

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

**FILED**

OCT 14 2011

Clerk, U.S. District & Bankruptcy  
Courts for the District of Columbia

UNITED STATES OF AMERICA, )  
By: United States Attorney )  
for the District of Columbia )  
555 Fourth Street, N.W., Civil Division )  
Washington, D.C. 20530 )

Petitioner,

v.

LANCE ARMSTRONG )  
Serve: John W. Kecker, Esq. )  
Keker & Van Nest LLP )  
710 Sansome Street )  
San Francisco, CA 94111-1704 )

Respondent. )

Case: 1:11-mc-00565  
Assigned To : Boasberg, James E.  
Assign. Date : 10/14/2011  
Description: Miscellaneous

**UNITED STATES' PETITION FOR SUMMARY  
ENFORCEMENT OF INSPECTOR GENERAL SUBPOENA**

Petitioner, the United States of America (United States), through its counsel and pursuant to the Inspector General Act of 1978, 5 U.S.C. App. 3 § 6(a)(4), respectfully petitions this Court for an order compelling the respondent, Lance E. Armstrong, to comply with the Inspector General's subpoena *duces tecum* No. 110576 (OIG subpoena). Adopted by reference and incorporated herein are the accompanying Memorandum in Support of the United States' Petition for Summary Enforcement of Inspector General Subpoena and a Declaration from Michael J. Pugliese, Special Agent, Office of Inspector General (OIG), United States Postal Service (USPS). A proposed Order also is attached.

The United States contends as follows in support of its Petition:

Jurisdiction and Venue

1. Subject matter jurisdiction is conferred by § 6(a)(4) of the Inspector General Act of 1978, 5 U.S.C. App. 3 (authorizing Inspectors General to subpoena documents and other information, and to enforce their subpoenas in United States District Courts) and 28 U.S.C. §§ 1331 (providing for “district courts . . . [to] have original jurisdiction of all civil actions arising under the . . . laws . . . of the United States”) and 1345 (providing for “district courts . . . [to] have original jurisdiction of all civil actions, suits or proceedings commenced by the United States”).

2. Venue is alleged under 28 U.S.C. § 1391(b)-(c)(1)-(2) (providing for venue based on where “a substantial part of the events or omissions giving rise to the claim occurred”).

Parties

3. Petitioner is the United States.

4. Respondent is Lance E. Armstrong, who resides in Austin, Texas.

Issuance and Service of Subpoena

5. The subpoena was issued in Washington, D.C. on June 10, 2011, by the USPS-OIG pursuant to the Inspector General Act of 1978 (the Act), 5 U.S.C. App. 3 § 6(a)(4), which authorizes the subpoenaing of records as part of the OIG’s responsibility to investigate and identify fraud and abuse in the USPS’s programs and operations. See 5 U.S.C. App. 3 § 4 (a)(1), (3)-(5).

6. As described in more detail in the subpoena and the accompanying Declaration, the subpoena was served on Mr. Armstrong in furtherance of the OIG's investigation to determine whether the corporate entities that owned and managed the cycling team sponsored by the USPS or certain individuals, including Mr. Armstrong, defrauded or made false statements in connection with the sponsorship contract with the USPS. The contract prohibited the team and its riders from employing substances or methods that were banned by cycling's governing bodies, and further required the team to take "immediate action" in the event that a rider used such substances or methods in violation of the agreement. The USPS paid approximately \$40 million pursuant to the contract between 1996 and 2004.

Mr. Armstrong's Failure to Comply with the Subpoena

7. The subpoena was served in San Francisco, California on June 10, 2011. The Date of Return was June 29, 2011, which was extended by the Government to July 8, 2011. The time to respond has now passed, and Mr. Armstrong has declined to produce documents in compliance with the subpoena or state a proper objection thereto. Accordingly, summary enforcement of the subpoena is appropriate.


WHEREFORE, petitioner United States respectfully requests that this Court enter an Order granting this Petition and:


1. Requiring Lance Armstrong to produce to the OIG within five calendar days of the Court's Order all items described in the subpoena.

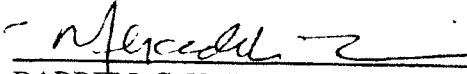
2. Granting such other and further relief to the United States that this Court deems necessary and appropriate.


