

**UCI Anti-Doping Tribunal**

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**Judgment**

**case ADT 08.2019**

**UCI v. Mr Jarlinson Pantano Gómez**

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**Single Judge:**

**Mr Jordi López Batet (Spain)**

**Aigle, 15 May 2020**

## **I. INTRODUCTION**

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (hereinafter referred to as “the Tribunal”) in application of the UCI Anti-Doping Procedural Rules (hereinafter referred to as “the ADT Rules”) in order to decide upon violations of the UCI Anti-Doping Rules (hereinafter referred to as “the UCI ADR”) committed by Mr. Jarlinson Pantano Gómez (hereinafter referred to as “the Rider” or “Mr. Pantano”), as alleged by the UCI (hereinafter collectively referred to as “the Parties”).

## **II. FACTUAL BACKGROUND**

2. The circumstances stated below are a summary of the main relevant facts, as submitted by the Parties. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Single Judge has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Judgment refers only to the necessary submissions and evidence to explain his reasoning.

### **A. The Rider**

3. The Rider is a professional cyclist of Colombian nationality who at the time of the alleged anti-doping rule violation (hereinafter referred to as “the ADRV”), was affiliated to the Federación Colombiana de Ciclismo (hereinafter referred to as “the FCC”), and was a Licence-Holder within the meaning of the UCI ADR.

### **B. The UCI**

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

### **C. The alleged ADRV**

5. On 26 February 2019, the Rider provided a urine sample during an out-of-competition doping control in Deia, Spain, and a blood sample for the purpose of the Athlete Biological Passport (hereinafter referred to as “the ABP”) program. The Rider confirmed on the Doping Control Form that both samples were taken in accordance with the applicable regulations and declared that he had only taken multivitamins over the seven days preceding the test.
6. At the time of the doping control, the Rider was engaged with the team Trek Factory Racing, by virtue of a self-employed rider agreement dated 25 October 2018 with a duration until 31 December 2020 (hereinafter referred to as “the Agreement”).
7. The urine sample provided by the Rider was analysed in the WADA-accredited Laboratory of Cologne, Germany (hereinafter referred to as the “Laboratory”).
8. On 9 April 2019, the Laboratory reported an Adverse Analytical Finding (hereinafter referred to as “the AAF”) for Recombinant Erythropoietin (hereinafter referred to as “Rh-EPO”) in the Rider’s A-sample. Rh-EPO is a prohibited substance under Section S2 “Peptide Hormones, Growth Factors, Related Substances and Mimetics” of the 2019 WADA Prohibited List adopted

by the UCI. Specifically, Rh-EPO is biotechnologically produced Erythropoietin (hereinafter referred to as "EPO").

9. On 15 April 2019, the Rider was notified of the AAF and of the mandatory provisional suspension imposed on him according to Article 7.9.1 UCI ADR with effect from the date of the notification. After having informed Mr. Pantano of his AAF, the UCI also notified the FCC, COLDEPORTES (the Colombian NADO), the Rider's Team and WADA of the positive test.
10. On 17 April 2019, the Rider requested (i) the B-Sample analysis and (ii) the A-Sample Laboratory Documentation Package.
11. On 18 April 2019, Mr. Pantano and the UCI agreed to proceed with the opening and analysis of the B-Sample on 6 May 2019.
12. On 30 April 2019, the A-Sample Laboratory Documentation Package was sent to the Rider.
13. On 6 May 2019, the opening and analysis of the B-Sample took place at the Laboratory. This analysis confirmed the AAF established in the A-Sample's analysis.
14. On 14 May 2019, the UCI informed the Rider of the results of the B-Sample analysis, asserted that the Rider had committed an ADRV under articles 2.1 and/or 2.2 UCI ADR and invited him to provide an explanation and supporting documents with regard to the AAF within 14 days, which the Rider did in two separate communications dated 1<sup>st</sup> and 5<sup>th</sup> June 2019. In essence, the Rider established that he suffered from toxoplasmosis, mononucleosis and herpes between the end of 2018 and the beginning of 2019 (hereinafter referred to as the "Illnesses"), in light of which, combined with the two years he had left to his contract and the lack of pressure to perform from his team, he would never have used Rh-EPO. The Rider attached to his explanations a report on the Illnesses he suffered issued by Dr. Yuste.
15. Following receipt of the Rider's explanations, the UCI requested an opinion from an external scientific expert, Prof. Martial Saugy, to address them. In particular, Prof. Saugy was asked if the aforementioned Illnesses suffered by the Rider could be at the origin of the AAF.
16. On 18 July 2019, Prof. Saugy issued his report. Apart from stating that the AAF was absolutely clear, Prof. Saugy concluded that in his opinion, the analytical result of the sample giving rise to the Rider's AAF for Rh-EPO was not influenced by any of the illnesses the Rider claimed he suffered from, and that the AAF was due to an intake of Rh-EPO.
17. On 19 July 2019, the Rider's team terminated the Agreement, and the Rider retired from cycling.
18. On 29 July 2019, the UCI offered an Acceptance of Consequences – according to Article 8.4 UCI ADR – to the Rider.
19. On 11 August 2019, the Rider requested an extension of one month to answer to the aforementioned UCI's communication of 29 July 2019, based on the fact that investigations were being conducted as to whether a kidney failure caused by the toxoplasmosis and mononucleosis suffered by the Rider could have caused a false positive.
20. On 12 August 2019, the UCI communicated to the Rider that following the consultation made with medical experts, it considered that the Illnesses could not have caused the AAF for EPO but nevertheless granted the Rider an extension until 19 August 2019 to either accept or refuse the proposed Acceptance of Consequences or to provide explanations regarding the criteria of

Article 10.10.1.1 of the UCI ADR, which could justify a reduction of the applicable fine and hence a revised proposal from the UCI.

