

UCI Anti-Doping Tribunal

Judgment

case ADT 05.2023

UCI v. Mr. Robert Stannard

Single Judge:

Ms. Helle Qvortrup Bachmann (Denmark)

Aigle, 3 June 2024

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 Tribunal Procedural Rules (hereinafter referred to as “the UCI ADT Rules”) in order to decide whether Mr. Robert Stannard (hereinafter referred to as “the Rider”) has violated the UCI Anti-Doping Rules (hereinafter referred to as “the UCI ADR”) as alleged by the Union Cycliste Internationale (hereinafter referred to as “the UCI” and, together with the Rider, 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 her reasoning.

A. The Parties

1. The UCI

3. The UCI is the international 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. At the time of the asserted Anti-Doping Rule violation (hereinafter referred to as the “ADRV”), i.e. around August 2018 and January 2019, the Rider was a professional road cyclist affiliated to the Australian Cycling Federation and a License Holder within the meaning of the UCI ADR.
5. The Rider started his cycling career in 2017 when he joined the UCI Continental Team Mitchelton-Scott and was contracted to that team until 8 October 2018. On that date he joined the UCI WorldTour Team Mitchelton-Scott which changed name to Team Bike Exchange in 2021. The Rider was contracted with that team until the end of 2021. Since 1st January 2022 he was riding for the UCI WorldTour Team Alpecin-Deceuninck until the provisional suspension imposed on him on 1 August 2023.

B. The ABP

6. The Rider was part of the UCI’s Athlete Biological Passport Programme (hereinafter referred to as the “ABP”). The APB is based on longitudinal monitoring of the athlete and is designed to be an “indirect” method of doping detection. It focuses on the effect of prohibited substances and methods on the athlete’s haematological values rather than the identification of a specific substance or method in the athlete’s specimen.
7. The Adaptive Model is a statistic tool which was developed to identify atypical values or profiles that warrant further investigation. It predicts - for the individual athlete - an expected range within which the athlete’s biological markers will fall assuming a normal physiological condition.
8. The Adaptive Model flags haematological data as atypical if 1) a haemoglobin (HGB) and/or OFF-score (OFFS) marker value falls outside the expected intra-individual ranges, with outliers

corresponding to values out of the 99%-range (0,5 – 99,5 percentiles) (1:100 chance or less that this result is due to normal physiological variation), or 2) when sequence deviations (a longitudinal profile of marker values) are present at specificity of 99,9% (1:1000 chance or less that this is due to normal physiological variation).

9. The OFF-score value is a haematological marker which is a combination of HGB and the percentage of reticulocytes (RET%).

C. The alleged ADRV

10. The UCI alleges that the Rider committed a violation of Article 2.2 UCI ADR based on abnormalities detected in the haematological values contained in the Rider's ABP.
11. In the present case, the Rider's biological passport was flagged with abnormalities at 99,0% specificity for HGB and OFF-score.
12. In particular, the following samples of the Rider's biological passport were flagged:
 - i. Sample 2 was flagged with upper limit HGB and upper limit OFF-score;
 - ii. Sample 10 was flagged for lower limit HGB; and
 - iii. Sample 20 was flagged with lower limit OFF-score.
13. The following table summarizes the key parameters reported in the Rider's ABP:

#	Sample code	Collection date	HGB	RET%	OFF-score	HCT	RET#	IRF	
1	316068	11.05.2017	14.7	0.85	91.7	43.7	0.0413	7.1	
2	387386	17.08.2018	16.8	0.56	123.1	48.1	0.0298	4.1	
3	387401	24.08.2018	15.3	0.69	103.2	45.3	0.0341	4.1	
4	390243	07.11.2018	15.8	0.72	107.1	44.4	0.0369	2.8	
5	349815	25.11.2018	16.1	1.05	99.5	44.9	0.055	5.4	
6	605858	13.01.2019	15.9	0.38	122.01	45.3	0.0196	2.7	
7	638748	14.05.2019	15	0.82	95.7	43.7	0.0407	4.9	
8	625304	05.06.2019	14.7	0.85	91.68	44.4	0.0414	2.1	
9	399468	28.06.2019	15.2	1.06	90.23	46.4	0.0542	2.3	
10	663677	11.07.2019	13.9	1.18	73.82	41.7	0.055	6.5	
11	664675	02.08.2019	14.6	0.93	88.1	43.5	0.045	3.9	
12	671416	27.08.2019	15	1.04	88.81	44.8	0.0509	3.4	
13	656194	03.03.2020	14.7	0.95	88.5	44.4	0.0469	4.1	
14	723802	20.09.2020	14.6	1.3	77.6	44.2	0.0618	5.6	
15	742110	21.10.2020	14	0.93	82.1	40.8	0.0421	2.5	
16	736624	22.03.2021	14.7	1.04	85.81	44.3	0.0504	3.3	
17	10000098858	28.07.2021	16.2	1.09	99.4	47	0.0579	4.3	
18	922648	12.08.2021	15.8	1.28	90.1	45.8	0.0655	3.4	
19	911970	21.03.2022	Invalid						
20	10000272718	10.04.2022	14.3	1.52	69.03	41.8	0.0692	7	
21	961582	17.08.2022	16.3	1.01	102.7	47.1	0.0535	4.3	
22	961806	03.09.2022	13.7	1.42	65.5	41.1	0.0639	6.6	
23	961726	07.09.2022	14.9	1.35	79.3	44	0.0653	11.2	

14. Following the initial expert review, the Athlete's Passport Management Unit submitted the Rider's ABP to an expert panel composed of Dr. Laura Lewis, Dr. Paulo Paixao and Dr. Jakob Mørkeberg (hereinafter collectively referred to as the "Expert Panel") for independent evaluation.
15. The Expert Panel conducted a review of the Rider's ABP regarding 23 samples obtained in the period between May 2017 and September 2022, the Rider's competition schedule and whereabouts for the same period including altitude information. In a joint expert opinion dated 12 April 2023 (hereinafter referred to as the "Expert Panel's First Opinion") the Expert Panel set forth their unanimous opinion on the Rider's haematological profile. The Expert Panel scrutinised each sample of the ABP to exclude that analytical or pre-analytical issues could explain the abnormalities or influence the results in a way that would disadvantage the Rider. As part of this assessment, the Expert Panel decided to invalidate Sample 19 due to analytical issues highlighted in the sample documentation and which might have affected the integrity of the sample. For the sake of clarity and as noted by the Expert Panel, this sample was not taken into account by the Expert Panel when reaching its conclusions on the Rider's profile.
16. The Expert Panel confirmed that the Rider's profile contained several abnormal features indicative of blood manipulation in August 2018 and January 2019. The Expert Panel particularly noted the following:

"[...] In our view, the data of the athlete bears several patterns indicative of blood manipulation, with clear off phases around competition in August 2018 and January 2019.

Specifically, sample 2 (high Hb, high OFF score) was collected at start of the Tour de l'Avenir, Sample 6 (high OFF score, low rets%) was collected one week after the national championships and has a low %ret value. No altitude is reported in connection with these samples.

A high OFF score is typically observed when the red cell mass of the organism has been supraphysiologically increased (high hemoglobin) and the body's own red cell production is reduced (low reticulocytes) as a consequence to downregulate the excess in red blood cells. This constellation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulating agent (ESA) or the application of a blood transfusion [...]."

17. The Expert Panel considered that the outlying results of Sample 10 flagged for lower limit Hb by the Adaptative Model, could be explained by environmental factors, specifically since the RET% and immature reticulocyte fraction (IRF) did not indicate a sub-physiological HGB mass.
18. Moreover, the Expert Panel considered that the abnormal values of Sample 20, which was flagged for low OFFS by the Adaptative Model, were highly likely due to the fact that the sample was collected two days after a multi-day race.
19. In view of the above-mentioned abnormalities identified in August 2018 and January 2019, the Expert Panel ultimately concluded that:

"[...] In summary, there are several occasions that the athlete has a suppressed erythropoiesis at or after competitions which indicate a supraphysiological Hbmass.