Respectfully submitted,

TONY WEST  
Assistant Attorney General

RONALD C. MACHEN JR., D.C. Bar # 447889   
United States Attorney

RUDOLPH CONTRERAS, D.C. Bar # 434122   
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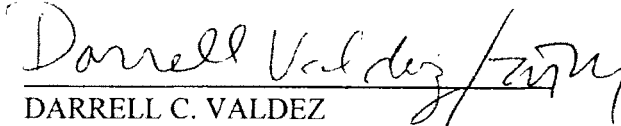
  
JOYCE R. BRANDA, D.C. Bar No. 246363  
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Attorneys For United States

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Petition for Summary Enforcement of Inspector General Subpoena, the Memorandum in support thereof, and Declaration were served by first-class mail this <sup>14<sup>th</sup></sup> 1<sup>st</sup> day of October, 2011 to counsel for Lance Armstrong:

John W. Keker, Esq.  
Keker & Van Nest LLP  
710 Sansome Street  
San Francisco, CA 94111-1704

  
DARRELL C. VALDEZ  
Assistant United States Attorney

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	)	
	)	
Petitioner,	)	
	)	
v.	)	Misc. No.
	)	
LANCE E. ARMSTRONG,	)	
	)	
Respondent.	)	
	)	

**MEMORANDUM IN SUPPORT OF UNITED STATES' PETITION FOR  
SUMMARY ENFORCEMENT OF INSPECTOR GENERAL SUBPOENA**

The United States of America (United States), for the Office of Inspector General (OIG) of the United States Postal Service (USPS), respectfully submits this memorandum of points and authorities in support of the United States' Petition for Summary Enforcement. The administrative subpoena *duces tecum* No. 110576, issued pursuant to the Inspector General Act of 1978 (Inspector General Act), 5 U.S.C. app. 3, was served upon Lance E. Armstrong on June 10, 2011. The subpoena required Mr. Armstrong to produce certain documents, including documents reflecting Mr. Armstrong's interest in Tailwind Sports LLC, payments by Mr. Armstrong to certain persons, and documents reflecting Mr. Armstrong's use of substances or methods that are banned from use by professional cyclists. Mr. Armstrong has failed to comply with the subpoena and has refused to interpose any valid objection to the subpoena.

An administrative subpoena is summarily enforceable if the government establishes by declaration that the subpoena is within the agency's authority, seeks information reasonably relevant to the agency's inquiry, and is not indefinite or unduly burdensome. As shown in the accompanying Declaration of Special Agent Michael Pugliese (Pugliese Decl.), the subpoena

issued to Mr. Armstrong satisfies each of these requirements. Accordingly, the United States respectfully requests that this Court enter an order requiring Mr. Armstrong to produce all documents and materials described in the subpoena within five days of the issuance of the Court's order.<sup>1</sup>

### **STATEMENT OF FACTS**

From 1996 through 2004, the USPS sponsored a professional cycling team owned by Tailwind Sports LLC (Tailwind), and during that time the USPS paid Tailwind between \$1 million and \$9 million per year to sponsor the team. Pugliese Decl. ¶ 3. Mr. Armstrong was the lead rider for the team from 1999 through 2004. *Id.* The sponsorship agreement between the USPS and Tailwind prohibited the team and its riders from employing substances or methods that were banned by cycling's governing bodies, and further required the team to take "immediate action" in the event that a rider used such substances or methods in violation of the agreement. *Id.* The USPS-OIG is investigating whether certain persons, including Mr. Armstrong, defrauded or submitted false claims to the USPS by making false statements about the team's or their own compliance with the sponsorship agreement's prohibition on the use of banned substances and methods. *Id.* The United States Attorney's Office for the Central District of California is conducting a separate criminal investigation which is ongoing. *Id.*

In furtherance of the USPS investigation, the USPS-OIG issued a subpoena to Mr. Armstrong on June 10, 2011, and Mr. Armstrong was served through counsel on the same

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<sup>1</sup> In light of Mr. Armstrong's expressed sensitivity to public disclosure relating to the Government's investigations, we have filed simultaneously herewith a motion to seal this petition and related documents temporarily, until Mr. Armstrong has had an opportunity to be heard on the issue of whether public disclosure is appropriate.

day. Pugliese Decl. ¶ 5, Exh. A. The subpoena contains 21 requests for documents, including documents relating to Mr. Armstrong's interest in or control of the corporate entities that owned and managed the USPS team (requests 1-2, 6); his understanding and compliance with the sponsorship agreement with the USPS (requests 3-5); funds paid to Mr. Armstrong directly or indirectly by the USPS (requests 1, 6, 10-13); and the use of any banned performance enhancing drugs or procedures by Mr. Armstrong or other members of the cycling team (requests 7-9, 13-21). *Id.* at ¶¶ 4, 5.

