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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 THIRD NOTICE OF SUPPLEMENTAL AUTHORITY

Plaintiff Philip Serpe submits notice of this supplemental authority: *FCC v. AT&T, Inc.*, No. 25–406, 2026 WL 1593357 (U.S. June 4, 2026).

AT&T confirms that the Seventh Amendment requires “that a jury make the ultimate determination of issues of fact” at some point before “legal rights and obligations are conclusively ascertained and determined.” *Id.* at *6 (cleaned up). The Horseracing Integrity and Safety Act’s anti-doping adjudication process offers no opportunity for a jury determination of the facts on a presence of a banned substance claim before either the Horseracing Integrity and Welfare Unit arbitration or the Federal Trade Commission despite the availability of a civil fine. *See Op. Br.* at 13–14. Thus, it violates the Seventh Amendment.

AT&T also applied the unconstitutional conditions doctrine to the Seventh Amendment. *See* 2026 WL 1593357, at *8–9. The Court concluded that the doctrine was a “poor fit” for the circumstances of the case but did not question the validity of

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the doctrine for Seventh Amendment claims. *Id.* at 9. The doctrine can thus be applied to Serpe's claim. Reply Br. at 4–5.

Dated: June 9, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to 16 CFR § 1.146(a) and 16 CFR § 4.4(b), I certify that on June 9, 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:

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