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

	)	
In the Matter of	)	
	)	
W. Bret Calhoun,	)	Docket No. 9430
	)	
Appellant.	)	
	)	

**ORDER SETTING EVIDENTIARY HEARING DATE AND LIMITING SCOPE**

On May 1, 2024, W. Bret Calhoun (“Appellant”) filed an Application for Review before the Federal Trade Commission (“FTC”) seeking *de novo* review of the decision of the Internal Adjudication Panel (“IAP”) of the Horseracing Integrity and Safety Authority (“Authority”) (“Decision”), which imposed upon him various civil sanctions pursuant to the Anti-Doping and Medication Control (“ADMC”) Program. By Order issued May 21, 2024, Appellant’s request for an evidentiary hearing was granted. Because the Application for Review did not clearly identify the facts found by the Authority that Appellant seeks to contest, that Order directed Appellant to submit a statement of the facts found by the Authority that Appellant seeks to contest with a demonstration as to how such facts are material to the Decision. *See* 16 C.F.R. § 1.146(a)(1). On May 24, 2024, Appellant’s Statement of Contested Facts (“Statement”) was filed. On June 3, 2024, the Authority filed its response to the Statement.

In Exhibit B to his Application for Review, Appellant stated he seeks to supplement the record with:

- Expert witness testimony by Dr. Stephanie King, as set forth in her expert report, and encompassing the matters set forth in Appellant’s demonstrative exhibits.
- Dr. King’s calculation of the amount in the B Samples for horses Tatanka and Ain’t Broke based on the raw data provided by the B Laboratory’s documentation packages.
- The A Laboratory’s data during the Initial Testing Procedure for horses Tatanka and Ain’t Broke.
- The A Laboratory’s testing results for the original round of confirmation testing for the horse Tatanka conducted on September 29, 2023.
- The Authority’s Rule 3342 Review of the A Laboratory documentation package.

In his Statement, Appellant clarified that he specifically seeks to contest the Authority’s finding that Diclofenac, a controlled medication substance, was present above the screening limit for horses Tatanka and Ain’t Broke, including the implicit findings of custody and control of the

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urine samples in question and that the A Laboratory's report is reliable, accurate, and compliant with the Authority's standards.

Pursuant to Rule 1.146(a)(1) of the FTC's Procedures for Review of Final Civil Sanctions Imposed under the Horseracing Integrity and Safety Act, absent a demonstration of good cause, Appellant may not in this review raise factual or legal questions that were not raised before the IAP. Additionally, the parties may not take a contrary view to facts or legal questions that were admitted or undisputed in the IAP proceeding.

Accordingly, and after having fully reviewed the factual record provided, the scope of the evidentiary hearing will be limited to the presentation of evidence and argument regarding the validity of the testing of the A Samples for horses Tatanka and Ain't Broke by the A Laboratory. To that end, testimony by Dr. King will be permitted on the validity of the testing of the A Samples as set forth in her report.

As the factual record is sufficient regarding the B Samples for horses Tatanka and Ain't Broke, no additional presentation of evidence regarding the B Samples will be permitted at the evidentiary hearing and the parties are limited to argument regarding the significance of the B Samples.

As it requested, the Authority is permitted thirty days to retain an independent expert to counter Dr. King's anticipated testimony. The Authority shall serve its expert report on Appellant by July 9, 2024.

No other discovery will be permitted prior to the hearing.

**The evidentiary hearing shall commence remotely via videoconference on July 18, 2024 at 10:00 a.m. Eastern.**

The following procedures apply:

1. Each party may make an opening statement, limited to fifteen minutes.
2. Each party is allotted no more than six hours total.
3. If the evidentiary hearing is not completed on July 18, 2024, it shall continue on July 19, 2024 at 10:00 a.m. Eastern.
4. No later than July 12, 2024, the Authority shall file with the FTC's Office of the Secretary a complete copy of the record developed below.
5. The parties are instructed to collaborate on the identification of joint exhibits.
6. By July 15, 2024, the parties must exchange and file with the FTC's Office of the Secretary, and provide a courtesy copy to [OALJ@FTC.GOV](mailto:OALJ@FTC.GOV):

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- a. A list of the witnesses they anticipate calling, including a brief proffer of witness testimony;
  - b. A list of proposed exhibits and the proposed exhibits<sup>1</sup> they wish to introduce, including expert witness reports; and
  - c. A list of attorneys or other individuals who are expected to participate in the hearing.
7. The parties are directed to meet and confer regarding the preparation of stipulations of fact, the admissibility of documents, and the expertise of any proposed expert witnesses and to file those stipulations with the FTC's Office of the Secretary by July 17, 2024 at 10:00 a.m. Eastern.
  8. The hearing will be transcribed by a court reporter. It will not be video recorded. An audio line will be provided for public access.
  9. Details regarding videoconference procedures will be sent to the parties in advance of the hearing date.
  10. The parties are requested to provide courtesy hardcopies of any filings that exceed thirty pages.

ORDERED:

*Dania L. Ayoubi*  
Dania L. Ayoubi  
Administrative Law Judge

Date: June 7, 2024

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<sup>1</sup> The factual record developed before the Authority will be considered the initial record before the Administrative Law Judge. 16 C.F.R. § 1.146(c)(4). Accordingly, documents already contained in the complete copy of the record to be filed by the Authority are not to be duplicated or included as proposed exhibits.