The response date for the subpoena was June 29, 2011, which the government agreed to extend to July 8, 2011. *Id.* at ¶ 5. In a letter dated June 16, 2011, Mr. Armstrong's counsel, John W. Kecker, indicated that Mr. Armstrong "is entitled to invoke the Fifth Amendment in response to [the Government's] subpoena," and inquired about whether the United States would provide "act of production immunity" in the event that Mr. Armstrong invoked his Fifth Amendment right. Pugliese Decl. ¶ 6. In its response, the government informed Mr. Kecker that any discussions about any type of immunity should be addressed to the prosecutors leading the criminal investigation in the Central District of California. Pugliese Decl. ¶ 7.

On July 7, 2011, Mr. Kecker informed the government that Mr. Armstrong did not intend to respond to the subpoena. Pugliese Decl. ¶ 8. He also suggested that, not only would Mr. Armstrong refuse to produce responsive documents, he also would not invoke any "of his constitutional rights" or otherwise state any objection to the subpoena. *Id.* Mr. Kecker offered no basis for Mr. Armstrong's failure to respond, but his letter did offer the vague suggestion that there was some connection between Mr. Armstrong's recalcitrance and Mr. Kecker's allegation that the investigation in the Central District of California "has been plagued by rampant leaking."



*Id.* In a conference call with the government on July 19, 2011, Mr. Keker stated his client's intention not to respond to the subpoena, but refused to elaborate on the basis for his position that the alleged leaks entitled Mr. Armstrong to ignore the Postal Service's subpoena. On July 20, 2011, the government again requested that Mr. Keker expressly invoke any objections to the subpoena, but he has not responded to that request. Pugliese Decl. ¶ 10, Exh. C. To date, Mr. Armstrong has not produced documents responsive to the subpoena, has not invoked his right under the "act of production doctrine" not to produce documents pursuant to the Fifth Amendment, and has not stated any other valid objection to the subpoena. Pugliese Decl. ¶ 11.

#### **ARGUMENT**

The Inspector General Act of 1978 provides that in the case of noncompliance, an administrative subpoena "shall be enforceable by order of any appropriate United States district court." 5 U.S.C. app. 3 § 6(a)(4). The role of the district court in evaluating a request for enforcement of an administrative subpoena is "strictly limited." *FTC v. Texaco, Inc.*, 555 F.2d 862, 872-73 (D.C. Cir. 1977) (en banc). Courts historically have enforced administrative subpoenas if: (1) they are for a lawful purpose within the statutory authority of the issuing agency; (2) they seek information that is reasonably relevant to a matter that the issuing agency is considering; and (3) they are not unreasonably broad or burdensome. *See United States v. Powell*, 379 U.S. 48, 57-58 (1964); *United States v. Morton Salt Co.*, 338 U.S. 632, 652-53 (1950). The District of Columbia Circuit has adopted this standard. *See FTC v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) ("It is well established that a district court must enforce a federal agency's subpoena if the information sought is reasonably relevant – or put differently, not plainly incompetent or irrelevant to any lawful purpose of the agency – and

not unduly burdensome to produce.”) (citations omitted) (internal quotation marks omitted); *Texaco*, 555 F.2d at 872 (noting that “the [Supreme] Court ruled that so long as the investigation was for a lawfully authorized purpose, the documents sought were relevant to the inquiry, and the demand was reasonable, the Administrator had a right to judicial enforcement of the subpoenas.”)

Moreover, “the scope of issues which may be litigated in an enforcement proceeding must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity.” *Texaco*, 555 F.2d at 872. Indeed, “the very backbone of an administrative agency’s effectiveness in carrying out [its] congressionally mandated duties ... is the rapid exercise of the power to investigate.” *Id.* (internal quotations marks omitted). To ensure the summary nature of enforcement proceedings, the government is authorized to rely on affidavits or declarations to demonstrate that the requirements for enforcement of an administrative subpoena have been satisfied. *In re EEOC*, 709 F.2d 392, 400 (5th Cir. 1983); *United States v. Blue Cross & Blue Shield of Michigan*, 726 F. Supp. 1523, at 1524-25 (E.D. Mich. 1989) (holding that “the OIG subpoena should be enforced or quashed on its face, with supporting and opposing briefs and affidavits,” and that discovery or evidentiary hearings were unnecessary). In this case, the accompanying Declaration of Special Agent Michael J. Pugliese demonstrates that summary enforcement of the subpoena issued to Mr. Armstrong is both appropriate and necessary.