21. On 19 August 2019, the Rider requested again an extension of one month to submit additional explanations, based on the need to conduct a more extensive research on the case to provide a reasonable explanation on how the AAF was produced. On a preliminary basis, the Rider suggested that the “AAF could have been produced either by a kidney failure or by the Athlete’s liver” and that he had reasons to believe that the production of the EPO found in the sample was endogenous. In particular, the Rider’s medical team estimated that the AAF could have been caused by the strenuous extra effort that the Rider had to make in the competition prior to the testing due to the illnesses he was suffering from at the time. In such situation, the Rider’s liver, in order to compensate this extreme effort, could have produced an extraordinary amount of EPO that could have been seen by the Laboratory as an AAF. In addition, the Rider also alleged that his ABP results from 26 February 2019 and 10 March 2019 did not show any alteration, which could only mean that he did not use Rh-EPO. Finally, the Rider mentioned in this communication of 19 August 2019 that if the time extension requested was not granted, he refused the Acceptance of Consequences offered by the UCI.
22. In light of these latest allegations made by the Rider, the UCI sought a new opinion from Prof. Saugy, which he issued on 21 August 2019. Prof. Saugy noted that the theory on the AAF raised by the Rider’s medical team was based on a method of detection that was used in the past, called “Isoelectric Focusing” (hereinafter referred to as “IEF”), which did not absolutely differentiate Rh-EPO from endogenous EPO transformed by a transient renal failure due to an acute effort. However, the method of detection used by the Laboratory on the Rider’s sample, the SAR-PAGE, allows making in an absolute manner the difference between Rh-EPO and endogenous EPO. Therefore Prof. Saugy excluded that the Rh-EPO found in the Rider’s sample could be of endogenous origin.
23. On 22 August 2019, the UCI, after going through the considerations made by Prof. Saugy on the theory about the AAF raised by the Rider as explained in para. 21 above, rejected the Rider’s aforementioned request for a deadline extension and informed him that it would refer the case to the Tribunal, which the UCI did on 21 October 2019. In its referral (hereinafter referred to as “the Petition”), the UCI requested an award be rendered in the following terms:
  - *Declaring that Mr. Jarlinson Pantano has committed an Anti-Doping Rule Violation.*
  - *Imposing on Mr. Jarlinson Pantano a Period of Ineligibility of 4 years, commencing on the date of the Tribunal’s decision.*
  - *Holding that the period of provisional suspension served by Mr. Jarlinson Pantano since 15 April 2019 shall be deducted from the Period of Ineligibility imposed by the Tribunal.*
  - *Disqualifying all the results obtained by Mr. Jarlinson Pantano between 26 February 2019 and 15 April 2019.*
  - *Condemning Mr. Jarlinson Pantano to pay a fine of [REDACTED].*
  - *Condemning Mr. Jarlinson Pantano to pay the costs of results management by the UCI (CHF 2’500.-), the costs incurred for Out-of-Competition Testing (CHF 1’500.-), the costs of the B Sample analysis (EUR 2’100.-) and the costs of the Laboratory Documentation Package (EUR 950.-).*

### III. PROCEDURE BEFORE THE TRIBUNAL

24. As mentioned above, in accordance with article 13.1 ADT Rules, the UCI initiated proceedings before this Tribunal through the filing of the Petition to the Secretariat on 21 October 2019. Before referring the case to the Tribunal and as explained above, the UCI proposed to put an

end to the proceedings by offering the Rider an Acceptance of Consequences within the meaning of article 8.4 UCI ADR and article 2 ADT Rules. This offer was not accepted by the Rider.