We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause. In summary, the profile bears several features of blood manipulation during the preparation for competition."

20. On 2 May 2023, the Rider was (i) informed of the APF, (ii) provided with the Expert Panel's First Opinion and the relevant documentation, and (iii) requested to provide an explanation for the abnormalities identified in his ABP.

21. More specifically, the documents sent to the Rider included the APF issued by the APMU, the APMU Documentation Package of Samples 2, 3, 6 and 19 to 23 of his ABP, a Certificate of Analysis for the other valid samples of his ABP and the Rider's competition schedule and altitude calendar.
22. On 8 May 2023, following the Rider's request, the deadline to provide his explanations for the abnormalities identified in his ABP was extended until 31 May 2023.
23. On 15 May 2023, the Rider's lawyers informed the UCI of their appointment and requested an extension of the time limit to provide their client's explanation until 16 June 2023.
24. The UCI confirmed the Rider his new deadline (i.e. 16 June 2023).
25. On 13 June 2023, the Rider requested i) information on any of the urine samples collected with any of his 23 blood samples (i.e. information about the specific occasions; on which of those occasions the urine samples were subject to analysis for the presence of EPO and on which of those occasions the urine samples tested negative for the presence of EPO), and ii) an extension of the deadline to provide his explanation.
26. On 14 June 2023, the UCI rejected the Rider's request for information, stating that such information was irrelevant to provide his explanation on his haematological profile. However, the UCI did grant an extension for the Rider to submit his explanations until 23 June 2023.
27. On 22 June 2023, upon the Rider's request, the UCI – in an exceptional move - granted an extension of the Rider's deadline until 27 June 2023.
28. On 27 June 2023, the Rider sent his explanation to the UCI including a Letter of Explanations, an Expert Report of Dr. Paul Scott, a witness statement of the Rider and the Rider's training record from 7 July to 3 August 2018.
29. In substance, the Rider alleged that he has never knowingly used any Prohibited Substance or Method and thus denies having committed any ADRV.
30. With respect to the abnormalities identified by the Expert Panel in relation to Sample 2, the Rider's scientific expert explained:
 - i. The fact that Sample 2 was flagged by the Adaptive Model simply reflects a constraint inherent to the model, whereby the second sample collected is more likely to be flagged for exceeding the acceptance limits. Sample 2 HGB concentration and OFFS do not look particularly extreme in view of the later upper limits set by the Adaptive Model.
 - ii. Regardless, the Rider's HGB concentration and OFFS would have remained within the acceptance range, if the Adaptive Model had considered the Rider's training at high altitude in the two weeks preceding the collection of Sample 2.
 - iii. In all events, considering the Rider's altitude stay and training in the 2 weeks prior to the collection of Sample 2, the HGB concentration values (and therefore also OFFS) fall perfectly within the Rider's normal range.
 - iv. The relatively high Hb concentration in Sample 2 could also be attributed to exercise-induced variations in plasma volume, particularly considering that the Rider had raced a competition just 5 days before the collection of Sample 2.
31. When it comes to the abnormalities identified by the Expert Panel in relation to Sample 6, the Rider's scientific expert:

- i. Stressed that RET% value is both highly variable and not as accurate as Hb concentration measurements.
 - ii. Noted that Sample 6 RET% remained within the 99% specificity boundaries, meaning it wasn't considered atypical as defined by the Adaptive Model.
 - iii. Argued that Samples 1 to 7 RET% values should be assessed separately from Sample 8 to 23 due to the change in the analyser. Additionally, Sample 6 RET% value does not deviate significantly from the mean RET% value for Samples 1 to 7 and thus falls within the expected physiological range.
32. Finally, the Rider stressed that several of his samples had been analysed for the presence of erythropoiesis stimulating agents and all returned negative. According to the Rider's scientific expert, this would support the fact that the Rider has likely not engaged in blood doping.
33. In view of the above, the Rider concluded that the case "*must be [simply] dropped*".
34. On 30 June 2023, the UCI acknowledged receipt of the Rider's explanation and confirmed that the expert report of Dr. Paul Scott had been submitted to the Expert Panel for review.
35. On 31 July 2023, after reviewing the expert report by Dr. Paul Scott dated 27 June 2023, the Expert Panel issued its second opinion (hereinafter referred to as the "Expert Panel's Second Opinion"), in which it considered the Rider's defence, ultimately concluding that:
- "[...] In our view, none of the arguments provided by Mr. Scott has offered any credible alternative explanation for the abnormalities observed in the profile. We therefore confirm the opinion expressed in our Joint Expert Opinion that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause."*
36. On 1 August 2023, the Rider was informed of the Expert Panel's conclusion and was provided with a copy of the Expert Panel's Second Opinion. In the same communication the Rider was notified by the UCI that an ADRV of Article 2.2 UCI ADR was asserted against him and that he was therefore provisionally suspended. The Rider was also offered an Acceptance of Consequences pursuant to Article 8.2 UCI ADR 2021 and Article 2 of the UCI ADT Rules.
37. The Rider was given a deadline until 21 August 2023 to provide consent to the proposed Acceptance of Consequences.
38. The Rider did not reply to the UCI's communication of 1 August 2023.
39. In view of the Rider's explanation, the Expert Panel's Second Opinion, the Rider's lack of response to the proposed Acceptance of Consequences and noting that no further elements were received by the UCI which could interfere with the assertion of the ADRV at this stage, the UCI referred the Rider's case to the Tribunal to rule on the asserted ADRV.

III. PROCEDURE BEFORE THE TRIBUNAL

40. In accordance with Article 13.1 UCI of the ADT Rules, the UCI initiated proceedings before this Tribunal through the filing of a petition to the Secretariat on 24 November 2023.
41. In the UCI Petition the UCI requested the following relief:
- *Declaring that the Rider has committed an Anti-Doping Rule Violation;*

- *Imposing on the Rider a Period of Ineligibility of (four) 4 years starting on the date of notification of the Tribunal's decision;*
 - *Holding that the period of provisional suspension served by the Rider since 1 August 2023 shall be credited against the period of ineligibility imposed by the Tribunal;*
 - *Disqualifying at minima all the results obtained by the Rider from the date of collection of Sample 2 (i.e. 17 August 2018) until 31 January 2019);*
 - *Ordering the Rider to pay a fine of EUR 71'312.-; and*
 - *Ordering the Rider to pay the costs of results management by the UCI (CHF 2'500.-), and the costs incurred for the documentation packages of the blood samples analysed for the Biological Passport (EUR 3'129.-).*
42. On 7 December 2023, the President of the Tribunal appointed Ms. Helle Qvortrup Bachmann to act as Single Judge in the present proceedings in application of Article 14.1 of the UCI ADT Rules.
43. On 14 December 2023, in application of Article 14.4 of the ADT Rules, the Tribunal informed the Rider that: (a) Disciplinary proceedings had been initiated against him before the Tribunal; (b) Ms. Helle Qvortrup Bachmann had been appointed as Single Judge of the Tribunal; (c) Any challenge to the appointment of the Single Judge and any objection to the jurisdiction of the Tribunal should be brought to the Secretariat within 7 days of the receipt of the correspondence; and (d) He was granted a deadline of 5 January 2024 to submit his answer in accordance with Articles 16.1 and 18 of the ADT Rules.
44. On 5 January 2024, the Rider submitted:
- His Answer;
 - Expert Reports:
 - i. Expert Report of Dr. Paul Scott of 27 June 2023;
 - ii. Statistical Opinion of Professor R. Hugh Morton of 11 December 2023;
 - iii. Physiological Evaluation of the Blood Parameters of Professor David S. Rowlands of 14 December 2023;
 - iv. Statistical and Probability Opinion of Prof. Philip Fink of 15 December 2023,
 - v. Haematological Opinion of Dr. Massimo Locatelli of 16 December 2023,
 - A request for a hearing to be held via videoconference, and
 - A request for the appointment by the Tribunal of an independent expert to issue a report on his ABP variation.
45. In the Answer the Rider requested the following relief:
- *Lift the Rider's provisional suspension;*
 - *Reject the reliefs sought by the UCI;*
 - *Declare that the Rider has not committed any ADRV.*
 - *Alternatively:*
 - *Impose, pursuant the principle of proportionality, the minimum ineligibility period applicable (that should not exceed the period already served), considering backdating the ineligibility period to 13 January 2019, crediting the period of provisional suspension already served by the Rider since 1 August 2023;*
 - *Not to impose any additional fine being the alleged ADRV non-intentional or, alternatively, impose, pursuant the principle of ineligibility, impose the minimum fine applicable that should not exceed the 10% of the 2019 Rider's gross income.*

