period under the rules on November 22, 2023. On November 28, 2023, HIWU issued a request for modification under HIWU Program Rule 7380 “to correct any clerical, typographical, or computational errors in the final decision”, on the basis that the operative portion of the final decision contained typographical errors that did not match the reasoned portion of the final decision. The Arbitrator responded the same day that he would not undertake a review until after the upcoming weekend. Mr. Saldana made a filing on November 29, 2023, challenging the power of the Arbitrator to make the requested changes and the time for him to file his response (the HIWU Rules grant him 5 days to respond). The Arbitrator subsequently responded acknowledging the receipt of Mr. Saldana’s objection, noting his objection to the time for his response being due, and pointing out that the Arbitrator had delayed a response to HIWU’s request specifically for purposes of permitting Mr. Saldana to make any further response. Mr. Saldana then requested for time through the weekend to make such a further response, which request was acknowledged and granted. Mr. Saldana made a further filing on December 4, 2023 in which he challenged the nature of the requested changes as not falling within the correction of “clerical, typographical, or computational errors” and asserting that the Arbitrator was now *functus officio* and could not act. The Arbitrator considered the arguments of HIWU and Mr. Saldana and has concluded that 1) he is not *functus officio* because HIWU Program Rule 7380 permits him to take certain actions even after issuance of the Final Decision, and 2) the requests of HIWU to correct the operative section demonstrate that those edits are focused on correcting typographical and not substantive errors that bring the operative section into line with the body of the Final Decision. Accordingly, on the date written below in this Corrected Final Decision, the Arbitrator submits the Corrected Final Decision with changes, aside from this paragraph and the document title, limited to those matters raised by HIWU.

IV. JURISDICTION

4.1 HIWU was created pursuant to the *Horseracing Integrity and Safety Act of 2020*, 15 U.S.C. secs. 3051-3060 (“Act”), and is charged with administering the rules and enforcement mechanisms of the Horseracing Integrity and Safety Authority’s (“HISA”) Anti-Doping and Medication Control Program (“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. Rule 3020 provides that the anti-doping rules set out in the ADMC Program apply to and are binding on violations by Covered Persons, and Covered Persons are defined under ADMC Program Rule 1020:

“(a) *The Protocol applies to and is binding on:*

...

(3) *the following persons (each, a Covered Person): 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.”

4.2 Pursuant to section 3054 of the Act, “Covered Persons” must register with the Authority. However, they are bound by the Protocol by undertaking the activity (or activities) that make(s) them a Covered Person, whether or not they register with the Authority.

4.3 ADMC Program Rule 3030(a) further defines a “Responsible Person” to mean: “*the Trainer of the Covered Horse.*”

4.4 Mr. Saldana is a Trainer who is required to be and is registered with HISA. As such, he is both a “Responsible Person” and a Covered Person who is bound by and subject to the ADMC Program.

4.5 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.

Rule 7020. 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.”

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

“Rule 7060. Initiation by the Agency

(a) EAD Violations. 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.”

4.7 In this case, arbitration proceedings were commenced before JAMS, the designated arbitration provider. Two Zoom preliminary hearings (see above) were conducted between the Parties during which a hearing schedule was set forth for these proceedings, and the requests of Mr. Saldana were specifically taken into account in the resulting scheduling orders and the change in arbitrator in the case.

4.8 No Party disputed jurisdiction here and all Parties fully participated in the proceedings without objection as to jurisdiction. As consent is the benchmark of arbitral jurisdiction, there is ample evidence of consent and no evidence of objection to arbitral jurisdiction here.

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

V. RELEVANT LEGAL STANDARDS

5.1 Rule 3212 of the ADMC Program recognizes “Presence” of a Prohibited Substance as an offense, providing in pertinent part as follows:

“(a) It is the personal and nondelegable duty of the Responsible Person to ensure that no Banned Substance is present in the body of his or her Covered Horse(s). The Responsible Person is therefore strictly liable for any Banned Substance or its Metabolites or Markers found to be present in a Sample collected from his or her Covered Horse(s). Accordingly, it is not necessary to demonstrate intent, Fault, negligence, or knowing Use on the part of the Responsible Person in order to establish that the Responsible Person has committed a Rule 3212 Anti-Doping Rule Violation.