25. The Secretariat of the Tribunal appointed Mr. Jordi López Batet to act as Single Judge in the proceedings in application of article 14.1 ADT Rules.
26. The Rider was informed that disciplinary proceedings had been initiated against him before the Tribunal and invited to file his answer to the Petition, which he did on 14 November 2019 (hereinafter referred to as “the Answer”).
27. In the Answer, the Rider requested the Single Judge (i) to declare that Mr. Pantano did not commit an ADRV and that he should not reimburse or cover any expense related with this process, with the collection of samples or its analysis and (ii) to order the UCI to repay Mr. Pantano all the expenses incurred into by him during this process. The Rider also requested a hearing be held in these proceedings.
28. In summary, the Rider contends in his Answer that (i) Rh-EPO is indeed a prohibited substance, but endogenous EPO is a natural substance produced by the human body, (ii) there is a potential risk that Hepatic EPO produced endogenously is mistaken with Rh-EPO, (iii) the illnesses that the Rider suffered and the fact that the Rider, at the time of the sample collection, had just finished the Tour du Haut Var in which he was submitted to strenuous effort could have reasonably caused the Rider’s liver to produce additional Hepatic EPO to supplement the lack of EPO produced by his kidneys and thus affect the results of the samples’ analysis, (iv) the SAR-PAGE method used in the assessment of the Rider’s sample is based on the analysis of images, which can be interpreted differently depending on the person performing the analysis and thus, an incorrect interpretation confounding Hepatic EPO with Rh-EPO could have taken place in the Rider’s case and (v) there is thus a real possibility that the EPO found in the Rider’s sample was indeed Hepatic EPO and not Rh-EPO, thus meeting the balance of probability standard of proof provided for in the UCI ADR. The Rider grounds these statements in an expert report issued by the toxicologist Dr. Jorge Marín. In addition, the Rider sustains that the fact that his ABP results from 26 February 2019 and 10 March 2019 did not show abnormalities is also a clear indication that he did not use Rh-EPO, or in other words, that if he had ingested Rh-EPO, the ABP would have reflected it somehow, which confirms in the Rider’s opinion that the most likely theory in this case is that the Laboratory misread the results and confused Hepatic EPO with Rh-EPO. A report issued by the hematologist Dr. Henry Idrobo Quintero was attached to the Answer to support this latest position.
29. On 21 November 2019, in consideration of the argumentation and new expert reports submitted by the Rider, the Tribunal invited the UCI to provide its comments to the Answer as well as any exhibits in relation to such new line of arguments and expert reports, by no later than 2 December 2019.
30. On 22 November 2019, the UCI requested an extension of the deadline to provide such comments until 9 December 2019, which was granted by the Tribunal.
31. On 4 December 2019, the UCI requested a new extension of such deadline until 16 December 2019, which the Tribunal accepted.
32. On 16 December 2019, the UCI filed its Reply to the Rider’s Answer (hereinafter referred to as “the Reply”). In this Reply, the UCI submits that (i) the reports issued by Dr. Marín and Dr. Idrobo do not explain the presence of Rh-EPO in the Rider’s sample, (ii) the UCI has therefore satisfied its burden of proof to establish that the Rider has committed an ADRV and (iii) the consequences set out in the Petition shall be upheld. Specifically, the UCI contends that (i) the EPO found in

the Rider's sample cannot be of endogenous nature and thus rejects the conclusions reached by Dr. Marin in his report, (ii) the Rider did not challenge the validity of the SAR-Page method and in any event, the Laboratory did not wrongly interpret the Rider's results and (iii) the alleged lack of variation in the Rider's ABP profile is not sufficient to interfere with the validity of the AAF. To support its allegations, the UCI produced two experts reports issued by Prof. Saugy and Mr. Yorck Olaf Schumacher: the first rebuts the approach made by Dr. Marin in his report and confirms that the result of the analysis using the SAR PAGE method clearly shows the presence of Rh-EPO in the Rider's sample, while the second reveals that it is possible for the Rider to have used Rh-EPO without causing significant variation in his ABP.

33. On 10 January 2020, the Rider was invited to provide his final comments on the UCI's Reply, if he deemed it appropriate.
34. The Rider did not file comments to the UCI's Reply.
35. At the request of the Rider and after the payment of the relevant advance of costs by him, a hearing *in persona* was held on 27 February 2020 at Starling Hotel in Geneva, Switzerland. The Parties were represented at the hearing by their respective counsels (Mr. Antonio Rigozzi and Ms. Charlotte Frey on behalf of the UCI, and Mr. Luis Fernández Aguilera on behalf of the Rider). The hearing started with the parties' opening statements, after which the experts Dr. Marin and Prof. Saugy were examined. At the beginning of the hearing, the Rider waived his right to present oral evidence from Dr. Henry Idrobo, following which the UCI also waived Mr. Yorck Olaf Schumacher's oral testimony. After the examination of the experts, the parties made their final pleadings. Before ending the hearing and in accordance with article 22.19 ADT Rules, the Rider was given the final opportunity to speak. The Rider then joined the hearing by telephone and made the statements he deemed appropriate. After this, both Parties declared that they did not have any objection as to how the proceedings were conducted and the Single Judge declared the hearing closed.

#### **IV. JURISDICTION**

36. The jurisdiction of the Tribunal follows from article 8.2 UCI ADR and article 3.1 ADT Rules according to which "*the 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 UCI ADR*".
37. Furthermore, article 3.2 of the ADT Rules provides that "*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.*"
38. Neither of the Parties raised any objection to the jurisdiction of the Tribunal within said time limit. Therefore, the Tribunal has jurisdiction to decide on the Petition.

#### **V. APPLICABLE RULES**

39. In accordance with article 25 ADT Rules, in rendering this Judgment, the Single Judge will apply the UCI ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law.

## VI. THE FINDINGS OF THE SINGLE JUDGE

40. Considering the submissions filed by the parties in these proceedings, the main issues to be addressed and resolved by the Single Judge are the following:

- (1) whether the Rider committed an ADRV within the meaning of Articles 2.1 and/or 2.2 ADR or not; and if so,
- (2) the consequences of such an ADRV.

### A. The ADRV

41. The UCI submits that the Rider committed an ADRV within the meaning of Articles 2.1 and 2.2 ADR, deriving from the AAF reported by the Laboratory as explained above. The Rider objects to this conclusion based on the arguments succinctly explained in para. 28 above.

#### 1. The relevant legal framework

42. The relevant legal provisions with respect to the establishment of an ADRV read as follows:

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

*2.1.1 It is each Rider’s personal duty to ensure that no Prohibited Substance enters his or her body. 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 B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle.*

*[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 quantitative threshold is specifically identified in the Prohibited List, the presence of any 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 or other International Standards or UCI Regulations incorporated in these Anti-Doping Rules*

may establish special criteria for the evaluation of Prohibited Substances that can also be produced endogenously.