**I. The Investigation Is Within The Authority Of The United States Postal Service Inspector General**

The investigation by the USPS-OIG regarding fraud or false claims in connection with its sponsorship of the USPS professional cycling team is well within the agency's authority.

Administrative agencies in general and their respective Offices of Inspector General in particular have broad investigatory and subpoena power. *See, e.g., Resolution Trust Corp. v. Thornton*, 41 F.3d 1539, 1544 (D.C. Cir. 1994) (“Administrative agencies wield broad power to gather information through the issuance of subpoenas.”). “Like a grand jury, an agency ‘*can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.*’” *Id.* (citation omitted) (emphasis added). Pursuant to the Inspector General Act of 1978, the USPS-OIG is authorized – and indeed has the “duty and responsibility” – to conduct investigations, provide reports, and make recommendations regarding, among other things, fraud and abuse in their agencies’ programs and operations. 5 U.S.C. app. 3, §§ 4(a)(1)-(3); *id.* § 6(a)(2) (authorizing Inspectors General to conduct investigations relating to an agency’s programs and operations that are, “in the judgment of the Inspector General, necessary or desirable.”).

The Inspector General Act of 1978 also grants authority to an Inspector General to require by administrative subpoena the production of records “necessary in the performance of the functions assigned by [the] Act.” 5 U.S.C. app. 3 § 6(a)(4). It has been observed that “[p]erhaps the Inspector General’s most important tool for ferreting out waste, fraud, and abuse is the extensive subpoena power created by Congress to aid his investigations.” *United States v. Aero-Mayflower Transit Co.*, 646 F. Supp. 1467, 1472 (D.D.C. 1986), *aff’d*, 831 F.2d 1142 (D.C.

Cir. 1987).” Congress considered this subpoena power “absolutely essential to the discharge of the [Inspector General’s] functions.” *Id.* (quoting S. Rep. No. 95-1071 at 32., reprinted in 1978 U.S.C.A.N. 2676, 2709). Moreover, Congress intentionally authorized the Inspectors General to access the records of recipients of federal funds. *See United States v. Teeven*, 745 F. Supp. 220, 224 n.6 (D. Del. 1990) (“Congress was well aware of the need for the IG to have compelled access to the records of recipients of federal funds to ensure that fraud and abuse could be detected.”). For these reasons, “[a] constricted interpretation [of the subpoena authority] would be at odds with the broad powers conferred on the Inspector General by the statute.” *United States v. Westinghouse Elec. Corp.* 788 F.2d 164, 170 (3<sup>rd</sup> Cir. 1986); *see also United States v. Medic House, Inc.*, 736 F. Supp. 1531, 1535 (W.D. Mo. 1989).

In the instant case, the USPS-OIG has undertaken an investigation of fraud or false claims in connection with the USPS sponsorship of the cycling team. Pugliese Decl. ¶ 3. This sponsorship arrangement involved the expenditure of significant funds by the USPS. *Id.* Thus, it is within the authority of the USPS-OIG to investigate in order to detect and prevent fraud and abuse. *See* 5 U.S.C. app. 3 § 4(a)(1), (3).

**II. The Information Sought By The Subpoena Is Reasonably Relevant To The Office Of Inspector General Investigation**

In the context of enforcement of an administrative subpoena, the courts have interpreted relevance broadly. “Reasonably relevant” means “merely that the information must be relevant to *some* (any) inquiry that the [agency] is authorized to undertake.” *United States v. Hunton & Williams*, 952 F.Supp. 843, 854 (D.D.C. 1997) (citations omitted). So long as the material requested “touches a matter under investigation,” an administrative subpoena will

