

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Andrew N. Ferguson, Chairman**  
**Mark R. Meador**

**IN THE MATTER OF**

**PHILIP SERPE,**

**Appellant.**

**MATTER NO. D09441**

**APPELLANT'S FOURTH NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff Philip Serpe submits notice of this supplemental authority: *NHBPA v. Black*, --- F.4th ---, 2026 WL 1689717 (5th Cir. June 11, 2026) (*Black III*).

*Black III* reconsiders a facial private non-delegation challenge to the Horseracing Integrity and Safety Authority's rulemaking and enforcement authority in light of *FCC v. Consumers' Rsch.*, 606 U.S. 656 (2025). The Fifth Circuit reissued and affirmed its prior decision (*NHBPA v. Black*, 107 F.4th 415 (5th Cir. 2024) (*Black II*)), holding that the private Authority was unconstitutionally delegated enforcement authority—and rejected the Sixth Circuit's conclusion in *Oklahoma v. United States*, 163 F.4th 294 (6th Cir. 2025). The Fifth Circuit explained that *Consumers' Research* did not alter the private non-delegation test it already applied. *Black III*, 2026 WL 1689717, at \*15. Critically, no relevant decision of the private entity in *Consumers' Research* had "legal (or, indeed, practical) effect until the agency decide[d] it should," whereas the Authority can proceed through the entire enforcement action, *and*

*impose immediately effective sanctions*, “without any agency oversight.” *Id.* (cleaned up).

Serpe raised a private non-delegation challenge to the Authority’s enforcement action against him here. Op. Br. at 25–26. And the Commission decided to “consider the briefing in full” without determining whether the claim was “appropriately addressed in this proceeding.” Jan. 2, 2026 Order. Given that *Black III* holds that HISA’s enforcement authority is facially unconstitutional, the Commission should vacate the sanctions against Serpe and dismiss this adjudication on that basis.

Dated: June 15, 2026.

Respectfully submitted,

BRADFORD J. BEILLY  
Bradford J. Beilly, P.A.  
1144 S.E. 3rd Avenue  
Ft. Lauderdale, FL 33316  
Phone: (954) 763-7000  
Fax: (954) 525-0404  
brad@beillylaw.com

/s/ Joshua M. Robbins  
JOSHUA M. ROBBINS  
CHRISTOPHER CONDON  
Pacific Legal Foundation  
3100 Clarendon Blvd., Suite 1000  
Arlington, VA 22201  
(202) 945-9524  
JRobbins@pacificlegal.org  
CCondon@pacificlegal.org

OLIVER J. DUNFORD  
Pacific Legal Foundation  
4400 PGA Blvd., Suite 307  
Palm Beach Gardens, FL 33410  
(916) 503-9060  
ODunford@pacificlegal.org

*Attorneys for Appellant Philip Serpe*

**CERTIFICATE OF SERVICE**

Pursuant to 16 CFR § 1.146(a) and 16 CFR § 4.4(b), I certify that on June 15, 2026, I filed the foregoing document electronically using the FTC’s E-Filing System, which will send notification of the filing. A courtesy copy will be sent via email to the following:

|   |   |
|---|---|
| <p>April Tabor<br/>                 Office of the Secretary<br/>                 Federal Trade Commission<br/>                 600 Pennsylvania Avenue NW<br/>                 Suite CC-5610<br/>                 Washington, DC 20580<br/>                 atabor@ftc.gov<br/>                 electronicfilings@ftc.gov</p> | <p>Hon. D. Michael Chappell<br/>                 Office of Administrative Law Judges<br/>                 Federal Trade Commission<br/>                 600 Pennsylvania Avenue NW<br/>                 Washington, DC 20580<br/>                 oalj@ftc.gov<br/>                 electronicfilings@ftc.gov</p>   |
| <p>James Bunting<br/>                 Tyr LLP<br/>                 488 Wellington Street West,<br/>                 Suite 300-302<br/>                 Toronto, ON M5V 1E3<br/>                 jrbunting@tyrllp.com</p>  | <p>Michelle C. Pujals<br/>                 Allison Farrell<br/>                 4801 Main Street, Suite 350<br/>                 Kansas City, MO 64112-2749<br/>                 mpujals@hiwu.org<br/>                 afarrell@hiwu.org<br/> <i>Counsel for HIWU</i></p>   |
| <p>John L. Forgy<br/>                 830 Vermillion Peak Pass<br/>                 Lexington, KY 40515<br/>                 johnforgy1@gmail.com<br/> <i>Counsel for HISA</i></p>  | <p>Bryan H. Beauman<br/>                 Rebecca C. Price<br/>                 Sturgill Turner Barker &amp; Moloney,<br/>                 PLLC<br/>                 333 W. Vine St., Ste 1500<br/>                 Lexington, KY 40507<br/>                 bbeauman@sturgillturner.com<br/>                 rprice@sturgillturner.com<br/> <i>Counsel for HISA</i></p> |

|  |  |
|--|--|
| <p>Pratik A. Shah<br/>Lide E. Paterno<br/>Akin Gump Strauss Hauer &amp; Feld, LLP<br/>2001 K Street, NW<br/>Washington, DC 20006-1037<br/>pshah@akingump.com<br/>lpaterno@akingum<br/><br/><i>Counsel for HISA</i></p> | <p>John C. Roach<br/>Ransdell Roach &amp; Royse, PLLC<br/>176 Pasadena Drive, Building One<br/>Lexington, KY 40503<br/>john@rrrfirm.com<br/><br/><i>Counsel for HISA</i></p> |
|--|--|

/s/ Joshua M. Robbins  
JOSHUA M. ROBBINS