

**UCI Anti-Doping Tribunal**

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**Judgment**

**case ADT 01.2022**

**UCI v. Samah Mohammad Khaled**

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**Single Judge:**

**Ms. Emily Wisnosky (United States)**

**Aigle, 29 October 2022**

## INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (the “**Tribunal**”) in application of the UCI Anti-Doping Tribunal Procedural Rules (the “**ADT Rules**”) in order to decide whether Ms. Samah Mohammad Khaled (the “**Rider**”) violated the UCI Anti-Doping Rules (the “**UCI ADR**”) as asserted by the UCI (together with the Rider, the “**Parties**”).

### I. **FACTUAL BACKGROUND**

2. The following is a summary of the main relevant facts, submitted by the Parties to provide an overview of the matter in dispute. Additional facts may be set out where relevant in the legal discussion that follows. While the Single Judge has considered all the facts, allegations, arguments, and evidence submitted by the parties in the present proceedings, she refers only to the submissions and evidence she considers necessary to explain the reasoning.

#### A. **The Parties**

##### 1. **The UCI**

3. The UCI is an association of national cycling federations and is a non-governmental international association with a non-profit-making purpose of international interest, having legal personality pursuant to Articles 60 ff. of the Swiss Civil Code according to Articles 1.1 and 1.2 of the UCI Constitution.

##### 2. **The Rider**

4. The Rider is a Jordanian road cyclist, affiliated to the United Arab Emirates (“**UAE**”) Cycling Federation and was a Licence-Holder within the meaning of the UCI ADR at the time of the alleged violation in 2021. She has been included in the UAE National Anti-Doping Organization (“**NADO**”)’s Registered Testing Pool since 27 September 2020.

#### B. **The alleged anti-doping rule violation**

##### 1. **The sample collection and Adverse Analytical Finding**

5. On 22 April 2021, the Rider provided a urine sample during an Out-of-Competition test carried out in Dubai, UAE (Sample Number 3150537). The Sample collection was conducted by the International Testing Agency (the “**ITA**”)’s sample collection service provider, International Doping Tests and Management (“**IDTM**”), on behalf of the UCI.
6. The Rider confirmed on the relevant Doping Control Form (“**DCF**”) that the sample had been taken in accordance with the applicable procedures and signed the DCF. The Rider reported in the comment section “*they may have come an unspecified time in my whereabouts Adams*”. She further declared that she had taken “*Voltaren and malt vitamins*” in the seven (7) days preceding the test.
7. On 18 May 2021, the Laboratory reported an Adverse Analytical Finding for the substance “**Oxandrolone**” due to the presence of Oxandrolone metabolites in the Rider’s A-Sample.

8. The rough estimate of the concentration of Oxandrolone metabolites 17 $\alpha$ -hydroxymethyl-17 $\beta$ -methyl-18-nor-2-oxa-5 $\alpha$ -androsta-13-en-3-one and 17 $\beta$ -hydroxymethyl-17 $\alpha$ -methyl-18-nor-2-oxa-5 $\alpha$ -androsta-13-en-3-one detected by the Laboratory in the Rider's sample were 4.1 ng/mL and 9 ng/mL, respectively. The Laboratory confirmed that no apparent deviations from the relevant standards had been detected.
9. Oxandrolone is a Prohibited Substance listed under Section S1.1 (Anabolic Androgenic Steroids) of the 2021 and 2022 Prohibited Lists, which are maintained by WADA and adopted by the UCI.

## **2. Notification of the Adverse Analytical Finding and the explanation provided by the Rider**

10. On 11 June 2021, the UCI notified the Rider of the Adverse Analytical Finding for Oxandrolone metabolites and informed her that it constituted a potential violation of Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample) and/or Article 2.2 (Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method) of the UCI ADR. As Oxandrolone is not a Specified Substance (as per the Prohibited List), the UCI also imposed a mandatory Provisional Suspension on the Rider in accordance with Article 7.3 of the UCI ADR in combination with Article 6.3 of the UCI Regulations for Results Management. The UCI also asked the Rider to communicate her preferences regarding the B-Sample opening and analysis as well as the A-Sample Laboratory Documentation Package ("**LDP**"). Finally, the UCI invited the Rider to provide her explanations regarding the presence of Oxandrolone metabolites in her Sample.
11. On the same day, the Rider informed the UCI that "*it is certain that I did not take any kind of prohibited substances throughout my sports career and was tested beforehand.*" She further submitted that, unknown to her, she was pregnant at the time of the "*examination*". In addition, the Rider submitted various medical tests conducted on 27 December 2020 and a medical report dated 30 March 2021, neither of them referring to pregnancy.
12. On 17 June 2021, the Rider informed the UCI that she waived her right to have the B Sample opened and analysed. The Rider also indicated that she wished to receive the A-Sample LDP and a "*fair hearing to clarify and explain my situation*".
13. On 23 June 2021, the UCI asserted that the Rider committed an anti-doping rule violation in relation to her Adverse Analytical Finding for Oxandrolone metabolites, specifically as a violation of Articles 2.1 and/or 2.2 of the UCI ADR. In the same communication, the UCI provided the Rider with the opportunity to supplement her initial explanation regarding the presence of Oxandrolone metabolites in her body and/or to provide substantial assistance in line with Article 10.7.1 of the UCI ADR within seven (7) days.
14. On the same day, the Rider submitted additional explanations and reiterated that she did not take any prohibited substances. She explained that "*I have not taken any doping substances as I took a doping test a month before I got pregnant I tested negative and I had another test after it was a positive result as I was pregnant*". She further stated that "*I have not broken the rules in any way, the reason this substance was found in my body which resulted in a positive test because I am pregnant in my 4<sup>th</sup> month. I am always aware that I will be doing a doping test and I am pregnant and I will never be taking that substances if I was pregnant as I wouldn't do that to my child*".