- *In any case:*
 - *Ordering the UCI to bear the full costs of the result managing and of the ABP packaging;*
 - *Ordering the UCI to bear the full costs of these arbitration proceedings here included the Rider's legal Fees.*
46. On 12 February 2024 the Tribunal ruled that it did not have jurisdiction to determine the Applicant's request for lifting the Rider's provisional suspension. The Tribunal also invited the UCI to submit any comments with regard to the Rider's request for the Tribunal to appoint an independent Expert.
 47. On 16 February 2024 the UCI objected to the Rider's request that the Tribunal appoints an independent expert to issue a report on the Rider's ABP variation. The UCI argued that UCI's position is based on the scientific views of 3 independent experts and the Rider has submitted experts reports from 5 experts in the fields the Rider deemed relevant. Under these circumstances and considering that the party-appointed experts can be cross-examined at a hearing, the UCI found it both unnecessary and inefficient to have an additional expert report on the record.
 48. On 20 February 2024 the Tribunal invited the Rider to comment on the UCI's objection to appoint an independent expert by 27 February 2024.
 49. On 27 February 2024 the Rider submitted the following argumentation regarding the request to appoint an independent expert:

"If we take into account the highly specific scientific nature of the matter treated in these proceedings, we respectfully insist on the opportunity to have an independent expert appointed by the Tribunal, which will certainly be of great help and support to the judge.

To his regard we recall the general principle stated in the Suisse Federal Civil Procedure Laws at art. 57, according to which "when, to clarify the circumstances of a case, an investigation requiring special knowledge is necessary, the judge is assisted by one or more experts..."
 50. On 13 March 2024 the UCI requested the Tribunal to allow the UCI to submit a supplementary written expert report addressing the Rider's new expert evidence submitted with the Answer.
 51. On 18 March 2024 the Tribunal rejected the Rider's request for the appointment of an independent expert to issue a report on the Defendant's ABP variation pursuant to articles 19(4) and 20 UCI ADT Rules. The Single Judge did not deem it appropriate to appoint an expert in addition to those already appointed by the Parties. In the same communication the following procedural instructions were given: i) The Parties shall be permitted to submit supplementary written expert reports. The UCI should submit its supplementary written expert report, limited to the new expert evidence submitted by the Rider with his Answer. A deadline was given to the UCI of 25 March 2024. The Rider would after this deadline be given a deadline to submit a supplementary written expert report. The report shall be limited to the contents of the Claimant's supplementary written expert report, and ii) The Parties were requested to confirm their availability for proposed hearing dates and to confirm the names of all attendees to the hearing by 1 April 2024.
 52. On 25 March 2024 the UCI was given a 2-day extension of the deadline after request.
 53. On 27 March 2024 the UCI submitted a third Expert Opinion issued by the Expert Panel (hereinafter referred to as the "Expert Panel's Third Opinion").

54. On 28 March 2024 the Rider was given a deadline of 9 April 2024 to submit a supplementary written expert report. The deadline regarding the hearing dates and attendees was extended until 3 April 2024.
55. Information regarding the hearing dates and attendees was received on 28 March and 3 April 2024.
56. On 9 April 2024 the Rider submitted:
- i. An Expert Report signed by Prof. Massimo Locatelli and Dr. Eleonora Sabetta;
 - ii. C.V. of Dr. Eleonora Sabetta;
 - iii. Expert Report signed by Prof. Philip Fink;
 - iv. Prof. Philip's slides explanation;
 - v. Steve Stannard's witness statement after request from the Tribunal.
 - vi. A request to order the UCI to *"provide the Adoptive Model algorithm as well as all eventual previous expert(s) review (whether individual or joint) held by the UCI in relation to the Robert Stannard's ABP"*.
57. On 10 April 2014 the Tribunal invited the UCI to comment on the Riders request of 9 April 2024. The UCI was given a deadline of 11 April 2024.
58. On 11 April 2024 the UCI objected to the Rider's request stating that:
- "The request to produce the ABP Model algorithm should be rejected as it is of no relevance to the conclusion of the expert panel here at stake. Indeed, the algorithm only produces "flags" and is not (intended to produce) evidence of any anti-doping rule violation. The basis for a finding of use of a prohibited substance or methods is the qualitative assessment of the actual data by the expert panel, which are not challenged. Whether or not the algorithm provides for an adjustment based on age is of no relevance since the expert panel did consider the age in their quantitative analysis. Moreover, for the reasons that will be explained at the hearing, whether or not the values should be flagged by the algorithm or indeed what kind of correction the algorithm should take into account are issues that go beyond the scope of the present proceedings. Finally, it is obvious that the disclosure of the algorithm would allow athletes to refine techniques in order to avoid being flagged by the ABP model.*
- The request to produce previous expert(s) reviews of Mr. Stannard's ABP should be rejected for the same reasons, namely that what is relevant for the purpose of the present matter is not "to understand how the Adaptive Model algorithm interacts with the adjustment variance and how the independent ABP experts read it" but rather to determine whether the interpretation of the profile unanimously put forward by the expert panel based on the undisputed measured value is accurate (irrespective of how these value might have been adjusted by the algorithm for the purposes of generating a flag. Moreover, the request is too broad and is indeed akin to a fishing expedition. In any event, any such previous reviews are not in UCI's possession."*
59. The hearing was scheduled for and held on 12 April 2024 via videoconference.
60. The hearing was attended on behalf of the UCI by:
- Mr. Antonio Rigozzi, Lévy Kaufmann-Kohler
 - Ms. Marie-Christin Bareuther, Lévy Kaufmann-Kohler

And on behalf of the Rider by:

- Mrs. Maria Laura Guardamagna, Gealex
- Mr. Rocco Taminelli, Legal Taminelli
- Mrs. Giulia Re, Gaelex.

The hearing started with the Single Judge's ruling on the Rider's request of 9 April 2024. The Single Judge rejected the Rider's request made in writing before the hearing to have access to the algorithm of the ABP's adaptive model, as the Single Judge was not entitled to order such request. The Single Judge also rejected the Rider's request to be provided with copies of previous expert reports on the Rider's ABP on the grounds of irrelevance in the case at hand.

