

1285 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10019-6064
TELEPHONE (212) 373-3000

BEIJING
HONG KONG
LONDON
LOS ANGELES
SAN FRANCISCO
TORONTO
WASHINGTON, DC
WILMINGTON

Direct Dial: (212) 373-3654

Email: gmay@paulweiss.com

May 2, 2024

SERVICE BY E-FILING AND EMAIL

Bryan Beauman
Rebecca Price
Sturgill, Turner, Barker & Moloney, PLLC
333 W. Vine Street, Suite 1500
Lexington, Kentucky 40507
bbeauman@sturgillturner.com
rprice@sturgillturner.com

***In the Matter of Natalia Lynch, Docket No. D09423
Service of Subpoena***

Counsel:

Pursuant to the Administrative Law Judge's May 1, 2024 Order granting in part Ms. Lynch's motion for issuance of a subpoena *duces tecum* (the "May 1 Order"), and pursuant to 16 C.F.R. § 4.4(e), we hereby serve the accompanying subpoena *duces tecum* on your client the Horseracing Integrity and Safety Authority ("HISA"). A copy of the May 1 Order, including its attachments, is annexed hereto.

Sincerely,

/s/ Grant S. May
Grant S. May

cc: FTC, Office of the Secretary
Administrative Law Judge Hon. Jay L. Himes
HISA, Lisa Lazarus, Samuel Reinhardt
HIWU, Michelle C. Pujals, Allison J. Farrell

Enclosure

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

_____)	
In the Matter of)	
)	
Natalia Lynch,)	Docket No. 9423
)	
Appellant.)	
_____)	

ORDER (1) DENYING MOTION FOR ISSUANCE OF SUBPOENA *AD TESTIFICANDUM*, AND (2) GRANTING IN PART MOTION FOR ISSUANCE OF SUBPOENA *DUCES TECUM*

On April 19, 2024, Appellant Natalia Lynch filed separate motions for issuance of subpoenas, pursuant to 5 U.S.C. § 556(c)(2) and 16 C.F.R. § 1.146(c). One motion seeks a subpoena *ad testificandum* to compel the appearance of and testimony of Dr. Cynthia Cole at the evidentiary hearing scheduled for May 20, 2024. The other seeks a subpoena *duces tecum* to compel the Horseracing Integrity and Safety Authority (the “Authority”) to produce documents set forth in Exhibit A to the motion. The Authority opposes both motions.

1. The *ad testificandum* subpoena request:

Appellant has not demonstrated that subpoenaing Dr. Cole, the Authority’s expert, to testify at the evidentiary hearing, is warranted. Essentially, Appellant argues that her cross-examination of Dr. Cole in the arbitration below was truncated when Authority objections were sustained.¹ Under HISA Rules and my March 25, 2024 Order setting the scope of the evidentiary hearing permitted in this matter, Appellant may offer her own expert testimony directed to “the likelihood that the presence of Altrenogest in Motion to Strike on June 24, 2023 arose from ‘cross-’ (or ‘environmental’) contamination from trainer [Bruno] Tessore’s Monmouth Park barn or any horse stalled in that barn during the period June 19-24, 202[3].”² Appellant therefore has no need for Dr. Cole as a source of proof.

Indeed, Appellant’s argument that further examination of Dr. Cole may adduce additional evidence on the issue to be heard may be more aspirational than real. As the Authority states, Dr. Cole “has not provided an expert report that responds to the new theory of contamination being advanced by Appellant”—that contamination at Mr. Tessore’s Monmouth Park barn

¹ See Motion for Issuance of Subpoena *Ad Testificandum*, at 3-4 (citing to Appellant’s Statement of Contested Facts and Specification of Additional Evidence, at 17, among other record references).

² Order Setting Evidentiary Hearing, at 5.

caused the presence of Altrenogest in Motion to Strike—“the subject to be addressed at the upcoming evidentiary hearing”³ Thus, Appellant has failed to establish that further testimony from Dr. Cole would be either relevant or material. This failure itself provides an independent basis for rejecting Appellant’s motion to call Dr. Cole as her witness.

Accordingly, Appellant’s motion for issuance of a subpoena *ad testificandum* to Dr. Cole is DENIED.

2. The *ad testificandum* subpoena request

As noted above, the March 25 Order determined that Appellant had made a sufficient showing to supplement the record at the evidentiary hearing to address “the likelihood that the presence of Altrenogest in Motion to Strike on June 24, 2023 arose from ‘cross-’ (or ‘environmental’) contamination from trainer Tessore’s Monmouth Park barn or any horse stalled in that barn during the period June 19-24, 202[3].” The Authority does not dispute that it has charged Mr. Tessore with a presence violation involving Altrenogest, based on “a sample collected on July 18, 2023” from Tenebris, one of Mr. Tessore’s horses.⁴

The March 25 Order determined that “a confluence of alleged facts, probative of Appellant’s cross-contamination argument, justifies a more searching inquiry than was afforded in the arbitration.”⁵ These facts warrant requiring the Authority to produce documents on the issue identified in the Order.