15. She also submitted inter alia
  - A report dated 20 April 2021 from an ultrasound confirming the pregnancy; and
  - A second report dated 25 April 2021 from a family clinic that states that the Rider was six-week's pregnant.
16. On 30 June 2021, by email, the Rider reiterated that she *"did not take any substance and I do not know how this substance got into my body"*. She stated that the *"examination was not normal and the three boxes to be selected from"* that *"were open and not closed"*. She further submitted that when she asked why the "boxes" were opened, the Doping Control Officer ("DCO") explained that *"the new examination boxes are coming in this way"*. She further mentioned that she could not afford the LDP for the A Sample, nor the analysis of the B Sample and that she had difficulties communicating in English. She thus requested to be heard through a phone or video call.
17. On 7 July 2021, the UCI informed the Rider that it would exceptionally advance the costs of the A-Sample LDP. The UCI also requested the Rider to submit, within fourteen (14) days from receipt of the A-Sample LDP, additional clarifications related to her allegation that the presence of Oxandrolone metabolites in her urine resulted from her pregnancy and, in particular, any scientific literature or expertise confirming that the Oxandrolone metabolites could be of endogenous origin. The Rider was also asked to provide a list of supplements and medicine she consumed in the fifteen (15) days preceding the sample collection and reminded her of the possibility of providing substantial assistance.
18. On 13 July 2021, the UCI sent the A-Sample LDP to the Rider. In the same communication, the Rider was asked to submit the above clarifications and list of medicine and supplements ingested in the fifteen (15) days preceding the sample collection, by 27 July 2021.
19. On 26 July 2021, the Rider stated that her doctor, Dr. Rajaa, had been informed of the Adverse Analytical Finding and requested that the UCI to *"communicate with her so that she knows the situation"*. The Rider stated that her doctor informed her that *"anything can be expected during pregnancy especially with the male"* and asked the UCI to open an investigation against the UAE NADO as the doping control was not an *"honest examination"*. The Rider stated that she was not allowed to take any pictures of *"the opened cans during the examination"* and that she contacted the UAE NADO and received no response, which made her suspicious about the overall circumstances of the doping control process. Concerning the medicine and supplements taken in the fifteen (15) days preceding sample collection, the Rider listed numerous vitamins and other supplements.
20. On 19 August 2021, the UCI asked again the Rider, inter alia, to submit additional information such as pictures, dosage, date and timing of administration of each supplement and medicine ingested in the fifteen (15) days preceding sample collection.
21. On 26 August 2021, the Rider confirmed that she still had *"not found the reason for this substance in my urine sample"*. In the same communication, she submitted pictures of each supplement and medicine consumed together with their date and timing of administration. She also reiterated the requested for the UCI to conduct an investigation as, according to her:
  - The DCO had no ID or identification confirming his profession;
  - The *"three cans"* used for testing were open and not sealed;

- She and her husband were not allowed to take any pictures of the boxes being opened;
  - Her treatment by the UAE NADO was very bad;
  - The test was conducted outside of her 60-minute time slot which ran from 10 a.m. to 11 a.m.; and
  - She is the only regularly tested female rider in the UAE.
22. She stated having witnesses that would corroborate the above allegations.
23. On 1 September 2021, the UCI requested the Rider to submit evidence of her allegations and/or signed witness statements regarding the sample collection process.
24. On 8 September 2021, the Rider submitted two signed witness statements. The first, from the Rider's husband stated that
- The doctor did not have an official identity card;
  - The boxes were not closed;
  - There were not enough boxes to choose from for the Rider;
  - The Rider did not receive a receipt with the identification number of the urine sample collected;
  - The doctor did not let them take a photo of the sample boxes;
  - The Rider's signature on the DCF was an electronic signature and could have been manipulated; and
  - They "*suspect*" the urine sample.
25. The second from a Mrs. Ebtissam Mohamed (an Olympic track cyclist who stated that she was with the Rider at the doping test) who submitted that "*everything he [the DCO] did was wrong*" and the "*questions were quite strange*" and adding, inter alia, that:
- "*they did not have a clear identification card*"
  - "*the analysis packages were already open and were not wrapped*"
  - "*they did not come at the time designated for the program*"
  - "*the question papers that the athlete had to fill in were different*"
26. On 29 September and 7 October 2021, the UCI received from IDTM two (2) signed Supplementary Report Forms from the DCO.
27. On 11 October 2021, the UCI provided the Rider with one of the Supplementary Report Forms issued by the DCO explaining the sequence of events having occurred on 22 April 2021. The DCO particularly pointed out that:
- He arrived at the Rider's premises together with the Doping Control Assistant (DCA) and met with the Rider and her husband;
  - He showed them an IDTM ID;
  - The Rider initially refused to submit to sample collection and complained about the time, stating that the DCO was not from WADA;
  - The DCO then showed her his Letter of Authority ("**LOA**") from UCI and ADAMS;
  - Then, the Rider called someone on the phone and spoke in local language. Following the phone call, the Rider agreed to be tested;
  - The DCO provided the Rider with three (3) kits and collection vessels to choose from;

- The Rider was unsatisfied with the equipment as she was previously tested with different ones;
  - The DCO offered the Rider the opportunity to make any comments in that regard on the DCF; and
  - The DCO confirmed the presence of three (3) people, namely the Rider, her husband and a female cyclist, during the Rider's doping control.
28. On 24 October 2021, after being invited to comment on the Supplementary Report Forms by the UCI, the Rider reiterated the previously mentioned alleged irregularities concerning the sample collection session. In addition, she stated that *"all the photos of the team riders are wanted for examination, and there were two riders in the meantime who were ready to go out with me for training. They did not undergo the examination. He insisted that he only take the sample from me, and this is also what made me question this examination"*. She further stated that she asked for paper copies of the examination procedure, but was told that there was only a digital copy that would be sent by email. In addition, she said she asked to comment the sample collection process on the DCF but could not do it in view of the fact that it was electronic and was *"only ready to sign"*, so she could not add a comment her doubts about the *"examination"* and that she was pregnant.
29. On 22 December 2021, the Rider was asked to clarify the exact dates on which she became aware of her pregnancy and received medical confirmation of it.
30. On 28 December 2021, the Rider submitted, inter alia, that she felt pregnant in the first week of April 2021 and thus did a home pregnancy test, which turned out positive. She further explained that it was her blood test conducted on 20 April 2021 that confirmed the pregnancy. She also stated that her son was born in the meantime on 1 December 2021 and provided his birth certificate. She added, *"Please note that all my doping control test results are negative and I never had positive results until I got pregnant."*

### **3. The Rider's refusal of the UCI's proposed Acceptance of Consequences**

31. On 21 February 2022, the Rider was offered an Acceptance of Consequences pursuant to Article 8.2 of the UCI ADR. In accordance with Article 10.8.1 of the UCI ADR, a period of ineligibility of three (3) years was proposed to the Rider, if she admitted the anti-doping rule violation and accepted within twenty (20) days, i.e. until 13 March 2022. Otherwise, the applicable period of Ineligibility would be four years. The Rider was also advised that she was not obliged to accept the proposed Acceptance of Consequences, however, that if she did not, the UCI would start disciplinary proceedings before the Tribunal in accordance with the UCI ADR.
32. On 7 and 11 March 2022, the UCI reminded the Rider of the expiry of the validity of the Acceptance of Consequences on 13 March 2022 and of the fact that it would not be extended any further.
33. On 13 March 2022, the Rider informed the UCI that she rejected the accusations made against her and asked the UCI to refer the case to the Tribunal.
34. On 9 May 2022, the UCI received an expert report from an external scientific expert, Mr. Neil Robinson, ITA's Head of Science and Medical, regarding the Rider's explanations on the production of endogenous Oxandrolone as a result of a pregnancy as well as the detection and timing of excretion of Oxandrolone metabolites.