(b) Sufficient proof of a Rule 3212 Anti-Doping Rule Violation is established by any of the following:

(1) the presence of a Banned Substance or its Metabolites or Markers in the Covered Horse’s A Sample where the Responsible Person waives analysis of the B Sample and the B Sample is not analyzed;

(2) the Covered Horse’s B Sample is analyzed and the analysis of the B Sample confirms the presence of the Banned Substance or its Metabolites or Markers found in the A Sample; or

(3) where, in exceptional circumstances, the Laboratory (on instruction from the Agency) further splits the A or B Sample into two parts in accordance with the Laboratory Standards, the analysis of the second part of the resulting split Sample confirms the presence of the same Banned Substance or its Metabolites or Markers as were found in the first part of the split Sample, or the Responsible Person waives analysis of the second part of the split Sample.

(c) The general rule is that the presence of any amount of a Banned Substance or its Metabolites or Markers in a Sample collected from a Covered Horse constitutes an Anti-Doping Rule Violation by the Responsible Person of that Covered Horse.

(d) As an exception to the general rule of Rule 3212(c), the Prohibited List, Standards, or Technical Documents may establish special criteria for the reporting or the evaluation of certain Banned Substances, including a Minimum Reporting Level, Screening Limit, Threshold, or Decision Limit.”

5.2 Mr. Saldana, as the Trainer of Ice Queen, is a Responsible Person under Rule 3030(a) of the ADMC Program, and he does not dispute that status. As a Responsible Person, Rule 3030(a) makes clear that, *“The Responsible Person shall be personally liable for his or her Covered Horse(s) as set out under the Protocol.”* As a Responsible Person, Mr. Saldana is also a Covered Person. Rule 3040(a) also makes clear, in pertinent part, that:

*“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; . . .”*

5.5 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 the offense of Presence in the ADMC Program is substantively identical to the definition of possession in the WADC (*see* Article 2. ___).

5.7 ADMC Program Rule 3040 sets out certain obligations of a trainer such as Mr. Saldana, as a Responsible Person, in pertinent part as follows:

“Rule 3040. Core Responsibilities of Covered Persons

(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: . . .

(4) to inform all 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 of their respective obligations under the Protocol (including, in particular, those specified in Rule 3040(a));

(5) to adequately supervise all 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, including by (without limitation):

(i) conducting appropriate due diligence in the hiring process before engaging their services;

(ii) clearly communicating to such Persons that compliance with the Protocol is a condition of employment or continuing engagement in the care, treatment, training, or racing of his or her Covered Horses;

(iii) creating and maintaining systems to ensure that those Persons comply with the Protocol; and

(iv) adequately monitoring and overseeing the services provided by those Persons in relation to the care, treatment, training, or racing of his or her Covered Horses;

(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; . . .”

5.8 Pursuant to ADMC Program Rule 3223, the ineligibility, and financial penalties for a first anti- doping rule Violation of Rule 3214(a) (Presence) is:

- a. Two (2) years of Ineligibility, and
- b. A “Fine up to \$25,000 . . . and Payment of some or all of the adjudication costs and [HIWU]’s legal costs.”

5.9 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.”

5.10 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.”

5.12 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.”

5.13 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. For any violation of Rule 3212 or 3312, the Covered Person must also establish how the Prohibited Substance entered the Covered Horse’s system in order to establish No Significant Fault or Negligence.”

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.