The hearing continued with the parties' opening statements, after which the experts Prof. Philip Fink (called by the Rider), Prof. Massimo Locatelli (called by the Rider), Dr. Laura Lewis (called by the UCI), Dr. Jakob Mørkeberg (called by the UCI) and Dr. Paulo Paixao (called by the UCI) were heard. As witness, Mr. Steve Stannard (called by the Rider) was heard. Dr. Eleonora Sabetta also attended the hearing (called by the Rider). After the examination of the experts and the witness, the parties made their final pleadings. Before ending the hearing and in accordance with Article 23.20 of the ADT Rules, the Rider, who was present at the hearing, was given the final opportunity to speak. At the end of the hearing, both Parties expressly confirmed that they did not have any objection as to how the proceedings were conducted.

61. On 18 April 2024 the Tribunal sent a letter to the parties confirming that the UCI had a deadline of 22 April 2024 for submitting a fourth Expert Opinion, and the Rider had a deadline of 10 days after this. Also, the parties had a deadline to submit their account of costs.
62. On 18 April 2024 the UCI submitted the fourth Expert Opinion of same date from the Expert Panel (hereinafter referred to as the "Expert's Panel Fourth Opinion").
63. On 19 April 2024 the Rider was given a 10-day deadline to submit a reply to the Expert Panel's Fourth Opinion.
64. On 29 April 2024 the Rider submitted a reply by Prof. Philip Fink to the Expert Panel's Fourth Opinion.
65. On 16 May 2024 the Tribunal requested the Rider to provide information and documents about his remuneration between 1 January to 7 October 2018.
66. On 22 May 2024 the Rider requested a deadline extension to provide the requested information and documents. His request was approved by the Tribunal on 23 May 2024.
67. On 27 May 2024, the Rider submitted information and documents regarding his remuneration between 1 January 2018 and 7 October 2018.

IV. JURISDICTION OF THE TRIBUNAL

68. As per Articles 8.3.1 and 8.3.2 of the UCI ADR 2021, the Tribunal has jurisdiction over all matters in which an ADRV is asserted by the UCI based on a results management or investigation process under Article 7 of the UCI ADR 2021. The same rule is provided in Articles 8.1 and 8.2 of the UCI ADR 2015. Such jurisdiction is further confirmed in Article 3 of the ADT Rules.
69. The UCI ADR applies, inter alia, to any license-holder of the UCI member federations (Introduction, let. C, of the UCI ADR 2015 and UCI ADR 2021). Anyone who receives a license is required to respect the UCI Constitution and Regulations and participate in cycling events in a sporting and fair manner.

70. In particular, each license-holder undertakes to submit to doping control tests and accepts the jurisdiction of the Court of Arbitration for Sport (CAS) as the final instance in doping matters (Articles 1.1.001, 1.1.004 and 1.1.023 of the UCI Cycling Regulations).
71. Article 3.2 of the UCI 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”*.
72. In this case, the UCI asserted the ADRV following a results management/investigation process under Article 7 UCI ADR; the Rider was a holder of a UCI cycling license at the time of the relevant alleged offence(s) within the meaning of the UCI ADR and is bound by the UCI ADR; and neither of the Parties raised any objection to the jurisdiction of the Tribunal within said deadline.
73. Therefore, it follows that the Tribunal has jurisdiction to decide on this matter.

V. APPLICABLE RULES

74. Article 26 of the UCI ADT Rules provides 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”*.
75. The relevant samples of the Rider’s ABP were collected between 2018 and 2019.
76. Article 27 of the UCI ADR 2021 provides for general “transitional provisions” with respect to the application of the respective versions of the UCI ADR. Specifically, Article 27.1 of the UCI ADR 2021 provides that:

“These Anti-Doping Rules shall apply in full as of 1 January 2021 (the “Effective Date”).”

77. Article 27.2 of the UCI ADR 2021 then goes on to clarify that:

“Any anti-doping rule violation case which is pending as of the Effective Date and any anti-doping rule violation case brought after the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date shall be governed by the substantive anti-doping rules in effect at the time the alleged anti-doping rule violation occurred, and not by the substantive anti-doping rules set out in these Anti-Doping Rules or the Code, unless the panel hearing the case determines the principle of “lex mitior” appropriately applies under the circumstances of the case. For these purposes, the retrospective periods in which prior violations can be considered for purposes of multiple violations under Article 10.9.4 and the statute of limitations set forth in Article 17 are procedural rules, not substantive rules, and should be applied retroactively along with all of the other procedural rules in these Anti-Doping Rules or the Code (provided, however, that Article 17 shall only be applied retroactively if the statute of limitations period has not already expired by the Effective Date).”

78. The case at hand concerns an alleged ADRV established on the basis of an ABP with abnormal features detected in 2018 and 2019. Therefore, the UCI ADR 2015 applies in the case at hand.

A. ADRV

79. Article 2.2. of the UCI ADR 2015 defines the relevant ADRV as follows:

“2.2 Use or Attempted Use by a Rider of a Prohibited Substance or 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.] [...]"

B. Burdens and Standards of proof

80. As to the burden and standard of proof, Article 3.1 UCI ADR 2015 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. [...]"

81. As to the methods of establishing facts and presumptions, Article 3.2 UCI ADR 2015 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.]
[...]

C. Sanctions and Consequences

1. Period of Ineligibility

82. As for the standard period of Ineligibility Article 10.2 UCI ADR 2015 provides as follows:

"10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

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.*

10.2.1.2 *The anti-doping rule violation involves a Specified Substance and the UCI can establish that the anti-doping rule violation was 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. 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.”*

83. As for the possibilities to reduce the aforementioned periods of Ineligibility based on fault, Articles 10.4 and 10.5 of the UCI ADR 2015 state as follows:

“10.4 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.
[...]*

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

[...]

10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If a Rider or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, 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 years. [...]”

84. In relation to the Disqualification of results in competitions subsequent to sample collection or commission of an ADRV Article 10.8 UCI ADR 2015 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. [...]”

85. In relation to the commencement of the period of Ineligibility Article 10.11 UCI ADR 2015 provides as follows:

“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.

10.11.1 Delays Not Attributable to the Rider or other Person

Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Rider or other Person, the UCI may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.

[...]

86. In relation to credit for provisional suspension Articles 10.11.3.1 to 10.11.3.3 UCI ADR 2015 provide for credit for provisional suspensions.

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. [...]"

[Comment to Article 10.11: Article 10.11 makes clear that delays non attributable to the Rider, timely admission by the Rider and Provisional Suspension are the only justifications for starting the period of ineligibility earlier than the date of the final hearing decision]

2. Mandatory fine and costs

87. In relation to the Financial Consequences, Article 10.10.1 UCI ADR 2015 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]."

88. As for the liability for costs of the procedures, Article 10.10.2 UCI ADR 2015 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 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 cost 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. [...]"*.

89. As for the liability for costs of the proceedings, Article 29 of the UCI 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 UCI 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."*

VI. THE FINDINGS OF THE TRIBUNAL

90. The case at hand presents the following main issues:

A. Has the UCI successfully established that the Rider committed an ADRV?

B. If so, what are the consequences of such ADRV?

A. Did the Rider commit an ADRV?

91. The UCI submits that the Rider committed an anti-doping rule violation within the meaning of Article 2.2. UCI ADR 2015, which conclusion the UCI derives from the analytical data in the Rider's ABP as well as the evaluation of said data by the Expert Panel.

92. The Rider objects to this conclusion (cf. para 94 – 160 below).

93. It follows from Article 3.1 UCI ADR 2015 that the UCI bears the burden of proof to establish that the Rider committed a violation of Article 2.2 UCI ADR 2015. 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”*.