35. Pursuant to Article 8.3 of the UCI ADR and Article 13 of the ADT Rules, the UCI referred the Rider's case to the Tribunal for a determination of the sanction and consequences to be applied for her alleged anti-doping rule violation.

## II. PROCEDURE BEFORE THE TRIBUNAL

36. In compliance with Article 13.1 of the ADT Rules the UCI initiated proceedings before the Tribunal through the filing of a petition to the Secretariat on 6 July 2022.

37. In the UCI Petition, the UCI requested the following relief:

- *“Declaring that Ms. Samah Mohammad Khaled has committed an Anti-Doping Rule Violation.*
- *Imposing on Ms. Samah Mohammad Khaled a Period of Ineligibility of four (4) years, commencing on the date of the Tribunal's decision.*
- *Holding that the period of provisional suspension served by Ms. Samah Mohammad Khaled since 11 June 2021 shall be deducted from the Period of Ineligibility imposed by the Tribunal.*
- *Disqualifying all results obtained by Ms. Samah Mohammad Khaled between 22 April 2021 and 11 June 2021.*
- *Condemning Ms. Samah Mohammad Khaled to pay the costs of the results management by the UCI (CHF 2'500.-), the costs of out-of-competition testing (CHF 1'500.-) and the costs of the A-Sample LDP (EUR 950.-).”*

38. Before referring the case to the Tribunal, the UCI offered the Rider an Acceptance of Consequences within the meaning of Article 8.2 of the UCI ADR and Article 2 of the ADT Rules by letter dated 21 February 2022. The Rider rejected the offered Consequences.

39. On 18 July 2022, the Secretariat of the Tribunal appointed Ms. Emily Wisnosky to act as Single Judge in the present proceedings in application of Article 14.1 of the ADT Rules.

40. On 18 July 2022, in application of Article 14.4 of the ADT Rules, the Rider was informed that disciplinary proceedings had been initiated against her before the Tribunal. The Rider was also informed that any challenge to the Single Judge or objection to the jurisdiction of the Tribunal shall be brought to the Secretariat within 7 days of the receipt of the correspondence and that a deadline of 2 August 2022 was granted to submit her answer.

41. On 4 August, as the Rider had failed to submit an answer, the Tribunal granted the Rider a final deadline of 18 August to submit her answer.

42. On 18 August 2022, the Rider submitted her answer, as follows:

*“Note that I have been frequently tested by WADA without any issues. I was surprised by the last anti-doping result and I assure you that I didn't use any prohibited substance.*

*I'm trying to summarize my position here as a detailed report presented by UCI.*

*I have 2 explanations for this:*

1- I had plan to get pregnant with my husband since end of 2020. I got pregnant just before the anti-doping test. All evidence has been sent. Note that the test date is 22-April-2021 and my baby delivery date is 1-December-2021, which means that I was pregnant from 6 weeks when I had the test. My Doctor said that my case can be the result of pregnancy. She was willing to talk to UCI but no one approached her.

2- There could be error in the sample collection. This sample collection process was different from all sample collections I did before.

- The appointment person for sample collection didn't show his Original ID
- Sample container was different than before
- Sample container was not sealed
- I asked why container are different and he claimed it's the new one
- Usually I get a paper with sample code but this time I didn't get paper and I wasn't allowed to take photo for the container and I didn't get any proof in my hand for my container sample number. I was sent email next day for sample code with my signature. I can't confirm if it's the right sample code."

43. On 22 August 2022, the Tribunal informed the Parties that the written proceedings were closed and that, in consideration of the submissions by the parties, no oral hearing would be held in this case.

### III. JURISDICTION OF THE TRIBUNAL

44. Article 3.2 of the ADT Rules provides the following:

*"Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal's attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal's jurisdiction".*

45. Neither party objected to the jurisdiction of the Tribunal, thus the Single Judge confirms the jurisdiction of the Tribunal. For the sake of completeness, the Tribunal notes that its jurisdiction is in any case consistent with the applicable provisions of the UCI ADR.

46. Part C of the Introduction of the UCI ADR addresses its scope of application, as follows:

*"These Anti-Doping Rules shall apply to the UCI and to each of its National Federations. They shall also apply to the following Riders, Rider Support Personnel and other Persons: a) any License-Holder, ...".*

47. The Rider was affiliated to the UAE Cycling Federation and was a Licence-Holder within the meaning of the UCI ADR at the time of the alleged violation in 2021, and therefore bound by the UCI ADR.

48. Article 8.2 of the UCI ADR provides as follows:

*"The UCI Anti-Doping Tribunal shall have jurisdiction over all matters in which*

- *An anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7..."*

49. In this case, the UCI asserted the anti-doping rule violation following a results management process under Article 7 of the UCI ADR, and thus it follows that the Tribunal has jurisdiction in this matter.

#### IV. RULES OF LAW APPLICABLE TO THE MERITS

50. The ADT Rules provide that “*the Single Judge shall apply the [UCI] ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law*”. The alleged anti-doping rule violations took place on 22 April 2021 (the relevant point of time being that of Sample collection). The 2021 edition of the UCI ADR is thus applicable to the current matter (Article 27.1 of the UCI ADR).
51. Article 2.1 of the UCI ADR defines the anti-doping rule violation for “presence” of a Prohibited Substance, as follows:

*“2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Rider’s Sample*

*2.1.1 It is the Riders’ personal duty to ensure that no Prohibited Substance enters their bodies. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1..*

*[Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to a Rider’s Fault. This rule has been referred to in various CAS decisions as “Strict Liability”. A Rider’s Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]*

*2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Rider’s A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed; or, where the Rider’s B Sample is analyzed and the analysis of the Rider’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider’s A Sample; or where the Rider’s A or B Sample is split into two (2) parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Rider waives analysis of the confirmation part of the split Sample.*

*[Comment to Article 2.1.2: The Anti-Doping Organization with Results Management responsibility may, at its discretion, choose to have the B Sample analyzed even if the Rider does not request the analysis of the B Sample.]*