survive a challenge that the material is not relevant.” *Sandsend Fin. Consultants, Ltd. v. Fed. Home Loan Bank Board*, 878 F.2d 875, 882 (5<sup>th</sup> Cir. 1989) (quoting *EEOC v. Elrod*, 674 F.2d 601, 613 (7<sup>th</sup> Cir. 1982) (citations omitted)). The agency’s appraisal of relevancy must be accepted “as long as it is not ‘obviously wrong.’” *Hunton & Williams*, 953 F.Supp. at 854 (citations omitted); *In re McVane*, 44 F.3d 1127, 1135 (2d Cir. 1995) (An “agency’s appraisal of relevancy ... ‘must be accepted so long as it is not obviously wrong.’”) (quoting *Resolution Trust Corp. v. Walde*, 18 F.3d 943, 946 (D.C. Cir. 1994)). An affidavit from a government official is sufficient to establish a prima facie showing that these requirements have been met. *McVane*, 44 F.3d at 1136.

The pending subpoena seeks documents that would allow the OIG to evaluate the matters under investigation, including documents pertaining to Mr. Armstrong’s interest in or control of the corporate entities that owned and managed the USPS team (requests 1-2, 6); his understanding and compliance with the sponsorship agreement with the USPS (requests 3-5); funds paid to Mr. Armstrong directly or indirectly by the USPS (requests 1, 6, 10-13); and the use of any banned performance enhancing drugs or procedures by Mr. Armstrong or other members of the cycling team (requests 7-9, 13-21). Pugliese Decl. ¶ 4.

Thus, the subpoena seeks information related to whether and the extent to which Mr. Armstrong or any other rider on the USPS team used any banned substance or method and whether Mr. Armstrong or any other person affiliated with the USPS team made false statements to the USPS in connection with the sponsorship agreement. Moreover, the subpoena seeks information about the nature of Mr. Armstrong’s interest in the companies that owned and operated the team, which relates to whether Mr. Armstrong may be held vicariously liable for

false claims submitted by those companies. Requests such as these plainly are relevant to the issue of whether USPS funds were expended in reliance on false representations about the team's or Mr. Armstrong's utilization of banned practices and the extent of Mr. Armstrong's liability for the submission of false claims. *Id.*

### **III. The Subpoena is Not Unreasonably Broad or Burdensome**

It is well settled that the burden of showing that the demand is unreasonable falls upon the subpoenaed party. *See Powell*, 379 U.S. at 58; *Texaco. Inc.*, 555 F.2d at 882; *Hunton & Williams*, 952 F. Supp. at 855. Where the agency inquiry "is authorized by law and the materials sought are relevant to the inquiry, that burden is not easily met." *SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1056 (2d Cir. 1973); *Texaco. Inc.*, 555 F.2d at 882. Indeed, "[s]ome burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest." *Id. See also Adams v. FTC*, 296 F.2d 861, 867 (8th Cir. 1961) ("broadness alone is not sufficient justification to refuse enforcement of a subpoena so long as the material sought is relevant").

Given the limited scope of the subpoena, Mr. Armstrong cannot resist compliance on the basis of undue burden. The requested information is narrowly targeted to aid the USPS-OIG in completing its investigation in connection with the expenditure of federal funds pursuant to the sponsorship agreement. Pugliese Decl. ¶ 4. The subpoena seeks focused information directly relevant to this legitimate inquiry – namely, information relating to Mr. Armstrong's involvement in the ownership or management of the USPS team, the use of banned substances or methods by team riders, and the making of any false statements in connection therewith. Thus, the subpoena is neither overly broad nor unduly burdensome. *Id.*

**IV. Mr. Armstrong Has Not Stated a Proper Objection to the Subpoena**

To date, Mr. Armstrong has refused to interpose any objection to the USPS-OIG subpoena. Rather, his attorney merely has stated his belief that Mr. Armstrong “is entitled to invoke the Fifth Amendment in response to [the government’s] subpoena,” while declining to invoke the Fifth Amendment or any other constitutional right. Pugliese Decl. ¶ 6.

Mr. Armstrong instead has argued that his concern that his invocation of the Fifth Amendment will be made public entitles him to ignore the USPS-OIG subpoena. The government is not aware of any authority in support of that proposition, and Mr. Kecker did not identify any when asked to do so during the parties’ July 19, 2011 conference call. To the contrary, the case law articulating the basis for summary enforcement of inspector general subpoenas makes clear that the inquiry is a limited one and that the considerations relevant to summary enforcement do not include the respondent’s fear that his objections to the subpoena will be made public.