1. The position of the Rider

94. The Rider states that he has never taken a prohibited substance or used a prohibited method.

95. In general, regarding Sample 2, the Rider submits, that the HGB of Sample 2 lies within the normal distribution 95.5% of the Rider, and that Sample 2 is not atypical. The HGB values in Sample 2 only breached the limits because it was only the second sample collected. According to the Rider the Expert Panel interpreted the limits produced by the APB profile for Sample 2 incorrectly, because the Expert Panel did not acknowledge the limitations of the individual’s ABP in its early stages. The Rider also argued that the Expert Panel did not account for confounding factors such as age, altitude, heat exposure and time between the tests. The Rider also stated that the *“whole catalogue of at least 8 relevant elements mostly not even considered by the UCI experts makes it possible to safely exclude that Sample 2 presents significant anomalies.”*

96. In general, regarding Sample 6, the Rider argues that RET% is within the acceptance limits as generated by the Adaptive Model, and there is not a sufficient justification for a deviance of the original acceptance limit. This is in particular true in analysing the average RET% values and immature reticulocytes (IRF) obtained with identical analytical instruments, and for samples obtained in similar general conditions, or considering the variabilities due to differences in the physiological condition of the Rider and in the different analytical systems.

97. In 2017, when the Rider started his career, he was a teenager. He went through an important physical growth between 2017 and 2020.

98. In July and August 2018, the Rider spent time training with the team at altitude in the Alps. For the period between 9 and 25 July 2018 he stayed in Livigno and trained in Livigno area. On 26 July 2018 the Rider went back to Gavirate and trained around Gavirate until 30 July 2018.

99. For the period between 1 August and 3 August 2018 he stayed in Val d’Isere, France. In late November 2018, after the off-season, the Rider spent four weeks in New Zealand during early summer, then moving to Australia. During the following three weeks of intense training in Australia, he experienced temperatures in excess of 40 degrees.

100. The Rider went through an intense training period in a warm environment, firstly in New Zealand for four weeks, then a hot environment in Australia for the subsequent three weeks.

Sample 2: abnormalities are not such

101. The limits produced by the ABP profile for Sample 2 were incorrectly interpreted. The Hb value does not represent a situation of highly elevated Hbmass and suppressed erythropoiesis (low %ret).

102. The Bayesian model on which the ABP is based is not perfect. It does not account for *“...any possible pathological or confounding conditions that may have impacted an Athlete’s analytical results.”* (WADA ABP Operating Guidelines V7 2.2.2.4). For example, *“...an altitude correction factor is not incorporated into the adaptive model...”*. (UCI Expert Opinion 31st July 2023, pg 2). *“Instead, altitude information is considered by the expert panel and interpreted in the context of the specific information available”* (Ibid).

103. The Rider is not arguing that the ABP model is flawed, but rather that limitations of an individual's ABP in its early stages is not acknowledged by the Expert Panel, and confounding conditions such as age, altitude and time between the tests have not been not accounted for.
104. The reasoning of the UCI experts, and thus their conclusions, fails to consider several aspects that are likely to have a decisive influence, both on statistical grounds and thus on the limit of tolerable values, and on the haematological indices.
105. In particular, with regard to Sample 2, the following must be highlighted: In its submissions the Rider supported the thesis that flagging of Sample 2 reflects a limitation of the Adaptive Model, since the second sample collected is particularly likely to be flagged. In fact, when one compares the Sample 2 Hb-conc and OFF-Score values to the later upper-limits (i.e. the upper-limits once more samples have been collected), neither value looks extreme. Despite this factual observation, the UCI experts persist in saying that the narrowing of the limits from Sample 1 to 2 is inherent the nature of the Adaptive Model, where it goes from a general reference (population) to a much more individualized and specific reference range.

Fifteen months passed between Sample 1 to 2

106. Professor of Sport Statistics R. Hugh Morton points out that in the documentation produced by the UCI, it does not appear that the impact of time has been considered by the experts when assessing the ABP model. Considering that more than fifteen months passed between Sample 1 and 2, the reliability of the upper limit determined by the UCI experts at the point of Sample 2 becomes weak.

Questionability about the upper variance limit for Sample 2 in Hb

107. Professor of Nutrition, Metabolism and exercise David S. Rowlands, notes that it is easily seen in the ABP Documentation package that the variance (limits) of the ABP profile become transiently restricted at Sample 2. This is because, with only one prior sample, there is no personal (within subject) variation from which to set the limits. For the second sample in any ABP profile, externally sourced variance is used instead. Accordingly, a co-incidentally high Hb in Sample 2 is coinciding with a switch in ABP statistical approach, at a time where there is insufficient data from the individual athlete to provide valid 99% limits.
108. Prof. Rowland criticises in his report, that it is not stated where from what external population this variance (error) is derived. Nevertheless, quite clearly in the Rider's ABP the externally sourced variance at Sample 2 is more restrictive than his own, obvious from the increasing limits from Sample 3 onwards. He adds most pertinently that it would be considered poor statistical practice to use a biological variance which does not represent the individual's circumstances and environment. The between athlete variation being employed for Sample 2 should reflect the cyclist's own data, age and immediate prior environmental conditions.
109. The UCI has not made available any information on the sample population that is used for that external variation which is used to set the limits for Sample 2. This exact topic is confirmed by the Statistical and Probability Opinion of Prof. Philip Fink, who pointed out that:

"In the case of the biological passport of the Rider, even a cursory examination shows the problem with the confidence limits for the second sample; the upper confidence limit is much lower than any of the neighbouring samples- or, in other words, the model had not yet converged. As the expert panel noted in their response to the Athlete's arguments, the first sample was very close to the population average. From this, the expert panel concluded that there was no problem with the use of the population averages, but they are mistaken. A single sample provides very little information about the true average for that person or certainly the range of expected values; indeed, any statistician would be skeptical of a conclusion drawn

from a single data point. Firstly, the sample (Sample 1) was taken more than a year earlier, and in that year the athlete had become a full-time cyclist for the first time and was still in the process of physical maturation, which should cause a shift in the blood values. Secondly, and perhaps more importantly, the sample provided no information about variability, and could have been anywhere within the athlete's normal range of values."

110. Concluding then that the low upper limit of Hb in Sample 2 was an artefact of the ABP Bayesian model not having converged, and that the value of this sample would only have triggered a positive with that particular acceptance limit, Prof. Philip Fink express the opinion that Sample 2 should not be regarded as an abnormal value, even without considering other issues such as exposure to altitude or other causes of biological variation, such as hydration status, age, or diurnal rhythms.
111. Prof. Morton adds in this regard that upper and lower limits of the type used in the Adaptive Model do indeed typically narrow the acceptance range over time as more data is collected. This narrowing is (at least in the earlier stages) very typically monotonic. This is very evident in the behaviour of the lower limit in Hb ABP Figure, but not in the upper limit. In any examination of this data, such an observation would immediately raise a warning flag; but it does not appear to have done so, therefore the value of the upper limit is also for this reason questionable.
112. The Rider's Sample 2 is for the Hb concentration within normal population range: as demonstrated by Professor of Nutrition, Metabolism and exercise David S. Rowlands, the Hb concentration recorded in Sample 2 is not abnormally high by internationally recognised standards. He explains that according to the studies cited in his report, a value of 16.8 would easily sit within the 5-95th percentile intervals for a male of his age-group. Therefore, those data strongly raise into question the validity of the ABP upper limit at Sample 2 as being out of the normal physiological range.
113. Considering all of the Rider's samples presented in his ABP profile, the Hb concentration of Sample 2 lies within the Normal distribution 95.5% of the Rider.