*2.1.3 Excepting those substances for which a Decision Limit is specifically identified in the Prohibited List or a Technical Document, the presence of any reported quantity of a Prohibited Substance or its Metabolites or Markers in a Rider’s Sample shall constitute an anti-doping rule violation.*

*2.1.4 As an exception to the general rule of Article 2.1, the Prohibited List, International Standards or Technical Documents may establish special criteria for reporting or the evaluation of certain Prohibited Substances..”*

52. As to the burden and standard of proof, Article 3.1 of the UCI ADR reads as follows:

*“The UCI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Rider or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.*

*[Comment to Article 3.1: This standard of proof required to be met by the UCI is comparable to the standard which is applied in most countries to cases involving professional misconduct.]”*

53. As to the methods of establishing facts and presumptions, Article 3.2 of the UCI ADR provides:

*“Facts related to anti-doping rule violations may be established by any reliable means, including admissions.*

*[Comment to Article 3.2: For example, the UCI may establish an anti-doping rule violation under Article 2.2 based on the Rider’s admissions, the credible testimony of third Persons, reliable documentary evidence, reliable analytical data from either an A or B Sample as provided in the Comments to Article 2.2, or conclusions drawn from the profile of a series of the Rider’s blood or urine Samples, such as data from the Athlete Biological Passport.]*

*The following rules of proof shall be applicable in doping cases:*

*3.2.1 [...]*

*3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Rider or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.*

*3.2.3 If the Rider or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.*

3.2.4 Departures from any other rules set forth in these Anti-Doping Rules, UCI Regulations, any International Standard or other anti-doping rule or policy set forth in the Code shall not invalidate analytical results or other evidence of an anti-doping rule violation, and shall not constitute a defense to an anti-doping rule violation; provided, however, if the Rider or other Person establishes that a departure from one of the specific UCI Regulations or International Standard provisions listed below could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding, an Adverse Passport Finding or whereabouts failure, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the whereabouts failure:

(i) a departure from the UCI Testing & Investigation Regulations or International Standard for Testing and Investigations related to Sample collection or Sample handling which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or an Adverse Passport Finding, in which case the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding;

54. As for the standard period of Ineligibility Article 10.2 of the UCI ADR provides as follows:

*“The period of Ineligibility for a violation of Article 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Article 10.5, 10.6 or 10.7:*

10.2.1 *The period of Ineligibility shall be four years where:*

10.2.1.1 *The anti-doping rule violation does not involve a Specified Substance or a Specified Method, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional. [...]*

10.2.2 *If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of Ineligibility shall be two (2) years.*

10.2.3 *As used in Article 10.2, the term “intentional” is meant to identify those Riders or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not “intentional” if the substance is a Specified Substance and the Rider can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered “intentional” if the substance is not a Specified Substance and the Rider can establish that the Prohibited Substance*

*was Used Out-of-Competition in a context unrelated to sport performance.*

*[Comment to Article 10.2.3: Article 10.2.3 provides a special definition of “intentional” which is to be applied solely for purposes of Article 10.2.]”.*

55. As for the possibilities to reduce a period of Ineligibility based on fault, the UCI ADR provides as follows:

**“10.5 Elimination of the Period of Ineligibility where there is No Fault or Negligence**

*If a Rider or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.*

*[...]*

**10.6 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence**

*[...]*

**10.6.2** *If a Rider or other Person establishes in an individual case where Article 10.6.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.7, the otherwise applicable period of Ineligibility may be reduced based on the Rider or other Person’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight (8) years.*

*[Comment to Article 10.6.2: Article 10.6.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8, 2.9 or 2.11) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Rider or other Person’s degree of Fault.]”.*

56. The definitions of No Fault or Negligence and No Significant Fault or Negligence are as follows (Appendix 1 of the UCI ADR):

**No Fault or Negligence:** *The Rider or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Protected Person or Recreational Rider, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered the Rider’s system.*

**No Significant Fault or Negligence:** *The Rider or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Rider, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered the Rider's system.*

57. With respect to Disqualification of results, Article 10.10 of the UCI ADR provides as follows:

*“10.10 In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Rider obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.”*

58. In relation to the commencement of the period of Ineligibility Article 10.13 of the UCI ADR provides (in relevant part) as follows:

*“[E]xcept as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed. [...]*

*10.13.1*

*[...]*

*10.13.2.1 If a Provisional Suspension is respected by the Rider or other Person, then the Rider or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If the Rider or other Person does not respect a Provisional Suspension, then the Rider or other Person shall receive no credit for any period of Provisional Suspension served. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Rider or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.*

59. As for the liability for costs of the procedures, Article 10.12.2 of the UCI ADR provides as follows:

*“If the Rider or other Person is found to have committed an anti-doping rule violation, he or she shall bear, unless the UCI Tribunal determines otherwise:*

- 1. The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*

2. *The cost of the results management by the UCI; the amount of this cost shall be CHF 2'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*
3. *The cost of the B Sample analysis, where applicable.*
4. *The costs incurred for Out-of-Competition Testing; the amount of this cost shall be CHF 1'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*

[...]

*The National Federation of the Rider or other Person shall be jointly and severally liable for its payment to the UCI”.*

## V. THE FINDINGS ON THE MERITS

### A. Did the UCI establish that the Rider committed an anti-doping rule violation?

60. The UCI has alleged that the Rider has committed a violation of Articles 2.1 and/or 2.2 of the UCI ADR, for the presence of a Prohibited Substance in the Rider’s Sample and for the Use of a Prohibited Substance, respectively.

#### 1. Burden and standard of proof

61. To start, the UCI bears the burden of proof to establish that the Rider committed an anti-doping rule violation. The standard of proof is “*comfortable satisfaction*” (Article 3.1 of the UCI ADR).

62. In establishing that a Rider committed a violation of Articles 2.1 or 2.2 of the UCI ADR, the following framework applies to the analysis of the Sample:

- WADA-accredited laboratories are “*presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories [ISL]*” (Article 3.2.4 of the UCI ADR);
- Riders may overcome this presumption by establishing to the “balance of probability” standard that (i) there was a departure from the ISL; and (ii) the departure “*could reasonably have caused the Adverse Analytical Finding*” (Article 3.2.3 of the UCI ADR);
- If the Rider successfully establishes both of the foregoing elements, then the UCI must establish that “*such departure did not cause the Adverse Analytical Finding*”. Article 3.2.3 of the UCI ADR);
- If the UCI fails to establish that the departure did not cause the Adverse Analytical Finding, the violation is not established.

