

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

**ADMINISTRATIVE LAW JUDGE: Jay L. Himes**

**IN THE MATTER OF: DOCKET No. D09423**

**NATALIA LYNCH, APPELLANT**

**MOTION FOR ISSUANCE OF SUBPOENA DUCES TECUM**

Pursuant to 5 U.S.C. § 556(c)(2) and 16 C.F.R § 1.146(c) and in light of Judge Himes’s March 25, 2024 Order Setting Evidentiary Hearing (the “March 25 Order”) and Judge Himes’s April 5, 2024 Order Resetting Evidentiary Hearing (the “April 5 Order”), Appellant Natalia Lynch (“Ms. Lynch”) hereby moves for issuance of a subpoena *duces tecum* to compel Respondent Horseracing Integrity and Safety Authority (“HISA”) to produce documents in advance of the evidentiary hearing scheduled for May 20, 2024. Ms. Lynch seeks documents related to Respondent HISA and any of its agents’ investigation of and efforts to impose sanctions on Trainer Bruno Tessore for Presence of Altrenogest, which she has set forth in the attached Exhibit A.

**BACKGROUND**

An evidentiary hearing in this matter is scheduled for May 20, 2024. The March 25 Order is clear that the evidentiary hearing will cover “presenting evidence and argument probative of 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 the barn during the period June 19-24, 202[3].”

The documents Ms. Lynch seeks, which are listed in Exhibit A, are not available to and outside the control of Ms. Lynch. As set forth in Ms. Lynch’s Statement of Contested Facts and Specification of Additional Evidence dated March 1, 2024 (“Ms. Lynch’s March 1 Brief”), Ms. Lynch was not provided with these documents in advance of the Arbitration. Ms. Lynch’s March 1 Brief at 17-18. In conjunction with these proceedings, Ms. Lynch’s counsel asked counsel for HISA to produce these documents but, by letter dated April 4, 2024, HISA refused. Ms. Lynch has therefore been forced to file this motion.

### **ARGUMENT**

#### **I. The ALJ Is Authorized To Issue Document Subpoenas in Advance of the Forthcoming Evidentiary Hearing**

The Horseracing Integrity and Safety Act provides that “[a]n administrative law judge shall conduct a hearing under this subsection in such a manner as the Commission may specify by rule, which shall conform to section 556 of title 5.” 15 U.S.C. § 3058(b)(2)(B). Section 556 in turn provides that “employees presiding at hearings,” such as an Administrative Law Judge, may “issue subpoenas authorized by law.” 5 U.S.C. § 556(c). The regulations establishing evidentiary hearings are clear that “[a]ll parties are entitled to the right of due notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing consistent with 5 U.S.C. 556.” 16 C.F.R. § 1.146(c)(ii). A party is also “entitled to present its case or defense by sworn oral testimony and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as, in the discretion of the Administrative Law Judge, may be required for a full and true disclosure of the facts.” 16 C.F.R. § 1.146(c)(6)(iii).

## **II. The Documents Ms. Lynch Seeks Are Relevant and Material to Ms. Lynch's Bases for Appeal.**

The regulations provide that “relevant” and “material” evidence “will be admitted” at the forthcoming evidentiary hearing. 16 C.F.R. § 1.146(c)(6)(ii). For the reasons set forth below, the documents Ms. Lynch seeks are relevant and material to Ms. Lynch's bases for appeal.

*First*, HISA's own expert in the Arbitration proceedings, Dr. Cynthia Cole, who argued that contamination was unlikely to explain the Presence violation conceded that information regarding Mr. Tessore's case would have been relevant to her analysis. When asked as much during the Arbitration, Dr. Cole stated: “It would be an important—it would be an interesting fact, and important to have known those—that situation.” App. Bk. at 3290:10-16. As set forth in Ms. Lynch's March 1 Brief, HISA did not inform Dr. Cole about Mr. Tessore's case at all. Ms. Lynch's March 1 Brief at 17. HISA cannot justify withholding these documents from Ms. Lynch and Your Honor when its own expert has admitted that they have bearing on the question of contamination and her analysis could not possibly have accounted for this information due to HISA's own conduct.

*Second*, the documents Ms. Lynch seeks go to the heart of the questions at issue at the forthcoming evidentiary hearing, as they are probative of the likelihood that the Presence violation charged in this case could have been the result of contamination whether at Monmouth Park or otherwise. The March 25 Order is clear that the evidentiary hearing will cover “evidence and argument probative of 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].” Judge Himes has already ruled that “a confluence of alleged facts, probative of Appellant's

cross-contamination argument, justifies a more searching inquiry than was afforded in the Arbitration.” March 25 Order.

As outlined in Ms. Lynch’s March 1 Brief, and as Ms. Lynch will establish at the forthcoming evidentiary hearing, the Covered Horse Motion to Strike was shipped to Mr. Tessore’s barn at Monmouth Park on the morning of June 24, 2023, and was saddled for the race by Mr. Tessore. Ms. Lynch will further establish at the evidentiary hearing that Mr. Tessore was charged by HISA for the *same* violation (Rule 3212 ADMC) involving the *same* substance (Altrenogest) found in a horse stabled at Mr. Tessore’s barn only a few weeks after Motion to Strike raced at Monmouth Park. App. Bk. at 8; Ms. Lynch’s March 1 Brief at 16-17.