## 2.2 Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method

2.2.1 It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. 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 for Use of a Prohibited Substance or a Prohibited Method.

2.2.2 The success or failure of the Use or Attempted Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.

*[Comment to Article 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Article 3.2, unlike the proof required to establish an anti-doping rule violation under Article 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Rider, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Rider Biological Passport, or other analytical which does not otherwise satisfy all the requirements to establish 'Presence' of a Prohibited Substance under Article 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organization provides a satisfactory explanation for the lack of confirmation in the other Sample.]*

*[Comment to Article 2.2.2: Demonstrating the 'Attempted Use' of a Prohibited Substance or a Prohibited Method requires proof of intent on the Rider's part. The fact that intent may be required to prove this particular anti-doping rule violation does not undermine the Strict Liability principle established for violations of Article 2.1 and violations of Article 2.2 in respect of Use of a Prohibited Substance or Prohibited Method. A Rider's 'Use' of a Prohibited Substance constitutes an anti-doping rule violation unless such substance is not prohibited Out-of-Competition and the Rider's Use takes place Out-of-Competition. (However, the presence of a Prohibited Substance or its Metabolites or Markers in a Sample collected In-Competition is a violation of Article 2.1 regardless of when that substance might have been administered)]".*

43. As to the burden and standard of proof, Article 3.1 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, the standard of proof shall be by a balance of probability. ...".*

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

*"Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:*

*[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.]*

*3.2.1 Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid. Any Rider or other Person seeking to rebut this presumption of scientific validity shall, as a condition precedent to any such challenge, first notify WADA of the challenge and the basis of the challenge.*

*CAS on its own initiative may also inform WADA of any such challenge. At WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge. Within 10 days of WADA's receipt of such notice, and WADA's receipt of the CAS file, WADA shall also have the right to intervene as a party, appear amicus curiae, or otherwise provide evidence in such proceeding.*

*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.*

*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.*

*[Comment to Article 3.2.2: The burden is on the Rider or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding. If the Rider or other Person does so, the burden shifts to the UCI to prove to the comfortable satisfaction of the hearing panel that the departure did not cause the Adverse Analytical Finding.]*

*3.2.3 Departures from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such evidence or results. If the Rider or other Person establishes a departure from any other rule set forth in these Anti-Doping Rules, or any International Standard or UCI Regulation incorporated in these Anti-Doping Rules which could reasonably have caused an anti-doping rule violation based on an Adverse Analytical Finding or other anti-doping rule violation, then the UCI shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation".*

## **2. In casu**

45. In the present case, the analysis of both the Rider's A and B Samples at the Laboratory revealed the presence of Rh-EPO, which is a prohibited substance under Section S2 "Peptide Hormones, Growth Factors, Related Substances and Mimetics" of the 2019 WADA Prohibited List adopted by the UCI.

46. This leads the Single Judge to consider that at least *prima facie*, the UCI has discharged its burden of proof with respect to an ADRV (Article 2.1 ADR) committed by the Rider according to Article 2.1.2 ADR.
47. However, the Single Judge notes that the Rider rejects the existence of an AAF and thus requests that the Tribunal declares that the Rider did not commit any ADRV, based on the reasons, arguments and explanations referred to in para. 28 of this Judgement, which the Single Judge has carefully examined together with the evidence brought by each of the Parties to these proceedings.
48. The Rider sustains that his theory on the alleged AAF (basically, the confusion of Hepatic EPO with Rh-EPO in the results' analysis of the Rider's sample) is more likely than the one held by the UCI (the presence of biotechnologically produced EPO -Rh-EPO- in the Rider's sample), and on this basis, that he has met the standard of proof of balance of probability established in Article 3.1. UCI ADR and that no ADRV has then occurred. The UCI opposes to it and contends that (i) Rh-EPO was validly identified in the Rider's sample, (ii) the Rider has neither proven his alleged source of the AAF nor any misinterpretation of the analytical results and (iii) the fact that the Rider's ABP profile did not show any significant variation on the days following the sample collection does not interfere with the aforementioned conclusions.
49. The Single Judge has thus examined the aforementioned theory of the Rider in order to determine whether the balance of probability's standard of proof has been met by him or not, and to this purpose has analyzed both the allegations made and evidence brought by the Parties to the proceedings, and in particular the expert reports issued by Dr. Marín, Prof. Saugy, Dr. Idrobo and Mr. Schumacher.
50. The Single Judge shall firstly stress that as mentioned in the Decision UCI ADT 04.2018 UCI v. Jeancarlo Padilla, in the context of establishing the source of a Prohibited Substance, the CAS has interpreted that the deciding body "[...] to be satisfied that a means of ingestion is demonstrated on a balance of probability simply means, 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" (CAS 2014/A/3615 WADA v. Daiders or CAS 2009/A/1926 ITF v. Richard Gasquet). In addition, in what concerns the evidence needed to reach this standard of proof, it shall be taken into account that as established in the UCI ADT Decisions 04.2018 UCI Jeancarlo Padilla and 05.2017 UCI v. Nunes Pinho, "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)".
51. The Single Judge, after analysing the arguments and evidence produced to the file and in particular the expert reports, is not persuaded that the theory on the AAF raised by the Rider is more likely than not to have occurred, and considers that the UCI has discharged its burden of proof with respect to the ADRV as explained above.
52. It is a fact that EPO can be produced endogenously by the human body. It has been also proven in these proceedings that the Rider suffered from toxoplasmosis, mononucleosis and herpes<sup>1</sup>,

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<sup>1</sup> UCI's Exhibit 16.3.

and that days before the doping control, the Rider took part in a 3-day competition, the Tour du Haut Var<sup>2</sup>. However, what the Single Judge does not deem proven is:

- (i) that these two circumstances (the Illnesses and effort made by the Rider at Tour du Haut Var) could have influenced the result of the Rider's sample analysis.