Mr. Saldana’s Contentions and Claims for Relief

6.2 Mr. Saldana asserts the following in his pre-hearing brief, in summary:

- a. There is no proof that Mr. Saldana gave the prohibited substance to Ice Queen;
- b. Hand sanitizer containing the prohibited substance is found and used in the test barn by testing personnel;
- c. There was accidental contamination by the test barn personnel;
- d. There are issues with the chain of custody (including no pictures, no signatures through every step, and too many opportunities for tampering or contamination), so the urine sample must be inadmissible;
- e. Diisopropylamine is not on the list of banned or controlled substances of the Association of Racing Commissioners International classification that was in place prior to HIWU oversight commencing just 2-3 weeks prior to the test of Ice Queen’s sample;

- f. Diisopropylamine is not a vasodilator but is a secondary amine; and
- g. There have been other cases where HIWU allegations against a trainer have been overturned, namely in the case involving Trainer Dennis VanMeter.

6.3 Mr. Saldana concludes with the following requests for relief:

“The evidence HIWU has presented is very lacking. NO integrity, NO security, NO proof that the urine sample actually was collected properly, stored correctly or even transported securely. This urine sample MUST be INADMISSIBLE and case needs to be dismissed, to continue to proceed is just a travesty. We are in a country where we are innocent until proven guilty beyond a reasonable doubt and the evidence shows no proof of guilt. HIWU has failed to demonstrate Burden of Proof in this matter. HIWU has claimed that Diisopropylamine is a vasodilator when in fact by scientific proof it is not, it is an amine. These false claims and mis classification by HISA of Diisopropylamine have cost me my livelihood, has caused stress, emotional, monetary and repetitional damage that I can’t ever get back, to continue would just be un injustice.”

6.4 At the hearing, Mr. Saldana was asked whether he was arguing for reduction based on No Fault or Negligence or No Significant Fault or Negligence and he responded that he was not (he did not raise the issue in his hearing brief or other materials).

HIWU’s Contentions and Claims for Relief

6.5 HIWU asserts the following submissions in support of its case, in summary:

- a. The testing shows the presence of the prohibited substance in the A and B Samples of Ice Queen’s urine;
- b. There was no deviation from the applicable standards for testing and collection of the Ice Queen Sample, and even if there was a deviation no evidence has been provided that such deviation caused the positive test;
- c. The collectors of the Sample did not use hand sanitizer in the test barn at the time of collecting the Sample from Ice Queen;
- d. The fact that the prohibited substance did not appear on a list that is not HIWU’s list or pre-dates HIWU’s oversight is irrelevant;
- e. The presence of the prohibited substance on the HIWU Prohibited List is not a matter than can be resolved in this arbitration as a matter of law; and
- f. Mr. Saldana has not met the requirements show No Fault or Negligence or No Significant Fault or Negligence to permit mitigation of his sanction.

6.6 HIWU seeks the following relief under the ADMC Program:

“i. A period of Ineligibility of two (2) years for Trainer Saldana as a Covered Person, with credit for the time that Trainer Saldana has served under Provisional Suspension;

- ii. *Forfeiture of all distributed purses, prizes, trophies or other compensation arising from Ice Queen's third place finish on June 16, 2023 at Santa Anita Park in Arcadia, California, including the purse of \$4,560;*
- iii. *A period of Ineligibility for Ice Queen of at least 60 days from July 6, 2023 (and up to fourteen (14) months from June 16, 2023), with reinstatement of Ice Queen being subject to a Negative Finding from a Re-Entry Test administered by HIWU;*
- iv. *A fine of USD \$25,000.00; and payment of some or all of the adjudication costs; and*
- v. *Any other remedies which the learned Arbitrator considers just and appropriate in the circumstances."*

6 ANALYSIS

7.1 While all evidence and legal authorities submitted were considered by the Arbitrator, this section necessarily refers only to the evidence and law that the Arbitrator relied upon in reaching this Final Decision.

