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

ADMINISTRATIVE LAW JUDGE: DANIA L. AYOUBI

**IN THE MATTER OF:
W. BRET CALHOUN, APPELLANT**

DOCKET No. 9430

**JOINT MOTION TO AMEND DATES SET FORTH IN THE
ORDER SETTING EVIDENTIARY HEARING DATE AND LIMITING SCOPE**

Pursuant to 16 C.F.R. § 4.3(b), Appellant W. Bret Calhoun (“Mr. Calhoun”) and Respondent the Horseracing Integrity and Safety Authority (“HISA”) (collective, “the Parties”) respectfully bring this joint motion to amend certain dates set forth in the Order Setting the Evidentiary Hearing Date and Limiting Scope, dated June 7, 2024, as set forth below.

ARGUMENT

On June 7, 2024, Administrative Law Judge Ayoubi issued an Order Setting the Evidentiary Hearing Date and Limiting Scope (“the June 7 Order”). The June 7 Order set a date for the Authority’s expert report of July 9, 2024, and an evidentiary hearing in this matter for July 18, 2024 at 10 a.m. Eastern. The June 7 Order further provided that: (1) no later than July 12, 2024, the Authority shall file a complete copy of the record developed below; (2) by July 15, 2024, the Parties must exchange and file a list of the witnesses they anticipate calling, including a brief proffer of witness testimony, a list of proposed exhibits and the proposed exhibits they wish to introduce, including expert witness reports, and a list of attorneys or other individuals who are expected to participate in the hearing; and (3) the Parties must 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 by July 17, 2024 at 10:00 a.m. Eastern.

PUBLIC

Rule 4.3(b)(1) permits the Administrative Law Judge to “[e]xtend any time limit prescribed or allowed by order of the Administrative Law Judge” for “good cause shown” 16 C.F.R. § 4.3(b)(1). The June 7 Order is an order of the Administrative Law Judge and therefore falls within the scope of this rule. For the following reasons, the Parties submit there is good cause for extending the above-referenced dates set forth in the June 7 Order.

First, as to the Authority’s expert report, since the June 7 Order, the Authority, responding to an informal request Appellant made on June 6 during preliminary discussions among counsel, has received additional documentation from the relevant laboratory, produced that documentation to Mr. Calhoun’s counsel and offered to agree to allow Dr. Stephanie King to issue an amended report, taking into account that new documentation. After a review of that information, Dr. King considered the information provided and determined that it did not add to or detract from the opinions already set forth in her report, so an amended report was not necessary under the circumstances. The Authority had delayed its action on its expert report in the event that Dr. King would be issuing an amended report. As a result, the Parties agreed to an extension of the deadline for the Authority’s expert report of two (2) weeks, until July 23, 2024.

Second, with an extension of the deadline for the Authority’s expert report, an accompanying extension of the date of the evidentiary hearing and the other related deadlines would be necessary. The Parties have conferred and have determined that they are available for the evidentiary hearing on August 8 or 9, if that would be acceptable to the Court. The June 7 Order included nine days from the Authority’s expert report to the hearing; the Parties’ proposed dates allow for some additional time due to already scheduled vacation travel.

With the rescheduling of the evidentiary hearing to August 8 or 9, the other dates would be modified to the following, if that would be acceptable to the Court: (1) no later than August 2, 2024, the Authority shall file a complete copy of the record developed below; (2) by three (3)

PUBLIC

business days before the evidentiary hearing, the Parties must exchange and file a list of the witnesses they anticipate calling, including a brief proffer of witness testimony, a list of proposed exhibits and the proposed exhibits they wish to introduce, including expert witness reports, and a list of attorneys or other individuals who are expected to participate in the hearing; and (3) the Parties must 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 by the day before the evidentiary hearing at 10:00 a.m. Eastern.

Third, the Parties agree to these amendments and therefore, no Party will be prejudiced by this short delay.

CONCLUSION

Accordingly, the Parties respectfully request that the relevant dates set forth in the June 7 Order be amended as set forth above.

PUBLIC

Dated: June 27, 2024

Respectfully submitted,

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

ADMINISTRATIVE LAW JUDGE: DANIA L. AYOUBI

**IN THE MATTER OF:
W. BRET CALHOUN, APPELLANT**

DOCKET No. 9430

**[PROPOSED] ORDER GRANTING JOINT MOTION TO AMEND DATES SET FORTH
IN THE ORDER SETTING EVIDENTIARY HEARING DATE AND LIMITING SCOPE**

By joint motion filed on June 27, 2024, Appellant W. Bret Calhoun (“Appellant”) and Respondent the Horseracing Integrity and Safety Authority (“HISA”), (collectively, “the Parties”) request to amend certain dates set forth in the June 7, 2024 Order Setting the Evidentiary Hearing and Limiting Scope in this matter (the “Motion”).

Federal Trade Commission Rule of Practice 4.3(b)(1) permits the Administrative Law Judge to “[e]xtend any time limit prescribed or allowed by order of the Administrative Law Judge” for “good cause shown” 16 C.F.R. § 4.3(b)(1). The Parties contend that there is good cause for amending the dates because: the Authority received additional documentation from the relevant laboratory, produced that documentation to Mr. Calhoun’s counsel and offered to agree to allow Dr. Stephanie King to issue an amended report, taking into account that new documentation; after a review of that information, Dr. King considered the information provided and determined that it did not add to or detract from the opinions already set forth in her report, so an amended report was not necessary under the circumstances; the Authority had delayed its action on its expert report in the event that Dr. King would be issuing an amended report; as a result, the Parties agreed to an extension of the deadline for the Authority’s expert report until July 23, 2024; and the additional time for the delivery of the Authority’s expert report makes it

PUBLIC

necessary to amend the other dates set forth in the Order. Both Appellant and the Authority agree to these amendments, and, therefore, neither will be prejudiced by this short delay.

Based on the foregoing, there is good cause for amending the dates in the Order and the Motion is GRANTED. It is hereby ORDERED as follows: (1) the Authority's expert report is due on July 23, 2024; (2) the evidentiary hearing in this matter is set for August [8 or 9], 2024 at 10 a.m. Eastern; (3) no later than August 2, 2024, the Authority shall file a complete copy of the record developed below; (4) by three (3) business days before the evidentiary hearing, the Parties must exchange and file a list of the witnesses they anticipate calling, including a brief proffer of witness testimony, a list of proposed exhibits and the proposed exhibits they wish to introduce, including expert witness reports, and a list of attorneys or other individuals who are expected to participate in the hearing; and (5) the Parties must 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 by the day before the evidentiary hearing at 10:00 a.m. Eastern.

ORDERED

Dania L. Ayoubi
Administrative Law Judge

Date: June 27, 2024

PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2024, pursuant to Federal Trade Commission Rules of Practice 4.2(c) and 4.4(b), I caused the foregoing to be filed and served as follows:

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PUBLIC

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