If Mr. Armstrong believes he is entitled to avoid compliance with the subpoena on constitutional grounds, then it is incumbent upon him to identify the basis for his noncompliance. Unless and until Mr. Armstrong actually invokes his constitutional rights, the government cannot know for certain that he is entitled to do so. He is in a far better position than the Court or the government to know the extent to which the Fifth Amendment applies here, and is in the best position to resolve the uncertainty by simply invoking that right.

**CONCLUSION**

For the foregoing reasons, the United States respectfully requests that the Court enter an Order granting the United States' Petition For Summary Enforcement Of Inspector General Subpoena and:

1. Requiring Lance Armstrong to produce to the OIG within five calendar days of the entry of the Court's Order all items described in the subpoena.
2. Granting such other and further relief to the United States that this Court deems necessary and appropriate.

Respectfully submitted,

TONY WEST  
Assistant Attorney General

RONALD C. MACHEN JR., D.C. Bar # 447889  
United States Attorney

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A handwritten signature in black ink, appearing to read "Robert E. Chandler", written over a horizontal line.

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Attorneys For United States



**UNITED STATES POSTAL SERVICE  
OFFICE OF INSPECTOR GENERAL  
MAJOR FRAUD INVESTIGATIONS DIVISION  
PO BOX 34493  
BETHESDA, MD 20817-0493**

Date: June 10, 2011

Lance E. Armstrong  
C/O John Keker  
Keker & Van Nest LLP  
710 Sansome Street  
San Francisco, CA 94111

Mr. Keker,

Pursuant to the attached federal Subpoena Duces Tecum 110576, the U.S. Postal Service (USPS), Office of Inspector General (OIG), Major Fraud Investigations Division (MFID) hereby grants approval for Lance E. Armstrong to provide subpoena production directly to the U.S. Department of Justice, Civil Division, Washington, DC, instead of the USPS OIG, as required by the subpoena. For your convenience, please provide responsive records to:

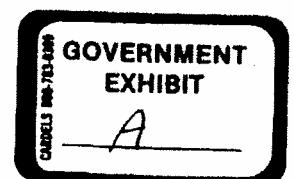
Robert E. Chandler, Trial Attorney  
U.S. Department of Justice  
Civil Division  
Commercial Litigation Branch, Fraud Section  
601 D. Street, NW  
9<sup>th</sup> Floor  
Washington, DC 20004

If you should have any questions concerning this matter, please contact me directly by telephone at (301) 968-0419.

Sincerely,

A handwritten signature in cursive script, appearing to read "M.J. Pughese".

M.J. Pughese  
Special Agent  
Major Fraud Investigations Division  
US Postal Service, Office of Inspector General



**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,	)	
By: United States Attorney	)	
for the District of Columbia	)	
555 Fourth Street, N.W., Civil Division	)	
Washington, D.C. 20530	)	
	)	
Petitioner,	)	
	)	
v.	)	Misc. No.
	)	
LANCE ARMSTRONG	)	
Serve: John W. Keker, Esq.	)	
Keker & Van Nest LLP	)	
710 Sansome Street	)	
San Francisco, CA 94111-1704	)	
	)	
Respondent.	)	

**DECLARATION OF SPECIAL AGENT MICHAEL J. PUGLIESE  
IN SUPPORT OF UNITED STATES' PETITION FOR  
SUMMARY ENFORCEMENT OF INSPECTOR GENERAL SUBPOENA**

I, Michael J. Pugliese, hereby state and declare:

1. I am employed as a Special Agent with the U.S. Postal Service (USPS) Office of Inspector General (OIG). I have been a Special Agent with the federal government for 11 years, including the last six years with the USPS-OIG. My duties include investigations of possible criminal or civil misconduct by employees and contractors of the USPS.

2. I am making this declaration in support of the United States' petition for enforcement of USPS-OIG subpoena *duces tecum* No. 110576 issued pursuant to the Inspector General Act, 5 U.S.C. app. 3 § 6(a)(4) to Lance E. Armstrong. The statements made herein are based upon my personal knowledge, which I acquired in the performance of my duties relating to the investigation described in ¶ 3 below.