Presence

7.2 The Respondent is alleged to have breached ADMC Program Rule 3212(a), under which the presence of a Prohibited Substance in a Covered Horse 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:

*"(a) It is the personal and non-delegable duty of the Responsible Person to ensure that no Banned Substance is present in the body of his or her Covered Horse(s). The Responsible Person is therefore **strictly liable for any Banned Substance or its Metabolites or Markers found to be present in a Sample** collected from his or her Covered Horse(s). Accordingly, **it is not necessary to demonstrate intent, Fault, negligence, or knowing Use on the part of the Responsible Person** in order to establish that the Responsible Person has committed a Rule 3212 Anti- Doping Rule Violation."* (emphasis added).

7.3 HIWU has the burden of establishing a Presence Based violation to the "comfortable satisfaction" of the Arbitrator. Under Rule 3212(b), sufficient proof of a Rule 3212 violation is established when "*the Covered Horse's B Sample is analyzed and the analysis of the B Sample confirms the presence of the Banned Substance or its Metabolites or Markers found in the A Sample*". As set out above, the B Sample Analysis confirmed the A Sample Analysis and Mr. Saldana's violation is established under Rule 3212(b)(2).

7.4 Mr. Saldana argues that alleged errors made in collecting and analyzing Ice Queen's Sample should result in its disqualification. His allegations are vague and unparticularized. The only specific alleged deficiency in the sample collection or custody for Ice Queen was that the Nominated Person was prevented from seeing the collection of Ice Queen's urine.

7.5 Pursuant to Rule 3122(d), departures from any Standards or provisions of the ADMC program are presumed to not invalidate an AAF:

“(d) Departures from any other Standards or any provisions of the Protocol shall not invalidate analytical results or other evidence of a violation, and shall not constitute a defense to a charge of such violation; provided, however, that if the Covered Person establishes that a departure from any other Standards or any provisions of the Protocol could reasonably have caused the Adverse Analytical Finding or other factual basis for the violation charged, the Agency shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or other factual basis for the violation.”
(emphasis added)

7.6 For Mr. Saldana to rebut this presumption, he must first establish that there has been a departure from the Standards or provisions of the Protocol, and second, that this departure is reasonably the cause of the alleged AAF, both on a balance of probabilities. This must be done with proper evidence, and not mere speculation. Third, if and only if Mr. Saldana rebuts the presumption does the burden shift to HIWU to establish that the departures did not cause the AAF.

7.7 Rule 3122(d) sets out a clear three-stage process to be applied to any criticisms surrounding the collection, storage, and tracking of Ice Queen’s Sample.

7.8 Mr. Saldana’s argument fails at the first step, as he cannot establish any departure from the ADMC Standards. The ADMC Program has numerous detailed provisions governing the sample collection process, and Mr. Saldana does not specifically cite any rule that was allegedly not followed.

7.9 As confirmed by Mr. Hernandez and Mr. Chavez, and corroborated by the Sample Collection Form and Chain of Custody Report, there were no irregularities or departures from the relevant standards or procedures with regard to any aspect of Ice Queen’s Sample. Contrary to Mr. Saldana’s bald assertion that there is “no proof” that the Sample was collected and stored properly and transported securely, the Sample collection was documented, the Sample was sealed and remained sterile and securely locked when not being handled, and the Sample’s chain of custody was recorded. Mr. Saldana advanced no evidence to the contrary in his written submissions and did not point to any specific alleged “tampering” in the Sample’s chain of custody or otherwise.

7.10 Having said that, at the hearing, Mr. Saldana argued that there was no documented chain of custody for a multi-week period of time between when the A and B Samples were tested. This appears to be an issue with the laboratories and their documentation processes. Having said that, the B Sample confirmed the presence of the Prohibited Substance that was found in the A Sample. Mr. Saldana also argued at the hearing that the chain of custody form used for the Samples by HIWU has ambiguous language on it relating to the time when the Sample was received and when it was placed in the refrigerator. On rebuttal from HIWU’s head of anti-doping operations, it was explained that the box in question could have been better described than it is written but that it refers to when the entire lot of samples collected in the mission in question, that also included Ice Queen’s Sample, was placed in the refrigerator and locked. There was also verbal testimony from the person responsible for the Sample from the time it was dropped off immediately after collection until it was stored in the refrigerator overnight that the Sample would have been placed in the refrigerator with no other individual’s access as a matter of practice (not surprisingly this collection was uneventful

so no one remembers the specific collection among dozens that day), even if the approximately 5 hours in question that are not documented on the final form were as that having been done specifically.