For reasons that Ms. Lynch will develop further at the evidentiary hearing through fact witness and expert testimony, these facts suggest that that the sources of contamination for Mr. Tessore's Covered Horse (Tenebris) and Ms. Lynch’s Covered Horse Motion to Strike could be related. At a minimum, another case that could have been the result of contamination concerning the same substance around the same time as Ms. Lynch’s case from an environment that Motion to Strike was also in prior to testing is probative of the likelihood of contamination more generally.

The records Ms. Lynch seeks are relevant to that question and they are uniquely in HISA’s custody and control. Moreover, for reasons that Ms. Lynch will develop further at the evidentiary hearing through fact and expert testimony, documentation concerning events at Monmouth Park in both June and July 2023 are relevant to the question of contamination. As Ms. Lynch will establish, among other things, Altrenogest can persist in environments for extended periods of time.

*Third*, documents concerning Mr. Tessore's case, which, as discussed, involved a near contemporaneous Presence violation for the same substance, including the underlying test results for Mr. Tessore's case, will shed light on Ms. Lynch's argument that the sanctions HISA has imposed on her are arbitrary and capricious.

*Fourth*, Ms. Lynch intends to argue that she was not afforded due process in the Arbitration below due to HISA's failure to disclose the information regarding Mr. Tessore's case during the Arbitration proceedings both to HISA's own expert and to Ms. Lynch. (Ms. Lynch's March 1 Brief at 17-18.) Ms. Lynch cannot fully construct an argument regarding the prejudice she suffered without access to information that speaks to what HISA and its agents knew and when they knew that information.

### CONCLUSION

For the foregoing reasons, and the reasons set forth in Ms. Lynch's March 1 Brief, Ms. Lynch respectfully requests that Judge Himes issue a subpoena *duces tecum* to HISA compelling the production of the above-referenced documents without delay and in no case later than April 26, 2024. To the extent HISA asserts that these documents are confidential, Ms. Lynch is prepared to consent to the documents HISA produces being subject to *in camera* treatment consistent with the provisions of 16 C.F.R. § 1.146(c)(7). A proposed order granting this motion is attached.

Dated: April 19, 2024

Respectfully submitted,

/s/ Grant S. May

H. CHRISTOPHER BOEHNING

GRANT S. MAY

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**Exhibit A**

Ms. Lynch seeks production of the following documents from HISA. For the avoidance of doubt, this includes but is not limited to any documents related to the below topics that are in the custody and control of any of HISA's agents, including but not limited to its enforcement arm Horse Integrity & Welfare Unit ("HIWU").

- HISA and HIWU's investigation file on trainer Bruno Tessore relating to the pending Charge brought against Mr. Tessore for an alleged violation of Rule 3212 ADMC for Presence of Altrenogest ("Altrenogest Presence Charge"), including but not limited to, testing documentation for the collection of samples from the Covered Horse "Tenebris" and Laboratory Documentation Package for A Sample and, if applicable, B Sample tests;
- All documents and communications relating to Mr. Tessore's Altrenogest Presence Charge, including but not limited to, communications or documents shared between HIWU, HISA, or its representatives, and Mr. Tessore or any third party concerning Mr. Tessore's Altrenogest Presence Charge;
- All stall or barn records in HISA or its agents' custody and control for stalls or barns used or occupied by Mr. Tessore's horses at Monmouth Park during June and July 2023;
- All veterinary records in HISA and its agents' custody and control for any horses stabled at or trained by Mr. Tessore at Monmouth Park in June and July 2023;
- All documents and communications in HISA or its agents' custody and control concerning any other positive sample test results for Altrenogest at Monmouth Park in June and July 2023.

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**ADMINISTRATIVE LAW JUDGE: JAY L. HIMES**

**IN THE MATTER OF:  
NATALIA LYNCH, APPELLANT**

**DOCKET No. D09423**

**[PROPOSED] ORDER GRANTING MOTION FOR ISSUANCE OF SUBPEONA  
DUCES TECUM**

By motion filed on April 19, 2024, Appellant Natalia Lynch (“Appellant”) has sought issuance of a subpoena *duces tecum* pursuant to 5 U.S.C. § 556(c)(2) and 16 C.F.R § 1.146(c). Ms. Lynch seeks an order that Respondent HISA produce the documents set forth in Exhibit A of her motion. Ms. Lynch has argued that the requested documents are likely to be probative of 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, 2023.

The Horseracing Integrity and Safety Act sets forth: “An administrative law judge shall conduct a hearing under this subsection in such a manner as the Commission may specify by rule, which shall conform to section 556 of title 5.” 15 U.S.C. § 3058(b)(2)(B). Section 556 of the Administrative Procedures Act provides that employees presiding at hearings may issue subpoenas authorized by law. 5 U.S.C. § 556(c). Pursuant to these authorities and for the reasons set forth in Ms. Lynch’s motion, the Motion is GRANTED. HISA is ordered to produced the documents set forth in Exhibit A of Ms. Lynch’s motion no later than April 26, 2024.

ORDERED

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Jay L. Himes  
Administrative Law Judge

Date: April \_\_, 2024



**CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 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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Federal Trade Commission  
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Suite CC-5610  
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Hon. Jay L. Himes  
Administrative Law Judge  
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