3. From 1996 through 2004, the USPS sponsored a professional cycling team owned by Tailwind Sports LLC (Tailwind), and during that time USPS paid Tailwind between \$1 million and \$9 million per year to sponsor the team (for a total of approximately \$40 million). Mr. Armstrong was the lead rider for the team from 1999 through 2004. The sponsorship agreement between USPS and Tailwind prohibited the team and its riders from employing substances or methods that were banned by cycling's governing bodies, and further required the team to take "immediate action" in the event that a rider used such substances or methods in violation of the agreement. USPS-OIG is investigating whether certain persons, including Mr. Armstrong, defrauded or submitted false claims to the USPS by making false statements about the team's or their own compliance with the sponsorship agreement's prohibition on the use of banned substances and methods. The investigation is being conducted substantially in Washington D.C. The United States Attorney's Office for the Central District of California is conducting a separate criminal investigation which is ongoing.

4. On June 10, 2011, in connection with the aforementioned USPS-OIG investigation, OIG General Counsel Elizabeth P. Martin issued USPS-OIG administrative subpoena No. 110576 to Lance E. Armstrong. The subpoena was issued under the authority of the Inspector General Act of 1978, 5 U.S.C. app. 3 Section 6(a) (4). The subpoena seeks documents relevant to the OIG's investigation, including documents pertaining to Mr. Armstrong's interest in or control of the corporate entities that owned and managed the USPS team (requests 1-2 and 6); his understanding and compliance with the sponsorship agreement with the USPS (requests 3-5); funds paid to Mr. Armstrong directly or indirectly by the USPS (requests 1, 6 and 10-13); and the use of any banned performance enhancing drugs or procedures

by Mr. Armstrong or other members of the cycling team (requests 7-9 and 13-21). The requests in the subpoena are narrowly tailored to the needs of the USPS-OIG investigation. The response date for the subpoena was June 29, 2011, which government counsel later extended on behalf of USPS-OIG to July 8, 2011.

5. On June 10, 2011, I served Mr. Armstrong via electronic mail to his appointed counsel, Mr. John W. Kecker, with a copy of the subpoena. Mr. Kecker previously had agreed to accept service on behalf of Mr. Armstrong by electronic mail. A true and correct copy of the subpoena served on Mr. Armstrong is attached hereto as Exhibit A (except that in the copy, the page entitled RETURN OF SERVICE is a separate page (it was on the back of the original's first page) and it has handwritten entries regarding service).

6. In a letter dated June 16, 2011, Mr. Armstrong's counsel, John W. Kecker, indicated that Mr. Armstrong "is entitled to invoke the Fifth Amendment in response to [the government's] subpoena," and inquired about whether the United States would provide "act of production immunity" in the event that Mr. Armstrong invoked his Fifth Amendment right.

7. In its response, the government informed Mr. Kecker that any discussions about any type of immunity should be addressed to the prosecutors leading the criminal investigation in the Central District of California.

8. On July 7, 2011, Mr. Kecker informed the government that Mr. Armstrong did not intend to respond to the subpoena. He also suggested that, not only would Mr. Armstrong refuse to produce responsive documents, he also would not invoke any "of his constitutional rights" or otherwise state any objection to the subpoena. Mr. Kecker offered no basis for Mr. Armstrong's failure to respond, but his letter did offer the vague suggestion that there was some connection

between Mr. Armstrong's recalcitrance and Mr. Keker's allegation that the investigation in the Central District of California "has been plagued by rampant leaking."

9. On July, 13, 2011, the Government responded to Mr. Keker's letter of July 7, 2011. In its letter, the Government informed Mr. Keker that Mr. Armstrong's concerns about leaks did not relieve him of the obligation to respond to the USPS-OIG subpoena and asked that Mr. Armstrong reconsider his position in order to avoid the need for enforcement proceedings. Attached hereto as Exhibit B is a true and correct copy of the Government's response letter sent on July 13, 2011 from Mr. Chandler to Mr. Keker.

10. On July 20, 2011, the government again requested that Mr. Keker expressly invoke any objections to the subpoena, but he did not respond to that request. Attached hereto as Exhibit C is a true and correct copy of a chain of electronic mail messages regarding the Government's request.

11. As of the date hereof, Mr. Armstrong has not produced any documents responsive to the subpoena, has not invoked any right under the Constitution of the United States not to respond to the subpoena, and has not otherwise stated any objection to the subpoena.

12. The OIG has fully complied with the Inspector General Act, 5 U.S.C. app. 3 § 6(a)(4).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13<sup>th</sup> day of OCTOBER, 2011, at BETHESDA,  
MARYLAND.



Michael Pugliese  
Special Agent  
Office of Inspector General  
United States Postal Service