Apart from referring to the statements made by Prof. Saugy in his report of 18 July 2019, in accordance to which *"the analytical result is not influenced by any of the Illnesses which affected the rider"*, the Single Judge shall point out in this respect that:

- even if it is accepted that the Rider suffered from the Illnesses at some point in time, the exact moment in which he suffered each of them is not conclusively proven in accordance with the evidence taken<sup>3</sup>; and
- Dr. Marín suggests in his report that the Rider's infectious picture and the physical effort made *"could be the reason why"* there is an increase of the production of EPO of hepatic origin, but makes no mention to specific precedents in which illnesses of the kind of those suffered by the Rider combined with strenuous effort have given rise to false positives for EPO, while Prof. Saugy referred in his report that (i) neither him nor the scientists of the Laboratory were aware of cases of toxoplasmosis or the other Illnesses suffered by the Rider having provoked an AAF for EPO and (ii) no scientific literature suggests that toxoplasmosis has a modulating effect on the molecular structure of EPO.

- (ii) that the Rh-EPO found in the Rider's sample could be confounded with Hepatic EPO with the method of analysis used by the Laboratory (SAR-PAGE).

In this respect, the Single Judge shall firstly note that the validity of the SAR-PAGE method has not been challenged by the Rider. What the Rider did is to put into question the interpretation of the results obtained in the application of this method in this specific case, and to suggest that a confusion between Rh-EPO and endogenously produced EPO could have taken place.

In particular, the Rider's expert Dr. Marín holds in his report that the analytical results arising out of the Rider's sample were interpreted by the Laboratory *"as an image that could fit the result pattern that has been associated with the presence of erythropoietin of exogenous origin"*, but thereafter states that *"there is a reasonable doubt regarding the possibility that the result given the scarce proportion towards the pattern of a basic substance corresponds to an analysis where there is evidence of a high proportion of erythropoietin of hepatic origin, explaining this result, given that positive tests have a different pattern to that reported in this case"*.

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<sup>2</sup> UCI's Exhibit 24.

<sup>3</sup> In particular, UCI's Exhibit 16.3 (report of Dr. Yuste dated 11 April 2019 -that is to say 2 months after the doping control passed by the Rider-) (i) refers to the Rider suffering toxoplasmosis in August 2018 (that is to say, 7 months before the doping control) and to a 6-week treatment to heal it, but does not expressly affirm that the Rider suffered toxoplasmosis on the date of the doping control, (ii) indicates that no *Toxoplasma gondii* is detected in the examination made to the Rider and (iii) refers to the detection of herpes and virus Epstein Barr in the Rider but does not expressly indicate if the Rider suffered from these diseases at the date of the doping control.

The aforementioned theory sustained by the Rider was contested by Prof. Saugy's in his reports dated 21 August 2019 and 16 December 2019. In the first one, Prof. Saugy rebutted the allegations made by the Rider in his submissions of 19 August 2019 by stating that *"the scientific arguments discussed by the medical team of the rider are well known and have been used for some specific cases in the past, when the differentiation of endogenous EPO and recombinant EPO was based on a method called "Isoelectric Focusing" [...] But the method based on SDS/SAR-Page allowed to make in an absolute manner the difference between Endogenous EPO and recombinant EPO. [...] It is impossible to conclude that the recombinant EPO found in the urine is of endogenous origin"*. In the second one, Prof. Saugy contested Dr. Marín's report by affirming again that the SAR-PAGE method, unlike the IEF method used in the past which could give rise to confusions between hepatic EPO and Rh-EPO, *"allows to differentiate clearly the exogenous recombinant EPO and the endogenous EPO secreted by both the liver and the kidney"*.

At the hearing, Prof. Saugy corroborated such statements and confirmed his opinion about the exogenous origin of the EPO found in the Rider's sample, which is in line with the conclusion reached by certifying scientist of the Laboratory on 29 March 2019 and with the Second Opinion issued by Drs. Christian Reichel and Günter Gmeiner on 8 April 2019 on the Rider's AAF in accordance with the WADA TD2014EPO (UCI's Exhibit 13).

In this respect, it shall be taken into consideration that the SAR-PAGE analytical method foreseen in the WADA TD 2014EPO, which was the one used with the Rider's sample, necessarily implies that an assessment of the images resulting from the sample analysis is made by the relevant experts. Such assessment is part of the methodology. This being said, after checking the aforementioned expert reports and examining Dr. Marín and Prof. Saugy at the hearing, the Single Judge was not convinced that a confusion of the kind alleged by the Rider or a misinterpretation of the results could have given rise to a false positive in this specific case. Alleging that in abstract, potential misinterpretations of results by the persons in charge of their management can take place while applying the SAR-PAGE method do not suffice in the Single Judge's view to put the validity and reliability of the Rider's AAF into question, especially when the Laboratory first, Drs. Reichel & Gmeiner afterwards (Second Opinion) and finally Prof. Saugy concluded without hesitation after assessing the relevant images that Rh-EPO was found in the Rider's sample.

- (iii) that if the Rider had ingested Rh-EPO, it would have been reflected in his ABP.