63. A similar framework applies to other aspects of Doping Control:

- In principle, departures from any other set of anti-doping rules or policies, including the UCI Testing & Investigations Regulations and other International Standards “*shall not invalidate analytical results or other evidence of an anti-doping rule violation*” (Article 3.2.4 of the UCI ADR);
- However, Riders may establish to a balance of probability standard that (i) there was a departure from the relevant rules/policy; and (ii) the departure “*could*

*reasonably have caused*” the Adverse Analytical Finding (Article 3.2.4 of the UCI ADR); and

- As above, if a Rider does establish these two elements to the “balance of probability” standard, then the UCI must then establish that the departure did not cause the Adverse Analytical Finding and if the UCI fails to do so, the violation is not established.

64. In the context of establishing the source of a Prohibited Substance, the CAS has interpreted the standard of proof of “balance of probability” as follows:

*“in percentage terms, that it is satisfied that there is a 51% chance of it having occurred. The Player thus only needs to show that one specific way of ingestion is marginally more likely than not to have occurred.”<sup>1</sup>*

65. More insight as to the evidence needed to reach the “balance of probability” standard can be gained in the following passage, that summarizes a consistent line of CAS case law in this regard:

*“Previous CAS panels have expressed the conclusion that merely raising unverified hypotheses or mere speculations as to how the substance entered an athlete’s body will not be adequate to meet the threshold as set forth in Article 10.5.1 and 10.5.2 of the WADAC (and its corresponding federation’s anti-doping regulations) (see for example CAS 2010/A/2230 International Wheelchair Basketball Federation v. UK Anti-Doping & Simon Gibbs, spec. § 11.5 ; CAS 2010/A/2268, I v. FIA, spec. § 129 ; CAS 2007/A/1413, WADA v. FIG & Vysotskaya, spec. §§ 75 and 76 ; CAS 2006/A/1067, IRB v. Keyter, spec. § 6.11, CAS 2006/A/1130, WADA v. Stanic & Swiss Olympic Association, spec. §§ 51 and 52).”<sup>2</sup>*

66. As set forth previously by this Tribunal, CAS case law has further clarified the above prerequisites for a Rider to establish a departure from the relevant rules as follows<sup>3</sup>:

*“Therefore, the Panel deems a mere reference to a departure from the ISL insufficient, in the absence of a credible link of such departure to a resulting Adverse Analytical Finding. In other words, in order for an athlete to meet his/her burden and thus effectively shift the burden to an anti-doping organization, the athlete must establish, on the balance of probabilities, (i) that there is a specific (not hypothetical) departure from the ISL; and (ii) that such departure could have reasonably, and thus credibly, caused a misreading of the analysis. Further, the Panel remarks that such athlete’s rebuttal functions only to shift the burden of proof to the anti-doping*

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<sup>1</sup> CAS 2014/A/3615, WADA v. Daiders, Award of 30 January 2015, para. 57 quoting CAS 2009/A/1926, ITF v. Gasquet, Award of 17 December 2009, para. 5.9.

<sup>2</sup> CAS 2014/A/3615, WADA v. Daiders, Award of 30 January 2015, para. 56. Or, as stated in a more recent case: “To establish the origin of the prohibited substance, CAS and other cases make clear that it is not sufficient for an athlete merely to protest their innocence and suggest that the substance must have entered his or her body inadvertently from some supplement, medicine or other product which the athlete was taking at the relevant time. Rather, an athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question”. CAS 2016/A/4377, WADA v. Alvarez Caicedo, Award of 29 June 2016, para. 52.

<sup>3</sup> ADT 05.2016, UCI v. Jure Kocjan, Judgment of 28 June 2017, para 64 quoting CAS 2013/A/3112, WADA v. Chernova, Award of 16 January 2014, para. 85.

*organization, which may then show, to the Panel's comfortable satisfaction, that the departure did not cause a misreading of the analysis."*

67. Also as set forth previously by this Tribunal, CAS case law has also provided insight into the question of when an (established) departure may have reasonably caused an Adverse Analytical Finding<sup>4</sup>:

*"the Panel considers that Rule 33.3(b) requires a shift in the burden of proof whenever an athlete establishes that it would be reasonable to conclude that the IST departure could have caused the Adverse Analytical Finding. In other words, the athlete must establish facts from which a reviewing panel could rationally infer a possible causative link between the ISL departure and the presence of a prohibited substance in the athlete's sample. For these purposes, the suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible." (emphasis added)*

68. More generally, as set forth by this Tribunal in a different matter:

*The burden of proof not only allocates the risk among the parties of a given fact not being ascertained but also allocates the duty to submit the relevant facts before the court / tribunal (see also CAS 2011/A/2384&2386, no. 249). It is, in principle, the obligation of the party that bears the burden of proof in relation to certain facts to also submit them to the court / tribunal in a sufficient manner (SFT 97 II 216, 218 E. 1). The party that has the burden of proof, thus, in principle has also the burden of presenting the relevant facts to the tribunal. Only if the party has satisfied its burden of presentation, the question related to the burden of proof may arise (provided that the fact has been contested by the other party).*

*The ADR 2012 are silent on how specific and detailed the presentation of facts must be in an individual case. Since this question is of a procedural nature, the Single Judge takes – insofar – guidance in the jurisprudence of the Swiss Federal Tribunal (hereinafter referred to as "SFT") with respect to civil procedures before state courts. According thereto submissions of facts are substantiated within the above meaning if the factual submissions are detailed enough to determine and assess the applicability of the legal position derived from a particular provision (SFT 4A\_42/2011, 4A\_68/2011, E. 8.1). Consequently, the party having the burden of presentation must present the facts in a manner that allows subsumption under the prerequisites of the provision in question (SFT 4A\_501/2014, E. 3.1).<sup>5</sup> (emphasis added)*

## **2. Did the UCI establish that the Rider committed an anti-doping rule violation?**

69. The UCI alleged that the Rider committed a violation of Article 2.1 of the UCI ADR (Presence of a Prohibited Substance or its Metabolites or markers in a Rider's Sample). The Single Judge agrees.
70. Sufficient proof of an anti-doping rule violation is present when – *inter alia* – the "*presence of a Prohibited Substance or its Metabolites or Markers in the Rider's A Sample where the Rider waives the analysis of the B sample and the B Sample is not analysed*".

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<sup>4</sup> ADT 05.2016, *UCI v. Jure Kocjan*, Judgment of 28 June 2017, para 65 quoting CAS 2014/A/3487, *Campbell-Brown v. IAAF*, Award of 24 February 2014, para. 155.