The UCI experts failed to consider the (significant) diurnal variation in Hb

114. As evidenced by Professor Rowlands, when sampling blood every three hours over 24 hours in healthy young men are collected, a mean fluctuation of over 0.5 g/dL can be observed. Thus, blood sampling at random times of the day will create significant uncertainty when relating one measure to the next as it is done in the ABP. In the Rider's ABP profile it appears that blood sampling has indeed been taken at nearly random times of the day/night. Therefore, a variance of at least 0.5 g/dl must added to the sampling error.
115. Prof. Rowland concludes then that to return to Sample 2, the difference between the ABP upper limit and the Rider's Hb is 0.3 g/dL, less than the average biological variation reported above. Notably, the time the Rider's blood sample was taken (8 am) is close to the highest point reported in the diurnal cycle of the 24 participants in the Sennel study. Therefore, a 0.5 g/dL sampling error added to the ABP imposed limits in Sample 2 puts his Hb well within the acceptable (normal biological) range.

Doubts about the correct evaluation of the previous altitude training

116. The UCI do not dispute that the Rider stayed and trained in altitude in the weeks preceding the collection of Sample 2. As already stated by the Rider and its previous experts and written submissions, Prof. Rowlands, with a thorough explanation confirmed that the impact of the recent prior altitude training has been incorrectly evaluated, concluding:

“... that Sample 2 would not have breached the (adjusted) acceptance ranges for [Hb] or OFF-Score had it been recorded as having been collected from an athlete who had been at high altitude in the last two-weeks (as should have occurred).”

117. Incorrect evaluation of the over-compensatory plasma volume reduction and haemoconcentration that may have occurred in response to an exercise-induced plasma volume increase impulse following the race, which the cyclist won, on 12 August 2018, 5-days prior to Sample 2 collection.
118. Prof. Rowland states that it has been demonstrated that due to overcompensation by the body in reducing plasma volume to normal following significant exercise, a significant and variable (2-3%, SD2%) increase in Hb (from the baseline level) often occurs 5-7 days after a day on which there was a high exercise load. This is one more aspect of potential variability in haematological values that should have been considered by the UCI experts.

Additional uncertainty in the data introduced by effect of age of the athlete

119. Quoting Mørkeberg, one of the 3 members of the UCI expert panel, Prof. Rowlands notes that concerns regarding the effect of puberty on Hb, were such that he excluded from his studies athletes below 22 years of age.
120. Notably Sample 1 was taken 15 months earlier than Sample 2, when indeed the Rider was only 18 years of age. Thus, the validity of Sample 1 must therefore be in doubt as appropriate adult baseline, which then automatically puts the validity of the ABP limits of Sample 2 in doubt. As proof of the Rider's stage of development, it was recorded that he grew 1 cm in height between October 2017 and December 2018. In other words, the Rider's skeleton was very likely to still be growing when the first and possibly second samples were taken.
121. Concerns about the reliability of the Sample 1, due to the age of the Rider are also expressed by Prof. Philip Fink in his Statistical and probability Opinion, where he pointed out that the Rider was at this time still in process of maturation, which should cause a shift in the blood values.
122. Prof. Locatelli also notes that, due to the increased production of testosterone the value of HGB tends to increase progressively with age, reaching a maximum value in males around 25 years of age.

The influence of hydration

123. Prof. Rowlands points out that:

“Plasma volume can change significantly and quickly due to normal physiological exposure such as exercise training load and volume, environmental heat or cold stress, and hydration status. In fact, one reason why [Hb] varies so much during the competitive season is because PV changes with training load, environment conditions, and competition (Schumacher et al., 2002). Notably, the level of variation is such that it affects statistical heterogeneity to the extent that in a meta-analysis by Lobigs and colleagues (2018), studies which have measured [Hb] during multi-day competition such as cycling stage-races were excluded from the meta-analysis.”

124. In this case Sample 2 and Sample 3 were taken and analysed on the first and eighth days of the 2018 Tour de l'Avenir Stage Race. With reference to Prof. Rowlands' widespread and precise annotations on this aspect, it should therefore be emphasised that the rapid drop in Hb over the seven days between Samples 2 and 3 represents plasma volume expansion induced by participation in the cycling tour rather than any change in Hbmass. That Sample 3 is deemed acceptable by the experts but Sample 2 not, despite published evidence that Hbmass does not change in cycle stage race of this nature, clouds their interpretation of Sample 2.

The (haematological) cross analysis of the ABP profile demonstrate that Sample 2 is perfectly regular

125. In his Haematological Opinion Prof. Locatelli at first differentiates the samples according to when they were collected, pointing out that the difference Out-Of-Competition (OOC) or In-Competition (IC) is not always accurate. He observes that Sample 2 was collected at the start of the first stage of a stage race, 5 days following a short competitive effort, 14 days after a high-altitude training period.
126. Sample 1 was collected five days after participating at a particularly demanding stage race (Rhone Alpe d'Isère Tour, 650.2 km with significant elevation), where the Rider won a stage.
127. Prof. Locatelli states that in his assessment, the haematological metrics observed in Sample 1 suggest a progressive normalization of the athlete's blood parameters subsequent to the physiological demands of intense competition, which is indicative of augmented metabolic activity and concomitant plasma volume redistribution. In effect subsequent to the cessation of strenuous physical activity, a progressive diminution in exercise-induced haemoconcentration and a decrement in erythropoietic activity are typically observed.
128. The proposition that the biomarkers quantified in Sample 1 embody the athlete's physiological adaptive processes reverting to homeostasis or a pre-competition baseline is corroborated when concurrently evaluated with the analyses from Sample 20, which was collected two days subsequent to the conclusion of a stage race 6 (Circuite Cycliste Sarthe Pays de la Loire, 874 km). Given the fact that they were collected in similar conditions, Prof. Locatelli demonstrates that Sample 1 and Sample 20 - given it was deemed by the UCI experts to be congruent with a physiological state resultant from vigorous physical exertion, notwithstanding the presence of biomarker anomalies - have comparable haematological values.
129. Following this irrefutable finding, Prof. Locatelli then demonstrates that the UCI experts' position according to which the haematological parameter values measured in Sample 1 align with the average metrics of the general population (mean haemoglobin, HGB, value of 14.8 g/dl), is factually erroneous, both in the context of the Rider's Athlete Biological Passport (ABP) data, and the extant scholarly literature. Published research delineates that for healthy individuals of an age comparable to the Rider, the average HGB concentration is significantly elevated, reported to be 16.0 g/dL, with a normal range spanning from 15.88 to 16.17 g/dL. Furthermore, data on elite athletes (2258 individuals) tracked from 2011 to 2020 for haematological parameters indicate an HGB range from 13.5 to 17.1 g/dL.
130. Prof. Locatelli also compared the haematological parameter values of Samples 4 and 5, also collected in resting periods and without competition to Sample 2, demonstrating that the UCI experts' assertions concerning anomalies within the Rider's ABP with this latter Sample are not irrefutable. This is even more true since, as also demonstrated by Prof. Locatelli, the parameter of altitude in Sample 2 was not correctly considered by the UCI experts.

Conclusion about the anomalies in Sample 2

131. The time (fifteen month) passed from Sample 1 to 2; the questionability about the upper variance limit for Sample 2 in Hb; the Rider's Sample 2 is for the Hb concentration within normal population range; considering all of the Rider's samples presented in his ABP profile, the Hb concentration of Sample 2 lie within the normal distribution 95.5%; the UCI experts wrongly failed to consider the (significant) diurnal variation in Hb and in particular the (under) age of the Rider at the time of the collection of this Sample; the influence of hydration; the (haematological) cross analysis of the ABP profile demonstrate that Sample 2 is perfectly regular.

132. This whole catalogue of at least 8 relevant elements mostly not even considered by the UCI experts makes it possible to safely exclude that Sample 2 presents significant anomalies.