7.11 HIWU could certainly do a better job of ensuring that the written chain of custody documentation is clearer and that the labs are required to uniformly handle chain of custody issues and documentation in the same manner to avoid the issues raised in the prior paragraph. Having said that, Mr. Saldana's obligation was to show that the irregularities in the chain of custody that he claims were present had some effect on the outcome of the testing and he was unable to make that showing.

7.12 With respect to his allegation that Mr. Saldana's Nominated Person was prevented from entering the testing barn to observe Ice Queen pass urine, there is no specific requirement in this regard. For example, Rule 5410(b)(2) specifically permits and addresses situations where the Nominated Person is *not* present for sample collection. In any event, the Nominated Person in this case was Elva Winney, who signed the Sample Collection Form affirming that "subject to the statement(s) made on a Supplementary Report(s), if any, this Sample collection was conducted in compliance with the applicable procedures for HIWU Sample collections." There was no Supplementary Report issued in respect of Ice Queen's sample collection session. The gravamen of Mr. Saldana's complaint was that the testing barn at the track had a relatively small opening cut into the wall at about eye level through which a Nominated Person can watch the process of collecting urine from a horse without being in the room. It was explained by the various HIWU witnesses who handle urine collection at the track that the purpose of the observation hole and the exclusion of anyone other than the DCO from being in the barn is that 1) it enhances safety and reduces the likelihood of anyone getting kicked in the small surroundings of the testing barn, and 2) it minimizes the situation of some horses getting "stage fright" and freezing up from performing the whistle-induced command for urine excretion that all racehorses have embedded in their repertoire since a young age. Mr. Saldana did not challenge these bases or the form signed by his Nominated Person.

7.13 Mr. Saldana therefore fails at the first stage of the Rule 3122(d) analysis, as he has not met his onus of demonstrating any departures from any rules relevant to Ice Queen's Sample collection, storage, transport, or chain of custody. Even if any errors were established, Mr. Saldana fails at the second stage of the analysis as there is no evidence to suggest that any such departure actually caused the AAF, and Mr. Saldana is unable to advance even a colorable theory with respect thereto. Even if the Nominated Person had been prevented from observing Ice Queen give her urine sample and even if that amounted to a departure from an applicable Standard, there is no plausible way that the Nominated Person's absence "could reasonably have caused" the AAF.

7.14 Since Mr. Saldana fails to meet his burden on the first two stages of the Rule 3122(d) analysis, the third stage is not engaged. That said, any gap in Sample collection or handling "did not cause" the AAF. The AAF was caused by the presence of Diisopropylamine being detected in both the A and B Samples, and there is no theory advanced (or that can reasonably be contemplated on the evidence) that would tie any alleged Sample collection or storage errors to that positive finding.

7.15 Mr. Saldana's reference to Diisopropylamine not being banned under the prior ARCI rule implicitly questions the inclusion of Diisopropylamine as a Banned Substance under the ADMC

Program. Pursuant to ADMC Rule 3113, [ABA](#), Tab 23, all decisions related to HISA's determination of a Banned Substance are final and are not subject to challenge by a Covered Person on any basis, including whether the Banned Substance does or does not have a performance enhancing effect. Banned Substances are prohibited at all times, they can be placed on the Banned Substances category for any of three reasons: (1) their actual or potential ability to enhance the performance of a Covered Horse, (2) their actual or potential detrimental impact on the Covered Horse's welfare, and (3) their actual or potential masking properties, see [HIWU's Understanding the Prohibited List Educational Resource](#),

7.16 The ADMC Program superseded all anti-doping legislation and enforcement then in force in the US jurisdictions which HISA governs when it took effect on May 22, 2023. The ADMC Program is the sole legislation governing these proceedings. Rule 3113 states that HISA's "determination of the Prohibited Substances and Prohibited Methods included on the Prohibited List," is "final and shall not be subject to any challenge by a Covered Person or any other Person on any basis."