<sup>5</sup> ADT 05.2016, *UCI v. Jure Kocjan*, Judgment of 28 June 2017, paras 66 and 67.

The analysis must be conducted by a WADA-accredited laboratory (or a laboratory otherwise approved by WADA) (Article 6.1 of the UCI ADR).

71. In this case, the Rider's Sample was analysed by the WADA-accredited laboratory in Cologne, Germany. The analysis revealed the presence of Oxandrolone metabolites, a Prohibited Substance in class S1.1 (Anabolic Androgenic Steroids) in the Rider's sample. Thus, in the absence of relevant departures from the applicable rules, regulations or policies, the Single Judge holds that the UCI successfully established that the Rider committed a violation of Article 2.1 of the UCI ADR.

**3. Were there any departures from the relevant anti-doping rules regulations and policies that "could reasonably have caused" the Adverse Analytical Finding?**

72. As set forth in more detail above, if the Rider is able to establish both that there was a departure from the applicable anti-doping rules, regulations or policies and that this departure "*could reasonably have caused*" an anti-doping rule violation, then the burden would shift to the UCI to establish that the departure did not in fact cause the Adverse Analytical Finding. The Rider has failed to establish these necessary elements and therefore the violation must be confirmed.
73. The Rider has in her submissions alleged several irregularities during the Sample collection process, including the following:
- The DCO did not show the appropriate identification;
  - The sample collection kits used for testing were already opened and she was unsatisfied with the choice concerning the sample collection equipment as well as with the equipment proposed, as she was previously tested with different equipment;
  - She and her husband were prohibited from taking pictures of the allegedly opened sample collection kits;
  - She did not receive a paper receipt with the identification number of the urine sample collected by the DCO;
  - Her signature on the DCF was an electronic signature and could have been manipulated;
  - She asked to comment on the sample collection process on the DCF but could not do it in view of the fact that it was electronic and "only ready to sign";
  - The test was conducted outside of the Rider's designated 60-minute time slot;
  - She is the only female rider in the UAE to be regularly tested.
74. In the view of the Single Judge, the Rider has not established that any of the above "irregularities" amount to a "departure" from the applicable rules, regulations or procedures, let alone a departure that "*could reasonably have caused*" an anti-doping rule violation.
75. For the sake of completeness, the Single Judge makes the following observations.
76. As to the allegation of the absent ID, the Rider has not established that the DCO did not have/show an appropriate ID. While the Rider and her two witnesses made similar allegations in this respect, the UCI has provided as evidence both an ID card issued by the relevant sample collection authority (i.e. IDTM), as well as a letter of authority and the DCO stated in a supplementary report that he did in fact show these documents.

77. As to the allegation that the sample kits were “*already open*” and “*not wrapped*”, as well as that she was not satisfied with the choice of sample kits, the Single Judge notes that the DCO stated in his supplemental report that he did provide the Rider at the time with the opportunity to inspect the kits and that while the Rider did make some verbal remarks at the time about the kits, he invited her to express any dissatisfaction on the DCF, which she did not do. The Single Judge also notes that there is no requirement that the Rider is always tested with the same equipment.
78. As to the prohibition on taking photos of the sample collection kits, the DCO confirmed in his supplemental report that the Rider’s husband was asked to not take photographs. The Single Judge takes note of the UCI’s submission that the Rider has not pointed to any rule or policy of the UCI’s that this instruction would violate. In line with past case law, the Single Judge does not find the Rider’s submissions detailed enough to determine the applicability of the legal position, as the Rider did not allege which provision these instructions would violate.
79. As to the allegation that the Rider was not offered a paper receipt, the Single Judge takes note that, as highlighted by the UCI, the UCI Testing & Investigations Regulations allow for the Doping Control Form to be in electronic format (Article 8.3.8 of the UCI Testing & Investigations Regulations).
80. As to the allegation that her signature was an electronic signature and can be manipulated, the Rider neither specifies how nor that there (even potentially) was any manipulation in this case, so this allegation bears no impact on this matter.
81. As to the allegation that it is not possible to comment on the DCF, the Single Judge notes that there was in fact a comment included on the DCF submitted by the UCI as evidence in this case. Thus, the Single Judge finds this allegation unsupported by the facts at hand.
82. As to the allegation that the test was conducted outside of the 60-minute time slot, as submitted by the UCI, Rider’s are obliged to give a sample “*any time and at any place*” (Article 5.2.2 of the UCI ADR), so this allegation, even if true, is also inconsequential.
83. The Rider’s allegation that she is the only female Rider in the UAE who is regularly tested is unsubstantiated and no allegation is made as to how, even if true, this would constitute a departure from the applicable rules or policies.
84. The Single Judge further observes that even if any of the above alleged irregularities were to be established and to qualify as “departures” from the applicable rule, the Rider has not alleged let alone established that any of the above “*could reasonably have caused*” the Adverse Analytical Finding.
85. Therefore, in light of the above, the Rider’s allegations with respect to certain irregularities in the sample collection process have not been established. The UCI has no burden to establish that any of these alleged irregularities did not cause the anti-doping rule violation. The Rider’s anti-doping rule violation is therefore confirmed.
86. As the Single Judge has held that an anti-doping rule violation of Article 2.1 of the UCI ADR for the presence of a Prohibited Substance in the Rider’s Sample has been established, the question of whether the Rider also committed a violation of Article 2.2 of the UCI ADR need not be considered here.

## **B. Consequences of the anti-doping rule violation**

87. Now, the Consequences of this violation must be determined, including the period of Ineligibility (1.), any applicable Disqualification of results (2.), and any financial consequences (3).

### **1. Length of the period of Ineligibility**

#### **a. Default length of the period of Ineligibility**

88. For first time violations of Article 2.1 of the UCI ADR, the starting point to determine the length of a period of Ineligibility is Article 10.2 of the UCI ADR. According to Article 10.2.1.1 of the UCI ADR, the period of Ineligibility to be imposed shall be four (4) years where “[t]he anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional”.

89. In this matter, the anti-doping rule violation does not involve a Specified Substance as Oxandrolone is not considered a Specified Substance according to the 2021 Prohibited List.

90. Therefore, the starting point of the length of period of ineligibility for this violation is four years.

91. The Rider may reduce this period of Ineligibility if she establishes, to the balance of probability standard that the violation was not intentional (b.). If the violation is not intentional, the Rider may be entitled to a further reduction – or even elimination – of her period of Ineligibility if she establishes that one of the Fault-related reductions set forth in arts. 10.5 or 10.6 of the UCI ADR apply. Finally, the Rider may also reduce or suspend her period of Ineligibility by establishing that one of the non-Fault related reductions in Article 10.7 of the UCI ADR apply (c.). The Single Judge takes note that the Rider did not admit the violation so cannot benefit from a reduction of the relevant period of Ineligibility pursuant to Article 10.8 of the UCI ADR.