As mentioned above, the Rider contends that the fact that his ABP results from 26 February 2019 and 10 March 2019 did not show abnormalities is a clear indication that he did not use Rh-EPO, and concludes that if he had ingested Rh-EPO, the ABP would have reflected it somehow, which in his view would confirm the thesis of the confusion of results raised by him.

To support his position, the Rider has produced to these proceedings an expert report issued by the hematologist Dr. Idrobo, who concluded inter alia that (i) after analyzing the trend of the Rider's hematological parameters, no evidence of unsportsmanlike behaviour is observed, (ii) when an EPO-stimulating agent like Rh-EPO is administered, *"the percentage of reticulocytes should be increased after stimulation of the bone marrow leading to earlier exit of these red blood cells from this compartment, cells which due to their larger size and higher ribonucleic acid content, are known as*

*reticulocytes”, and (iii) “no variation is observed in the off-score that is different from the usual variations in this athlete, in its longitudinal follow-up in time”.* Also Dr. Marín refers to this ABP issue in conclusions 6 and 7 of his report, but without a specific development of the technical assessment and grounds on which he bases these conclusions.

This specific report of Dr. Idrobo was contested by the UCI with another report, the one issued by Mr. Schumacher and produced with the Reply. In this report, Mr. Schumacher:

- Confirmed that *“an athlete can use rEPO, have unaltered ABP markers and still test positive for the substance”* and that *“it is by no means surprising that the APB of the athlete is normal despite the use of EPO”*, and indicated that both the dosage of the drug administered and the timing of the test in relation to the application of the substance matter in this respect. In particular, Mr. Schumacher states in his report that *“a low dose of rEPO (microdose) might not change blood markers at all”*, and that *“it is clear that if the athlete either took rEPO close to ABP sample 51 in his profile (i.e. the sample taken on 26 February 2010) or he continuously took low dose of rEPO over the period covered by the ABP tests 51 and 52 (i.e. the sample taken on 10 March 2019) the ABP markers would likely be unaffected or within the variation seen in the current profile”*.
- Rebutted the argumentation of Dr. Idrobo, concluding that *“most of Dr. Idrobo’s statements are not valid as they are selectively taken out of context, fail to convey the true message of the cited article or draw wrong conclusions”*.

The Rider was given the opportunity to contest Mr. Schumacher’s aforementioned technical conclusions, either in the response to the Reply he was invited to file and thereafter at the hearing. However, the Rider failed to provide a new report (or an extension of Dr. Idrobo’s report) contesting or criticizing the conclusions of Mr. Schumacher and also decided to waive Dr. Idrobo’s declaration at the hearing, so the Single Judge could not hear Dr. Idrobo’s response on Mr. Schumacher’s approach to the matter.

In the described scenario, where (i) the conclusions reached by Mr. Schumacher are in the Single Judge’s opinion clear, straightforward and based on consistent explanations and (ii) the Rider, who had the burden of proof on his ABP related allegations, has not produced evidence specifically addressed to contest Mr. Schumacher conclusions, the Single Judge does not find proven in this specific case that, as sustained by the Rider, if the Rider had taken Rh-EPO, it would have been clearly reflected in his ABP profile.

53. Therefore, for the reasons explained above the Single Judge was not persuaded by the Rider’s explanations and arguments on the alleged endogenous origin of the EPO found in the Rider’s sample and thus considers that the Rider committed a violation of article 2.1 UCI ADR.
54. The Single Judge also notes that the UCI is sustaining that an ADRV of Use under article 2.2 UCI ADR is to be also established. However, in light of the fact that the Single Judge has already held that the Rider committed a violation of article 2.1 UCI ADR, the question of whether the Rider also committed a violation of article 2.2 UCI ADR is of no practical consequence, since both bear the same consequences. Thus, it is considered unnecessary to address the issue of whether the Rider also committed a violation of article 2.2 UCI ADR.

## **B. The Consequences of the ADRV**

55. The ADR provide for different types of consequences in case of an ADRV.
56. The UCI is requesting the Tribunal to impose the sanctions of ineligibility, disqualification of results and monetary fine.

### **1. Period of Ineligibility**

57. If the Rider's ADRV constitutes a first violation (as it is the case herein), Article 10.2 ADR applies, which reads as follows:

*"The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:*

*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, 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, the period of Ineligibility shall be two years.*

*10.2.3 As used in Articles 10.2 and 10.3, the term 'intentional' is meant to identify those Riders who cheat. The term therefore requires that the Rider or other Person engaged in conduct which he or she 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. [...]"*

58. Pursuant to this article, the standard period of ineligibility is 4 years, if the ADRV does not involve a Specified Substance and the Rider cannot establish that the ADRV was not intentional.
59. In the case at hand, the Rider's violation involves Rh-EPO, which is a Prohibited Substance and is not a Specified Substance, being for the Rider to prove (by a balance of probability, as per article 3.1. UCI ADR) that the violation was not intentional.
60. After analysing the submissions and evidence brought to the proceedings by the Parties, the Single Judge concludes that the Rider failed to establish that the anti-doping violation was not intentional.
61. As explained above (Section VI.1.b), the Single Judge does not accept the Rider's thesis about the origin of Rh-EPO in his sample. Additionally, the explanations given by the Rider on the lack of incentive to take doping substances (i.e. the fact that he suffered from the illnesses and that at the time of the doping control he had still two years of contract with his team and thus no pressure to perform from such team) are unsatisfactory for the purposes of demonstrating lack of intentionality. In this respect, it shall be recalled that in accordance with this Tribunal's precedents, mere unproven statements or the simple denial of use of doping do not discharge the burden of proof on the Rider's lack of intentionality. For instance, in UCI ADT 09.2019 UCI vs Nicola Ruffoni, the Tribunal asserted that *"it is not sufficient for the Athlete to deny the use of doping. It is well established in CAS case law (See e.g. CAS 2014/A/3615, WADA v. Daiders, Award of 30 January 2015, para 51.) and confirmed on multiple occasions by this Tribunal (See e.g. ADT 02.2016, UCI v. Fabio Taborre, Judgment of 25 May 2016, para 85, ADT 03.2017, UCI*