The Authority argues, however, that “[a]ny evidence related to Tenebris’ positive test result is plainly outside of the relevant time period established in the March 25 Order.”⁶ This unembellished objection does not afford grounds to preclude document production for possible use at the upcoming evidentiary hearing. Although Appellant’s proposed subpoena *duces tecum* to the Authority, which purports, among other things, to cover materials from “June and July 2023,” is overly broad, more narrowed production is warranted.⁷

Accordingly, Appellant’s motion is GRANTED in part and an appropriate Subpoena *duces tecum*, directed to the Authority and its agents, including but not limited to the Horseracing Integrity & Welfare Unit, is attached to this Order.

To the extent the Authority contends that responsive documents are protected by confidentiality provisions under HISA or HISA regulations, the Authority may prepare and submit to Appellant a proposed protective order limiting disclosure of confidential information, for subsequent entry by the Court, either on consent or on a contested motion by the Authority.

³ Response to Motion for Issuance of Subpoena *Ad Testificandum*, at 4.

⁴ Response to Motion for Issuance of Subpoena *Duces Tecum*, at 3 (footnote omitted).

⁵ March 25, 2024 Order Setting Evidentiary Hearing at 5.

⁶ Response to Motion for Issuance of Subpoena *Duces Tecum*, at 3.

⁷ See 5 U.S.C. § 556(c).

Any proposed confidentiality provisions shall be narrowly tailored and shall not unnecessarily restrict access to information allowed under the Subpoena ordered. Redactions, if any, must avoid impairing document intelligibility or integrity. The Authority may make narrowly tailored redactions to restrict disclosure of investigative sources and methods.

Production in response to the Subpoena is, of course, without prejudice to any objections to admissibility that the Authority may wish to assert.

Appellant is required to serve the Subpoena on the Authority.

* * *

In issuing this Order, I decline to resolve: (1) whether the Authority has an obligation to provide exculpatory evidence to Appellant; or (2) whether, even if there were such an obligation, the asserted facts involving Mr. Tessore would require disclosure. I have considered the other matters the parties have raised and find them unpersuasive.

ORDERED:

Jay L. Himes

Jay L. Himes
Administrative Law Judge

Date: May 1, 2024



Subpoena for Production of Documentary Material for Trial

1. TO

Horsereading Integrity and Safety Authority
401 W. Main Street, Suite 222
Lexington, KY 40507

2. FROM

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

This subpoena requires you to produce documents at the date and time specified in Item 5, at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

3. PLACE OF PRODUCTION OR INSPECTION

PAUL, WEISS, RIFKIND WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064

4. MATERIAL WILL BE PRODUCED TO

H. CHRISTOPHER BOEHNING
PAUL, WEISS, RIFKIND WHARTON & GARRISON LLP

5. DATE AND TIME OF PRODUCTION OR INSPECTION

On or before May 10, 2024, 5:00 p.m. EDT.

6. SUBJECT OF PROCEEDING

Docket No. 9423, Natalia Lynch

7. MATERIAL TO BE PRODUCED

The Horsereading Integrity and Safety Authority, and its agents, including but not limited to the Horsereading Integrity & Welfare Unit, shall produce the following documents:

- A. Except as provided in ¶ B, all documents created during, or that otherwise relate or refer to, the period June 19 through 24, 2023, inclusive, concerning:
1. the alleged presence of Altrenogest or its metabolites or markers, claimed by the Authority to have been detected in a horse raced, trained, saddled, or otherwise handled by Bruno Tessore at Monmouth Park, New Jersey;
 2. the barn location of any horse covered in (1) and that of Motion to Strike; and
 3. veterinary records and drug prescriptions for Altrenogest provided to, for, or otherwise believed by the Authority to have been available to, Mr. Tessore.
- B. Documents reporting the results of any test sample must be produced, but a complete Laboratory Documentation Package (as defined in HISA Rule 1020) for any testing may be withheld.

8. ADMINISTRATIVE LAW JUDGE

Jay L. Himes
Federal Trade Commission
Washington, D.C. 20580

9. COUNSEL REQUESTING SUBPOENA

CHRISTOPHER BOEHNING
PAUL, WEISS, RIFKIND WHARTON & GARRISON LLP
1285 Avenue of the Americas
New York, NY 10019-6064

DATE ISSUED

5/1/2024

ADMINISTRATIVE LAW JUDGE'S SIGNATURE

Jay L. Himes

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documentary material in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances relating to such production. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PUBLIC

Form of Certificate of Compliance

I/We do certify that all of the material required to be provided by the attached subpoena which is in the possession, custody, control or knowledge of the person(s) to whom the demand is directed has been submitted to the recipient of production (Item 4) named herein, together with a copy of this Certificate and all attachments.

If a portion of the material required by the subpoena has not been provided, in whole or in part, the reason(s) therefor and the basis for any objection(s) have been stated in the written response attached to this Certificate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____

Signature _____

Title _____