7.17 Contrary to Mr. Saldana's claim, *HIWU v VanMeter* was not decided on the basis that the Banned Substance at issue in that case, Isoxsuprine, was not previously prohibited under ARCI rules. Rather, as detailed at paras. 73-74 of that decision, although an ADRV was established pursuant to the ADMC Program, the Respondent proved that the source of the Isoxsuprine was a contaminated stall, and was found to have No Fault in the specific circumstances of that case.

7.18 In addition, Mr. Saldana's argument that Diisopropylamine is not a vasodilator by virtue of being a secondary amine is false. As explained by Dr. Maxwell, drugs such as Diisopropylamine can be classified both in terms of their chemical structure and their pharmacological or medicinal effects on the body. Diisopropylamine is classified as a secondary amine due to its chemical structure. It is also considered a vasodilator due to its general pharmacological effect, *i.e.*, causing blood vessels to open or dilate. There is nothing inconsistent about the simultaneous application of both categories, which address entirely different properties of Diisopropylamine.

7.19 Lastly, and despite the irrelevance of a substance's effects on the Covered Horse to any argument on liability, as addressed by Dr. Maxwell, Diisopropylamine is known to have a performance-enhancing potential in horses due to its status as a vasodilator, which expands blood vessels and "temporarily decreases the work of the heart."

7.20 Mr. Saldana also advanced a theory that hand sanitizer used by the DCO could have caused the positive result found in the Sample because hand sanitizers often contain the prohibited substance found here. He adduced no evidence on this point, and HIWU's evidence to the contrary was compelling. First, the evidence was unrefuted that the hand sanitizer used in the testing barn and all relevant areas for the Sample's journey to the refrigerator and the next day to the laboratory did not contain the Diisopropylamine. Second, the evidence was unrefuted that the DCO did not use hand sanitizer and instead used surgical gloves when collecting samples. Third, HIWU's expert Dr. Maxwell testified, on an unrefuted basis, that the active ingredient in hand sanitizer is ethanol and had the horse been contaminated with hand sanitizer not only would it have required a large amount of hand sanitizer to yield the levels of Diisopropylamine found here but ethanol would also have been found in the sample and it was not found here. Accordingly, the Arbitrator finds that hand sanitizer contamination was simply not possible here, and certainly not at all likely.

7.21 After the evidentiary hearing was held, HIWU submitted a copy of the recent case of *HIWU v. Lynch*. There was no explanation for why this case was submitted. Mr. Saldana was invited to comment on this case and its application to his case. Mr. Saldana submitted a response essentially urging me to find the case irrelevant. The Arbitrator has read the decision and finds that it is consistent with this Final Decision and other anti-doping cases, including other horseracing anti-doping cases, but the Arbitrator does not find any particular portion to rely upon for assistance in reaching this Final Decision.

7.22 Accordingly, for all of these reasons, the ADRV against Mr. Saldana is affirmed.

7.23 Diisopropylamine is a S0 category Prohibited Substance. Pursuant to ADMC Program Rule 3223, the presumptive ineligibility for a first ADRV under ADMC Program Rule 3212 (Presence) is two (2) years of Ineligibility.

Mitigation of Mr. Saldana's Sanction Based on Fault

7.24 Where a Violation of the ADMC Program is established, the Respondent *may* be entitled to a mitigation of the applicable Consequences, only where they establish on a balance of probabilities that they acted with either No Fault or Negligence, or No Significant Fault or Negligence. As explained below, 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 of the AAF.