*v. Ms. Isabella Moreira Lacerda, Judgment of 17 August 2017, para 105 and ADT 05.2017, UCI v. Josemburg Nunes Pinho, Judgment of 15 August 2017, para 122) that a simple denial without any supporting evidence should be afforded at most limited evidentiary weight. Likewise, the Tribunal in the case at hand affords the Rider's denial only limited evidentiary weight".*

62. Finally, the fact that, as alleged by the Rider, he has a foundation of children in his home city or that his motto has always been fair play and work hard and honest<sup>4</sup> are irrelevant in this case for the purposes of accepting that the Rider's violation was not intentional.
63. Therefore, the allegations made by the Rider are insufficient to establish that the violation was unintentional and consequently, the Single Judge finds that the standard period of ineligibility of 4 years shall apply to the Rider.
64. This being said, it shall be also noted that in accordance with the UCI ADR, a Rider may be entitled to the elimination or to the reduction of the period of ineligibility, if the prerequisites of articles 10.4 (No Fault or Negligence) or 10.5 (No Significant Fault or Negligence) UCI ADR are met. For this elimination or reduction to apply, the Rider shall establish how the Prohibited Substance entered his system. Additionally, it shall be also taken into account that article 10.6 UCI ADR sets out conditions under which a period of ineligibility may be eliminated, reduced or suspended for reasons other than fault.
65. In the case at stake, the Rider has not expressly requested the elimination or reduction of the sanction based on the aforementioned articles, and in any event, the Single Judge, after analysing the facts and evidence brought to the proceedings and in particular the fact that the Rider failed to validly establish how the Prohibited Substance entered his system, does not find that the Rider can qualify for such an elimination or reduction of the standard period of ineligibility. In consequence, it is reiterated that the period of ineligibility to be imposed on the Rider is of 4 years.
66. In relation to the commencement of the period of ineligibility, article 10.11 UCI ADR stipulates in the pertinent part that:
- "Except 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. [...]"*
- 10.11.3.1 If a Provisional Suspension is imposed and 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 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. [...]"*
67. In accordance with this article, the period of ineligibility shall start on the date of the final decision imposing such Ineligibility, with credit given for the period of any provisional suspension if and to the extent it was respected by the Rider.
68. In the case at stake, on 15 April 2019, the Rider was informed of a mandatory provisional suspension imposed on him. It is undisputed between the Parties that the Rider observed the terms of such suspension and that, therefore, he must receive credit for the time so served.

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<sup>4</sup> UCI 's Exhibit 16.1.

## 2. Disqualification of results

69. The UCI in its Petition requests the Single Judge to disqualify all the results obtained by the Rider between 26 February 2019 (date of the Rider's Out-of-Competition's doping control) and 15 April 2019 (beginning of the mandatory provisional suspension).

70. Article 10.8 UCI ADR provides as follows:

*"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."*

71. The aforementioned provision stipulates the Disqualification of all results from the date the positive sample was found until the date the Provisional Suspension was imposed, unless "fairness requires otherwise".

72. Considering that (i) the Rider's defense has been rejected, (ii) no specific allegations have been made by the Rider on the potential existence of reasons of fairness enabling to deviate from the effects foreseen in article 10.8 UCI ADR, and (iii) the Single Judge does not see a reason that would justify a derogation from the principle set forth in the aforementioned article, the Single Judge finds that the Athlete's results from 26 February 2019 until 15 April 2019 shall be disqualified.

## 3. Mandatory Fine and Costs

73. Article 10.10 ADR provides as follows:

*"In addition to the Consequences provided for in Article 10.1-10.9, violation under these Anti-Doping Rules shall be sanctioned with a fine as follows.*

*10.10.1.1 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.*

*[Comments: 1. A member of a Team registered with the UCI shall be considered as exercising a professional activity in cycling. 2: Suspension of part of a period of Ineligibility has no influence on the application of this Article].*

*The amount of the fine shall be equal to the net annual income from cycling that the Rider or other Person was entitled to for the whole year in which the anti-doping violation occurred. In the Event that the anti-doping violation relates to more than one year, the amount of the fine shall be equal to the average of the net annual income from cycling that the Rider or other Person was entitled to during each year covered by the anti-doping rule violation.*

*[Comment: Income from cycling includes the earnings from all the contracts with the Team and the income from image rights, amongst others.]*

*The net income shall be deemed to be 70 (seventy) % of the corresponding gross income. The Rider or other Person shall have the burden of proof to establish that the applicable national income tax legislation provides otherwise.*

*Bearing in mind the seriousness of the offence, the quantum of the fine may be reduced where the circumstances so justify, including:*

