

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

In the Matter of)	
)	
Joseph Peacock and Oscar Ceballos,)	Docket No. 9415
)	
Appellants.)	

MOTION FOR ISSUANCE OF SUBPOENAS

Pursuant to 15 U.S.C. § 3051 *et seq.*, 5 U.S.C. § 556 *et seq.*, and 16 CFR 1.145 *et seq.*, and pursuant further to the Chief Administrative Law Judge’s Order on Stay Application and Application for Review entered July 3, 2023, Appellants Joseph Peacock (“Appellant Peacock”) and Oscar Ceballos (“Appellant Ceballos”) (together, “Appellants”) hereby move for issuance of subpoenas *ad testificandum* to compel the appearances and testimony of two witnesses at the evidentiary hearing scheduled for July 13, 2023. The witnesses, both of whom are unaffiliated with and outside the control of Appellants, are:

- Larry L. Fontenot, Jr., the Chief Steward of the three Albuquerque Downs Racetrack stewards (the “Stewards”) who issued the September 25, 2022 ruling and civil sanction against Appellants. Upon information and belief, Mr. Fontenot may be served at the New Mexico Racing Commission, 4900 Alameda Boulevard NE, Suite A, Albuquerque, NM 87113, or via e-mail at larry.fontenot@rc.nm.gov.
- Mr. Jeff Williams, an industry expert on whom the Horseracing Integrity and Safety Authority (“HISA”) has relied in the past. Mr. Williams may be served at Arapahoe

Park, 26000 East Quincy Avenue, Aurora, CO 80016, or via e-mail at [REDACTED].

The witnesses' testimony is "relevant, material, and reliable" as to one or more of Appellants' bases for appeal, including that the Stewards were incorrect in their determination that Appellant Ceballos violated Rule 2280 and that the record was insufficient such that it did not allow for the Stewards' September 25, 2022 ruling and civil sanction. *See* 16 C.F.R. § 1.145(c)(6)(i). The testimony is not only expected to yield information that is relevant, but it will also assist the Administrative Law Judge in the completion of the review required under 16 C.F.R. § 1.145(b); *see* 16 C.F.R. § 3.31(c)(1) (permissible scope of discovery in adjudicative proceedings generally).

For example, Mr. Williams, whom, in the past, HISA has sought for his industry opinion related to HISA's enforcement of Racetrack Safety Rule 2280 ("Rule 2280")—the rule at issue in this matter—is expected to testify as follows:

- Mr. Williams was consulted by Marc Guilfoil, who served on the HISA panel in the hearing below, for his opinion about the Stewards' application of Rule 2280 and the September 25 ruling and civil sanction against Appellants;
- Mr. Williams told Mr. Guilfoil that, in his opinion, Appellant Ceballos did not use the riding crop in violation of Rule 2280, that Appellant Ceballos used the riding crop to strike the horse SHERIFF BROWN on the hindquarters only two or three times (at most), and that other uses of the riding crop were permitted uses that were intended to preserve the safety of horses and riders that should not have been counted against Appellant Ceballos; and

- Mr. Williams was under the impression that, following their conversation, Mr. Guilfoil shared his opinion (which Mr. Williams believes he may have submitted to HISA as a written report).

Mr. Fontenot is expected to testify to the following:

- The process that the Stewards undertook in determining that Appellant Ceballos violated Rule 2280 and, more particularly, in counting the number of uses of the riding crop to strike SHERIFF BROWN's hindquarters;
- Albuquerque Downs Racetrack's lack of a riding crop rule prior to the promulgation of Rule 2280;
- Mr. Fontenot's lack of experience stewarding uses of the riding crop in races at Albuquerque Downs Racetrack using the equipment and technologies that were available to him in this matter; and
- The Stewards' assessment of a Rule 2280 violation against the horse who finished second to SHERIFF BROWN in the race at issue.

The witnesses' presence is necessary. Mr. Williams' testimony is not currently in the record. Despite HISA's consultation of Mr. Williams and Mr. Guilfoil being part of the HISA panel whose May 17, 2023 decision affirmed the Stewards' September 25 ruling and civil sanction, HISA did not call Mr. Williams to testify at the hearing below. In fact, there is no indication in the May 17 decision that HISA considered—much less refuted—the opinion that it sought from Mr. Williams. As to Mr. Fontenot, while he testified at the hearing below, he did so apparently while driving. His appearance at that hearing via Zoom did not allow for Mr. Fontenot to be shown the video recordings of the race that the Stewards reviewed for the September 25 ruling and civil sanction and then cross-examined about what Mr. Fontenot had then just been shown in real-time. This

level of functionality is critical, as Appellants believe it will reveal that the Stewards lacked sufficient evidence to find as they did, by the preponderance of the evidence standard, that Appellant Ceballos violated Rule 2280.

For the forgoing reasons, Appellants respectfully request that the Administrative Law Judge issue subpoenas *ad testificandum* to Mr. Williams and Mr. Fontenot compelling their appearances and testimony at the evidentiary hearing on July 13, 2023.

Respectfully submitted,

/s/ Nolan M. Jackson

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR 4.2(c)(1)(i), a copy of the forgoing is being filed electronic through the Federal Trade Commission's electronic filing system (AEFS) this 6th day of July, 2023, with courtesy copies being served via email upon the following:

Office of the Secretary
electronicfilings@ftc.gov

Office of Administrative Law Judges
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