

**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. 9441

**THE HORSERACING INTEGRITY AND SAFETY AUTHORITY’S RESPONSE
TO APPELLANT’S THIRD NOTICE OF SUPPLEMENTAL AUTHORITY**

The Horseracing Integrity and Safety Authority responds to Appellant’s Third Notice of Supplemental Authority concerning *FCC v. AT&T, Inc.*, Nos. 25-406 & 25-567, 2026 WL 1593357 (U.S. June 4, 2026). *AT&T* undermines, rather than supports, Appellant’s positions.

To start, the Court held that the FCC’s forfeiture adjudication comported with the Seventh Amendment even though—unlike here—the FCC (i) had levied monetary penalties, via final forfeiture orders, on the carriers; (ii) did not dispute that the claims at issue were derived from the common law; and (iii) made no public rights argument. *See* Resp. Br., *FCC v. AT&T, Inc.*, Nos. 25-406 & 25-567, 2026 WL 841305, at *20 (U.S. Mar. 20, 2026). None of that is true in this case, making Appellant’s Seventh Amendment claim even weaker than the one rejected in *AT&T*.

AT&T also refutes Appellant’s argument that the ALJ’s (immediately stayed) imposition of a fine alone triggers the Seventh Amendment. The Court confirmed that the Seventh Amendment is implicated only at the stage of proceedings in which an adjudicator makes “the ultimate determination of the facts giving rise to the obligation to pay.” *AT&T*, 2026 WL 1593357, at *8. What matters to Appellant’s Seventh Amendment claim under the Act’s *de novo* review scheme, then, is the FTC’s decision on whether a fine is properly before it, not the ALJ’s (or the Arbitrator’s).

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Appellant’s “counterintuitive” theory—that the ALJ could and should have issued a fine that HIWU elected not to pursue and that the Arbitrator decided not to impose, so as to create (rather than avoid) a constitutional concern—is “something like a criminal defendant arguing that his right to trial by jury is infringed when the prosecutor decides to dismiss the indictment before trial.” *Id.* at *9.

Similarly, *AT&T* makes clear that the Seventh Amendment does not speak to “reputational and practical harms” that could have arisen out of the “preliminary” proceedings before the ALJ or Arbitrator. 2026 WL 1593357, at *8. Such harms “ha[ve] never been thought to pose a Seventh Amendment problem.” *Id.*

DATED: June 12, 2026

Respectfully submitted,

/s/Bryan H. Beauman

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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 12, 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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