1. *Nature of anti-doping rule violation and circumstances giving rise to it;*
2. *Timing of the commission of the anti-doping rule violation;*
3. *Rider or other Person's financial situation;*
4. *Cost of living in the Rider or other Person's place of residence;*
5. *Rider or other Person's Cooperation during the proceedings and/or Substantial Assistance as per article 10.6.1.*

*In all cases, no fine may exceed CHF 1,500,000.*

*For the purpose of this article, the UCI shall have the right to receive a copy of the full contracts and other related documents from the Rider or other Person, the auditor or relevant National Federation.*

*[Comment: No fine may be considered a basis for reducing the period of Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules]."*

74. The Rider is a professional rider which has committed an ADRV and that could not establish that this ADRV was unintentional, which leads the Single Judge to conclude that the prerequisites for a fine are, therefore, fulfilled and that such a fine shall be imposed.
75. With respect to the amount of the fine to be imposed, the UCI submits that the Rider was entitled to an annual gross income from cycling in 2019 of [REDACTED], as established in clause 3 of the Agreement. Therefore, according to the UCI, a mandatory fine of [REDACTED], representing 70% of the Rider's annual gross income, should be imposed as per article 10.10.1.1 UCI ADR. The Rider has not submitted specific allegations as to the fine's amount requested by the UCI.
76. In light of the seriousness of the ADRV (presence of Rh-EPO in the Rider's sample), the experience of the Rider at the time of the doping control and the absence of evidence on the occurrence of any of the circumstances enabling a reduction of the fine as per article 10.10.1.1 UCI ADR, the Single Judge decides to impose on the Rider a fine of [REDACTED].
77. Finally, in relation to the Liability for Costs of the Procedures, article 10.10.2 UCI ADR reads as follows:

*"10.10.2 Liability for Costs of the Procedures*

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

1. *The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*
2. *The cost of the result 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.*
5. *The cost for the A and/or B Sample laboratory documentation package where requested by the Rider.*

6. *The cost for the documentation package of Samples analyzed for the Biological Passport, where applicable.*

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

78. The UCI is requesting the Tribunal to condemn the Rider to pay the following amounts in this respect:
- CHF 2'500.- for costs of the results management;
  - CHF 1'500.- for costs incurred for Out-Of-Competition Testing;
  - CHF 2'100.- for the costs of the B Sample analysis;
  - CHF 950.- for the costs of the A Sample laboratory documentation package.
79. The costs for the results management and Out-Of-Competition Testing claimed by the UCI are in line with those foreseen in article 10.10.2 UCI ADR, and the UCI has provided the relevant invoice corresponding to the costs of the B Sample analysis (CHF 2'100) and the A Sample laboratory documentation package (CHF 950).
80. In light of the aforementioned the Single Judge considers that the Rider shall pay the amounts claimed by the UCI as listed in para. 78 above and condemns the Rider to pay them.

## **VII. COSTS OF THE PROCEEDINGS**

81. Article 28 ADT Rules provides as follows:

1. *The Tribunal shall determine in its judgment the costs of the proceedings as provided under Article 10.10.2 para. 1 ADR.*
2. *As a matter of principle the Judgment is rendered without costs.*
3. *Notwithstanding para. 1 above, the Tribunal may order the Defendant to pay a contribution toward the costs of the Tribunal. Whenever the hearing is held by videoconference, the maximum participation is CHF 7'500.*
4. *The Tribunal 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. If the prevailing Party was represented by a legal representative the contribution shall also cover legal costs.*

82. In light of all the circumstances of this case, and in particular:
- the fact that the UCI (as the prevailing Party) waived at the hearing its right to claim a contribution from the Rider (as the unsuccessful party) as regards the costs of experts as well as legal costs; and
  - the significant costs already incurred by the Rider in connection with the present case, including but not limited to the CHF 2'000 already paid as an advance of costs for the holding of the hearing;

the Single Judge decides that the present Judgment is rendered without costs and that each party shall bear its own costs in these proceedings.

## VIII. RULING

83. In the light of the above, the Tribunal decides as follows:
1. Mr. Pantano has committed an Anti-Doping Rule Violation (Article 2.1 ADR).
  2. Mr. Pantano is suspended for a period of Ineligibility of 4 years. The period of Ineligibility shall commence on the date of the decision, i.e. 15 May 2020. However, considering the credit for the period of the provisional suspension already served by Mr. Pantano since 15 April 2019, Mr. Pantano's period of Ineligibility effectively began on 15 April 2019, and shall end four years from this date, i.e. 14 April 2023.
  3. The results obtained by Mr. Pantano between 26 February and 15 April 2019 are disqualified.
  4. Mr. Pantano is ordered to pay to the UCI the amount of [REDACTED] as monetary fine.
  5. Mr. Pantano is ordered to pay to the UCI:
    - a) the amount of CHF 2'500 for the costs of results management;
    - b) the amount of CHF 1'500 for costs incurred for Out-Of-Competition Testing;
    - c) the amount of CHF 2'100 for costs of the B Sample analysis; and
    - d) the amount of CHF 950 for costs of the A Sample laboratory documentation package.
  6. All other and/or further-reaching requests are dismissed.
  7. This judgment is final and will be notified to:
    - a) Mr. Pantano ;
    - b) COLDEPORTES (Colombian NADO) ;
    - c) UCI ; and
    - d) WADA.
84. This Judgment may be appealed before the CAS pursuant Article 30.2 ADT Rules and Article 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in Article 13.2.5 ADR.

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Jordi López Batet  
Single Judge