Sample 6: abnormalities are not such

133. The issue about Sample 6 is that its value of RET% is within the acceptance limits as generated by the Adaptive Model. The UCI expert panel is authorized to override the acceptance limits and declare a positive, which is what indeed it did.
134. The UCI experts express the opinion that the values derived from this Sample signify a suppression of erythropoiesis as indicated by a low reticulocyte percentage and an elevated OFF-score which may be attributable to an augmented haemoglobin mass (reflected by an increased haemoglobin concentration: 15.9 g/dL).
135. First of all, it must be noted that, according to Prof. Philip Fink, when a limit is set (in ABP analysis 99%), it is not considered good statistical practice to change that limit:

“This is particularly true when the limit is changed based on the observed values. When a limit is changed on observed values, the statistical test is no longer controlling the α -value (or probability of a 15 false positive). For this particular case the original α -value was originally 0.01, as set by the standards for the biological passport. With $\alpha=0.01$, there is a 1% chance of a false positive (Type 1 error); it is a matter for debate whether this is an appropriate value, but it is what has been chosen and should only be changed in exceptional circumstances. The expert panel did not present the p -value for sample 6, but because it was within the acceptance limit it would have to be greater than 0.01: for the sake of argument, we can say 0.02. For $\alpha=0.02$, you would normally accept a 2% chance of a false positive, but because the limit was changed based on the data, in fact we have no way of estimating that probability: it could be literally anything between 0 and 1, and the risk of a false positive is greatly increased. Despite this, the expert panel still insists that they are 99% confident that the sample is explained by doping (corresponding to an 1% probability of a false positive), which certainly cannot be justified by statistics or probability.”

136. Prof. Philip Fink then argues that on years of reviewing manuscripts and his experience as a scientific journal editor, he would not accept for publication an article that makes such a basic statistical mistake. The consequence must be that unless a much stronger justification is given, the original acceptance limit should be preserved, and Sample 6 be regarded as not exceptional.
137. The (haematological) cross analysis of the ABP and the change in the analytical instrumentation: From his haematological analysis point of view, Prof. Locatelli too is of the opinion that the conclusions of the UCI experts in relation of Sample 6 are wrong, considering that the analysis of the athlete's ABP does not highlight any abnormality flags; indeed, both haemoglobin concentration [Hb], reticulocyte percentage (RET%), and OFF-score fall within the acceptable intervals of the Bayesian model utilized in the ABP.
138. Prof. Locatelli argued at the hearing, that the Rider's haematological parameters from Sample 6 are not a result of doping because the variation of RET% is similar to the one observed in healthy young male individuals. Prof. Locatelli further argued that the values variation observed in the Rider's ABP could represent changes in his physiological maturation and the values could reflect the values observed in healthy subjects.
139. The UCI experts emphasize the notably low RET% value, which is considered low both in absolute terms and in comparison, to similar values obtained using the same analytical instrumentation (1,3-5 and 7). As anticipated Prof. Locatelli notes that, as it was partially the case for the Hb value in Sample 2, the average RET% values are used as a reference, not considering the conditions under which the samples were obtained.

140. Of the 7 samples used, 5 were obtained out-of-competition (OOC, 1, 4-7) and 2 in-competition (IC, 2-3). Of the 2 samples obtained IC, Sample 2 appears to have been taken prior to the start of the first stage of a multi-day stage race, so it can only formally be considered as performed IC, and it would be better to consider it as performed OOC.
141. Consequently, analysing the average RET% values and immature reticulocytes (IRF) obtained with identical analytical instruments both as OOC+IC and as OOC only, we can observe that the fluctuation of values is minimal.
142. As stated by Prof. Locatelli the RET% value measured on Sample 6, whether compared with the average of RET% values or considered on its own, is always less than 2 standard deviations from the mean, which makes the measured variation plausible (CI: 0.72 ± 0.15).
143. Prof. Locatelli also finds that the observation that the RET% value measured on Sample 6 should not be considered as an indicator of blood manipulation is further confirmed by the fact that the calculated variability values (CV) are considered to be the sum of two variables: the intra-individual coefficient of variation (CVI) and the analytical coefficient of variation (CVA). Despite expert claims that the replicates of RET% obtained from Sample 6 are comparable, a difference of 2% is observed between the two measurements.
144. Considering that the average RET% values performed on Sysmex XT instrument were obtained from samples processed in different laboratories, and applying the CVA value obtained from Diaz-Garzon et al.⁴ - which is much lower than the 15% set by the UCI to validate the measurement obtained with RET% under 1 – the critical difference (CD) observed does not seem sufficient to consider the observed data as an indicator of blood manipulation.

The age of the Rider

145. Dr. Jakob Mørkeberg, one of the three UCI experts of the Panel involved in this procedure, in one of his publications on ABP stated that “Only athletes above 21 years of age were included to avoid any possible influence of puberty on blood markers.”
146. As already noted at the time of the collection of Sample 2 (ie., August 17th 2018) the Rider (born September 16th 1998) was 19 years old and at the collection of Sample 6 (ie., January 13th 2019) he was just 20. If Dr. Mørkeberg’s advice would have been coherently followed, this proceeding would not even have had to be opened. What is certain at this point, is that the Rider's age, both at the time of collection of Sample 2, and again at the time of collection of Sample 6, and therefore puberty, must be considered as an element susceptible to influence the blood markers. If we then remember that Sample 6 is within the acceptance limits as generated by the Adaptive Model, to override the acceptance limits and declare a positive, as made by the UCI experts is at least inappropriate.

Conclusion about the anomalies in Sample 6

147. RET% is within the acceptance limits as generated by the Adaptive Model, and there isn’t a sufficient justification for a deviance of the original acceptance limit. This is in particular true in analysing the average RET% values and immature reticulocytes (IRF) obtained with identical analytical instruments, and for samples obtained in similar general conditions, or considering the variabilities due to differences in the physiological condition of the Rider and in the different analytical systems.
148. Most of all, the age of the Rider at this moment, and therefore poor longitudinal stability of the blood markers due to puberty, should restrain from such deviance.

Conclusion about the Rider's ABP

149. All the above considered, the doubts that must arise regarding the conclusions of the UCI experts, are of such relevance that it is not possible to consider to the comfortable satisfaction of the hearing panel, that Sample 2 and/or Sample 6 show sufficient abnormalities that could only be considered as resulting from the use of doping.
150. Quite in the contrary, the Rider and his experts demonstrate with far more certainty than a simple balance of probability, that neither the blood markers of Sample 2, neither the ones of Sample 6 are symptomatic of doping use.

The lack of a "doping scenario"

151. In order to affirm a doping violation pursuant to the applicable rules, a Tribunal needs to be convinced to its comfortable satisfaction that the abnormal values are caused by a "doping scenario", which does not necessarily derive from the quantitative information provided by the ABP but requires a qualitative interpretation of the experts and possible further evidence.
152. In our case there is no doping scenario: the mere fact that the Rider's haematological values are abnormal is no proof of doping. ABP is an indirect proof, it is circumstantial evidence, and the probative value of circumstantial evidence is insufficient to overcome the absence of direct evidence that the athlete committed an ADRV of use of a Prohibited Substance or a Prohibited Method., it needed further evidence.
153. It is the same WADA Guidelines (abpv9 2023)¹ to provide that

"for the Hematological Module, it is recommended to collect urine Samples together with blood ABP Sample(s) in order to permit Analytical Testing for AAEs when required" (para 2.3.1 page 12); as well as the UCI Results Management Regulations "in case of an Atypical Passport Finding the Athlete Passport Management Unit shall advise the Results Management Authority (or Testing Authority as applicable) in the Athlete Passport Management Unit report, or via the Passport Custodian where appropriate, on whether the Sample, or any accompanying urine Sample, should be subjected to analysis for Agents Affecting Erythropoiesis. The Athlete Passport Management Unit should also provide recommendations for Agents Affecting Erythropoiesis analysis when the Adaptive Model detects an abnormality in the secondary Markers RET% and/or ABPS."