7.25 Mr. Saldana has waived any argument based on considerations of fault or the lack thereof. As a result, the Arbitrator will not consider these legal doctrines.

7.26 In any event, to succeed on such a defense for reduction of his penalty on these bases, it is well-accepted that he must show the source of the prohibited substance and there has been no showing here. Mr. Saldana has advanced nearly completely the theory of “I didn’t do it” (which, as they say, is the common currency of both the guilty and the innocent), not that the substance came to be in the horse’s Sample through some known or likely route, other than the failed hand sanitizer argument referenced above.

7.27 Accordingly, the Arbitrator finds that there is no mitigation that might possibly be considered for Mr. Saldana’s case, and his sanction should be **two years of Ineligibility**.

Punishment-Fine, Payment Toward Legal Fees and Arbitration Costs

7.28 Under the ADMC Program, the punishment includes, in addition to a period of Ineligibility, a, “*Fine up to \$25,000 . . . and Payment of some or all of the adjudication costs and [HIWU]’s legal costs*”. Rule 3223(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, however, HIWU has taken away the need to make a finding on the latter category, specifically not seeking to recover a contribution to its legal costs in its claims for relief, so the Arbitrator need not take up that issue.

7.29 Both sides agreed with the principle that the fine should follow the fault. In other words, the amount of the fine under the range allowed of “up to \$25,000” should be commensurate with the amount of fault found.

7.30 From reading Rule 3223(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 \$25,000”. The amount of this fine, however, appears to be entirely discretionary with the Arbitrator (which HIWU concedes in its brief), 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, violations involving interactions with others, or violations that resulted in some performance enhancing effect on the results of a particular race.

7.31 Accordingly, the Arbitrator determines that on the limited facts of this case, especially with Mr. Saldana being unable to adduce any evidence of the source of the positive test for Ice Queen, the lack of reduction in his period of Ineligibility, and the charge of Presence, the Arbitrator finds that **\$25,000 is the appropriate fine.**

7.32 With respect to issues of costs to be assessed, the Arbitrator notes that HIWU has not sought reimbursement of or contribution to its legal fees in this case in its claims for relief. HIWU does seek contribution to the costs of the arbitration proceeding, including the compensation of the Arbitrator and the arbitral bodies fees. 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.

7.33 Using the same factual and equitable considerations for assessing the fine above, the Arbitrator determines that Mr. Saldana should make a significant **contribution to the arbitration costs of HIWU of \$12,000** (Mr. Saldana is responsible to pay his half of the arbitration costs already), to be paid by the end of his period of Ineligibility. This is not a scientific calculation, but one determined by the Arbitrator to be appropriate given the circumstances and the ease with which Mr. Saldana could have avoided his predicament or the expense of arbitration fees by HIWU balanced against the allegations and the circumstances.

8 AWARD

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

- a. Mr. Saldana is found to have committed his first anti-doping rule violation of Presence. As a result, Mr. Saldana shall:
 1. Be suspended for a period of Ineligibility of twenty-four (24) months, commencing July 6, 2023, the effective date of his provisional suspension, and ending on August 5, 2025 (to reflect that Mr. Saldana was not provisionally suspended for a period of 31 days between July 29 and August 29, 2023);

2. Forfeit and return to the Race Organizer all distributed purses, prizes, trophies or other compensation arising from Ice Queen's third place finish on June 16, 2023, at Santa Anita Park in Arcadia, California, including the purse of \$4,560, and Ice Queen shall remain under Ineligibility until she is subject to a Negative Finding from a Re-Entry Test administered by HIWU;
3. Be fined \$25,000, with said amount to be paid by Mr. Saldana to HIWU by the end of the period of Ineligibility; and
4. Be required to pay a contribution of \$12,000 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, AWARDED, AND DECIDED.



Dated: December 4, 2023

Jeffrey G. Benz
Arbitrator