#### **b. Was the violation intentional?**

92. For violations that do not involve Specified Substances (such as the violation at stake), if the Rider establishes that the violation was not “intentional” within the meaning of the of the UCI ADR, the length of the period of Ineligibility would, as a first step, be reduced from four to two years.

93. As set forth above and quoting Article 10.2.3 of the UCI ADR,

*“as used in Article 10.2, the term “intentional” is meant to identify those Riders or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.”*

94. Here, the Rider has alleged that her “case”, i.e. presence of Oxandrolone metabolites in her Sample, could be explained by her pregnancy. In particular, she stated that she provided a sample a month before she got pregnant, which was negative. She then provided another sample after conception, which was positive, “as [she] was pregnant.” The Rider supported this allegation by referring to her doctor, who allegedly said that

the results could be the result of pregnancy. The Rider submitted no scientific evidence in this respect.

95. She also submitted that the result may be due to an *“error in the sample collection”*.
96. Finally, the Rider submitted that she has not used a Prohibited Substance, nor did she use Prohibited Substances during her sports career. In support of this statement, the Rider highlights that her previous tests were negative. In addition, she submits that she knew she was pregnant at the time and would never take this substance when pregnant as she *“wouldn’t do that to [her] child”*.
97. The UCI does not contest that the Rider was pregnant at the time of the relevant Sample collection. However, the UCI does contest that the Adverse Analytical Finding for Oxandrolone metabolites in this case was caused by the Rider’s pregnancy. In support of this, the UCI submitted a scientific expert opinion from the International Testing Agency’s Head of Science and Medical (the **“UCI Expert Opinion”**), which stated that
- “Based on the current state of scientific literature, there has been no report of endogenous Oxandrolone production and the same applies for pregnancy”*
98. The UCI also points to the lack of *“scientific or empirical literature”* in support of the Rider’s explanations.
99. The UCI further submitted that even though the Rider did not suggest that the medications and supplements she had used in the days preceding the sample collection at stake, it nevertheless verified the list she provided and confirmed that none appeared to contain Oxandrolone. The UCI also pointed to the Rider’s conduct at the time of the sample collection, in particular that she at first refused to provide a sample and only did so after a call, tends not to support an inadvertent intake of Oxandrolone.
100. Finally, as to the Rider’s more general denial of taking Prohibited Substances, the UCI submits that both the Court of Arbitration for Sport (the **“CAS”**) and this Tribunal has repeatedly held that mere assertions or denials are not sufficient to establish the source of a Prohibited Substance.
101. The UCI emphasizes that while a failure to establish a source of a Prohibited Substance does not necessarily preclude the Single Judge from holding that the violation was not intentional, it would require exceptional circumstances to hold that a violation is not intentional in absence of such source being established.<sup>66</sup> For the UCI, the exceptional circumstances do not exist in this case. In particular, the UCI submitted that her pregnancy, and more precisely, that she would not take such a substance as it may harm her fetus should not be considered such an exceptional circumstance.
102. Indeed, the UCI submitted that it could not be ruled out she did not (conclusively) know that she was pregnant at the time of ingestion, supported by the UCI Expert Opinion, which stated that

*“the detection window of oxandrolone in urine samples is dependent on various factors such as the quantity ingested, the number of intakes (single/multiple), type of administration, the analytical method (which metabolite is targeted) and the instrument model. The current literature shows that oxandrolone detection of a single oral intake of 5 mg of*

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<sup>66</sup> The UCI references CAS 2016/A/4377, *WADA v. Alvarez Caicedo*, para. 52 in Support of this notion.

*oxandrolone can be detected for many days (parent compound: ~3 days; long term metabolite(s): more than 10 days)."*

The UCI Expert Opinion also stated that the concentrations of Oxandrolone metabolites detected in the Rider's sample could arise from a single oral intake of oxandrolone more than three days prior, i.e. before the date upon which, for the UCI, the Rider conclusively confirmed she was pregnant.

103. On balance and in consideration of all the evidence at hand, the Single Judge considers that the Rider has failed to establish the balance of probability standard that the violation was not intentional.
104. In particular, the Rider has established neither that it is feasible for an Adverse Analytical Finding for Oxandrolone metabolites to be caused by pregnancy nor that the Adverse Analytical Finding in this case was, in fact, due to her pregnancy. The Rider submitted no scientific or medical support for this allegation, not even from her doctor who allegedly advised her that this is a possibility. Even if established, nor can the fact that the Rider had a negative test prior to her pregnancy and a positive test after becoming pregnant be conclusive. One cannot conclude from these observations that pregnancy is the only (or even the most likely) possible explanation for the different test results.
105. Nor does the Single Judge find the Rider's suggestion that she would not have taken Prohibited Substances as she was pregnant decisive in the circumstances of this case. As proposed by the UCI, even if this is true, a potential intentional ingestion may have come before the Rider knew she was pregnant.
106. Finally, the Rider has not successfully established the presence of Oxandrolone in her Sample arose by any other means than an intentional Use of the Prohibited Substance. The Single Judge concurs with the UCI that it cannot be enough to simply deny the ingestion of a Prohibited Substance. As set forth above, As already confirmed on multiple occasions by this Tribunal, *"a simple denial without any supporting evidence should be afforded at most limited evidentiary weight"*.<sup>7</sup>
107. In light of the foregoing, the Single Judge concludes that the Rider has not established the source of the Prohibited Substance in her system. The Single Judge takes note of the Comment to Article 10.2.1.1, which provides as follows:

*"While it is theoretically possible for a Rider or other Person to establish that the anti-doping rule violation was not intentional without showing how the Prohibited Substance entered one's system, it is highly unlikely that in a doping case under Article 2.1 a Rider will be successful in proving that the Rider acted unintentionally without establishing the source of the Prohibited Substance."*

108. In light of the above comment, the Single Judge would only note that the Rider did not otherwise discharge her burden to establish the violation was not intentional.

**c. Do any of the Fault or non-Fault related reductions apply?**

109. For the sake of thoroughness, as the Rider has failed to establish that the violation was not intentional, the Rider cannot benefit from any of the Fault-related reductions in

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<sup>7</sup> See, e.g. ADT 02.2016, *UCI v. Taborre*, Judgment of 25 May 2016, para. 85; ADT 04.2016, *UCI v. Oyarzun*, Judgment of 16 September 2016, para. 60.; ADT 01.2021, *UCI v. Lemos Pinto*, Judgment of 13 July 2022, para. 125; and UCI ADT 09.2017, *UCI v. Ruffoni*, Judgment of 14 December 2017, para. 60.

Articles 10.5 or 10.6 of the UCI ADR. Nor are any of the non-Fault-related reductions in Article 10.7 applicable in this case.

#### **d. Conclusion**

110. In light of the above, the Rider's period of Ineligibility shall be four years.
111. In reaching this conclusion, the entirety of the Rider's submissions were reviewed. Any other arguments or allegations raised by the Rider throughout the proceeding were considered and dismissed.

#### **2. Commencement of the period of Ineligibility**

112. Article 10.13 of the UCI ADR provides as a general rule that the period of Ineligibility shall start on the date of the final hearing decision. In addition, Article 10.13.2.1 of the UCI ADR also provides that the Rider receives credit for any Provisional Suspension that was imposed on her, provided that he respected the terms of the Provisional Suspension.
113. UCI submits that it sees no reason to deviate from this general rule. For the UCI, as the Rider was provisionally suspended on 11 June 2021 and that, to its knowledge, the Rider has respected the terms of her Provisional Suspension, the Rider should receive credit for the period of the Provisional Suspension so far. The Rider did not make any submissions as to the commencement date of the period of Ineligibility.
114. The Rider in the present case has been Provisionally Suspended since 11 June 2021. It is not contested that the Rider respected this Provisional Suspension. Accordingly, the Single Judge holds that the Rider shall receive a credit for the period of the Provisional Suspension, i.e. from 11 June 2021 until the date of the present Judgment.
115. Thus, considering the credit for the period of the Provisional Suspension served by the Rider, the effective date of the period of Ineligibility is 11 June 2021, and will extend for a period of four years from this date.

#### **3. Disqualification**

116. As the Rider's positive sample was collected in connection with an Out-of-Competition Sample, she is not subject to the automatic disqualification of competition results pursuant to Article 9 of the UCI ADR. However, according to Article 10.10 of the UCI ADR, "*all other competitive results of the Rider obtained from the date a positive Sample was collected...shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences, including the forfeiture of any medals, points and prizes*". The UCI saw no reasons to derogate from the general rule of Disqualifying all competitive results from the date of the Rider's positive Samples until the start date of the Rider's Provisional Suspension.
117. The Rider made no submissions with respect to Disqualification, and thus did not submit any reasons of fairness or otherwise, to derogate from this general rule. In light of the evidence before it, nor does the Single Judge see any reasons of fairness that would justify a derogation from the principle set forth in Article 10.10 of the UCI ADR.
118. In consequence, the Single Judge holds that all results obtained by the Rider between the date of the first Sample collection (22 April 2021) and the date of the commencement of the Provisional Suspension (11 June 2021) shall be Disqualified with

all of the resulting Consequences, including the forfeiture of any medals, points and prizes.

#### **4. Other financial consequences**

##### **a. Application of the mandatory fine**

119. Pursuant to Article 10.12.1.1 of the UCI ADR: “[a] fine shall be imposed in case a Rider or other Person exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3 [of the UCI ADR]”.
120. In this case, the Parties do not dispute that the Rider was not exercising a professional activity in cycling.
121. Therefore, the Single Judge holds that the Rider is not subject to a mandatory fine.

##### **a. Costs of the procedure**

122. Pursuant to Article 10.12.2 of the UCI ADR, the UCI has requested the Tribunal to order the Rider to pay the following costs:
- The costs of the results management by the UCI (CHF 2,500)
  - The costs of Out-of-Competition testing (CHF 1,500)
  - The costs of the A-Sample LDP (EUR 950)
123. In addition, the UCI has left it to the Tribunal’s discretion as to whether the Rider must pay a contribution to the cost of the proceedings of the Tribunal within the meaning of Article 29.3 of the ADT Rules and Article 10.12.2 of the UCI ADR. While it has reserved its rights to ask the Tribunal for further contributions towards other costs, it has not made any further requests in this respect.
124. The Rider has made no submissions on this point.
125. The Single Judge grants the UCI’s request to order the Rider to pay each of the costs set forth in § 123.
126. The Single Judge takes note that per Article 29.1 of the ADT Rules, the Single Judge must determine the cost of the proceedings as provided under Article 10.12.2.1 of the UCI ADR. Per Article 29.2 of the ADT Rules, as a matter of principle, the Judgment is rendered without costs. Notwithstanding the above, the Single Judge may also order the unsuccessful party to pay a contribution toward the prevailing Party’s costs and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and experts (Article 29.4 of the ADT Rules). The provision states that if the prevailing party was represented by a legal representative the contribution shall also cover legal costs.
127. In application of the foregoing provisions and in light of all of the circumstances of this case, especially the fact that the prevailing party, i.e. the UCI was not represented by external counsel and that there was no hearing, the Single Judge finds it appropriate to refrain from ordering the Rider (as the unsuccessful party) to pay a contribution towards the UCI’s costs.

## VI. RULING

128. In light of the above, the Single Judge decides as follows:

1. Ms. Samah Mohammad Khaled has committed a violation of Article 2.1 of the UCI ADR.
2. Ms. Samah Mohammad Khaled is subject to a period of Ineligibility of four years. The period of Ineligibility shall commence on the date of the decision, i.e. 29 October 2022. However, considering the credit for the period of the Provisional Suspension already served by Ms. Mohammad Khaled since 11 June 2021, Ms. Mohammad Khaled's period of Ineligibility effectively began on 11 June 2021, and will end four years from this date.
3. All results obtained by Ms. Samah Mohammad Khaled in the period between the date of her Sample collection (22 April 2021) and the date her Provisional Suspension began (11 June 2021), are Disqualified, including forfeiture of any medals, points and prizes.
4. Ms. Samah Mohammad Khaled shall pay the UCI the following costs:
  - The costs of the results management by the UCI (CHF 2,500)
  - The costs of Out-of-Competition testing (CHF 1,500)
  - The costs of the A-Sample LDP (EUR 950)
5. All other and/or further reaching requests are dismissed.
6. This Judgment is final and will be notified to:
  - (i) Ms. Samah Mohammad Khaled
  - (ii) UAE National Anti-Doping Organization;
  - (iii) WADA; and
  - (iv) UCI.

129. This Judgment may be appealed before the CAS pursuant Article 31.2 of the ADT Rules and art. 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in Article 13.2.5 of the UCI ADR.

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**Emily WISNOSKY**  
Single Judge