154. In order to have a complete understanding on the ABP, the Rider requested the UCI to reveal which of his urine samples referred to 2018 and 2019 were analyzed for the presence of ESAs. The UCI refused to provide that information. It is thus reasonable to assume, being the burden of proof on the UCI, that none of his urine samples have ever tested positive for ESAs, hence, the use of an ESA can be excluded. The UCI did not provide any concrete explanation, it just generally affirmed that it cannot be excluded, without any reference to the present case.
155. Even with regard to blood transfusions, the UCI did not provide any kind of explanation as to how the Rider could have performed such a process, above all considering the relevant circumstances: the Rider's age (on 2018 he was a minor) and the training and travelling schedule. To corroborate the alleged doping scenario, the UCI should have at least explain how a teenager in a foreign country could organize to collect his own blood, properly store it and then transport it through a different country (including Australia and New Zealand), passing through border security, without being discovered.
156. The UCI is inferring a doping scenario from the timing of Sample 2 which coincides with the Tour de l'Avenir 2018, which the UCI describes as a "springboard" for joining a first division team. Such

¹ Cf. referring to WADA's Athlete Biological Passport Operating Guidelines, version 9.0

an assumption is unfounded: in our case the Rider did not need a “spring board”, on 17 August 2018, he already had a contract with a UCI WTT ready to be signed. Hence the participation in the Tour de l'Avenir 2018 would have not, and has not had, any impact on the signing of the contract with a WTT Team.

157. Besides all the above, in our case the Rider provided plausible reasons to explain his ABP.
158. In conclusion the UCI was not able to produce a 'doping scenario' with a degree of credibility.
159. On 29 April 2024 the Rider submitted a reply to the Fourth Expert Opinion. The reply was an expert report by Prof. Philip Fink. In the report Prof. Philip Fink submitted and concluded that:

“[...] We would also like to remind the Tribunal that this is not the first time an expert has viewed the rider’s biological passport data. Although the UCI does not keep records of any prior reports (for reasons unknown), the Rider’s biological passport would have been sent to an expert each time a sample was flagged. From the graphs presented, this should have been done four times.

Considering that (assumingly) a prior group of experts has not found any problems with samples 2 and 6, the burden of evidence should be higher for the current Expert Panel to account for the disagreement among experts. We show here that the rider’s data falls within the normal ranges of variability even before all factors are considered, and no further explanation (i.e. doping) is required to account for the data.

[...]

In summary:

When considering the Rider APB, the statistical analysis and the research papers referred to by the Expert Panel, Sample 2 is completely consistent with values expected from a young rider who has just completed an altitude training block.

And, since Sample 6 is not flagged even without consideration of any environmental conditions such as heat exposure, or rider’s age, it is NOT AT ALL LIKELY that the values in Sample 6 are could be attributed to the use of illegal means.

It should be emphasized that all objective tests have shown that the rider’s blood values are not atypical. In addition, previous qualitative analyses of the same tests by other Experts have not been considered the Rider’s passport atypical.

The combination of a lack of objective tests and dissonance with previous qualitative analyses should call into question the Expert Panel’s conclusions.”

2. The position of the UCI

160. In general, the UCI submits that the Rider has provided no explanation which could interfere with the Expert Panel’s conclusion that it is highly likely that the Rider used a Prohibited Substance or Prohibited Method, and that it is unlikely to find the Passport abnormal assuming any other cause.
161. The UCI recalls, that at the outset that the Adaptive Model flagged several abnormalities at 99.0% specificity for Hb and OFFS as well as RET% i.e. Samples 2, 10 and 20. Following a careful review, the Expert Panel considered that the outlying values of Samples 10 and 20 could be explained by the context in which both samples had been collected and other environmental factors. In view of the Expert Panel opinion, the UCI submits that Samples 10 (flagged for low Hb) and 20 (flagged for low OFFS) shall not be considered as abnormal.

162. However, in addition to Sample 2 collected on 17 August 2018, flagged by the Adaptive Model, the Expert Panel also singled out Sample 6, collected on 13 January 2019, as being particularly abnormal:

“In our view, the data of the athlete bears several patterns indicative of blood manipulation, with clear off phases around competition in August 2018 and January 2019.

Specifically, sample 2 (high Hb, high OFF score) was collected at start of the Tour de l’Avenir, Sample 6 (high OFF score, low rets%) was collected one week after the national championships and has a low %ret value. No altitude is reported in connection with these samples.

A high OFF score is typically observed when the red cell mass of the organism has been supraphysiologically increased (high hemoglobin) and the body’s own red cell production is reduced (low reticulocytes) as a consequence to downregulate the excess in red blood cells. This constellation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulating agent (ESA) or the application of a blood transfusion.”

163. In view of the above, the Expert Panel concluded that:

“[...] In summary, there are several occasions that the athlete has a suppressed erythropoiesis at or after competitions which indicate a supraphysiological Hb mass. We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause. “

164. In his explanation, the Rider’s scientific expert, Mr. Scott, alleged that neither Sample 2 Hb nor OFFS values “do look particularly extreme” when compared with the later upperlimits set by the Adaptive Model. Moreover, Mr. Scott claimed that both would have stayed within the acceptable ranges, if the Rider’s stay and training at altitude in the weeks preceding the sample collection would have been considered by the Adaptive Model. With respect to Sample 6 RET%, Mr. Scott notes that RET% are both highly variable and inaccurate. He also alleged that Sample 6 RET% remained within the limit set by the Adaptive Model and does “not differ significantly” from the mean RET% for Samples 1-7 for which the same analyser was used.

165. Although the Rider’s scientific expert tends to minimise the magnitude of the abnormalities identified by the Expert Panel, it follows from his explanation that it is not contested that Sample 2 Hb as well as Sample 6 RET% values are not “normal”. In that regard, he seeks to explain those abnormalities by exposure to altitude and/or exercise induced plasma variation for Sample 2 and the lack of reliability of RET% measurement for Sample 6.

166. In view of the above, the UCI considers it established that there are indeed abnormalities in the Rider’s ABP and that such abnormalities are based on valid and reliable sample analyses.

167. In this case, the Rider requested an expert opinion from Mr. Paul Scott in order to explain his haematological profile, in particular the values of Samples 2 and 6. After review, Mr. Scott submitted that “it cannot be concluded [...] that the Rider has likely (still less highly likely) engaged in blood doping”.

168. The Expert Panel has considered (and dismissed) the explanations from the Rider and has maintained its opinion that the more likely scenario in this case is the use of a Prohibited Substance and/or Method.

Sample 2 abnormalities remain unexplained by the Rider

169. The UCI recalls that that Sample 2, collected at the start of the Tour de l’Avenir on 17 August 2018, was flagged for high Hb and high OFFS.

170. The UCI argues that the Rider's upper-limits were correctly defined by the Adaptive Model.
171. According to the Rider's expert, Sample 2 Hb values breached the limits because it was only the second sample collected and not because the values were particularly high:

"The flagging of Sample 2 reflects a limitation of the Adaptive Model which means that the second sample collected is particularly likely to be flagged. When one compares the Sample 2 Hbconc and OFF-Score values to the later upper-limits (i.e. the upper-limits once more Samples have been collected), neither value looks particularly extreme."

172. The Expert Panel has carefully considered and dismissed this explanation.
173. In general, the statistical approach underpinning the ABP program relies on using data from prior samples to project the probable profile limits for future samples. As explained by the Expert Panel in their Second Opinion, the limits for Sample 2 are considerably more personalised, resulting in narrower ranges in contrast to Sample 1. For Sample 1, a broader reference range is established to reflect the uncertainty of an athlete's "normal" Hb value:

"We respectfully disagree with this argument. Sample 1 from the rider had a Hb of 14.7 g/dL and hence was almost perfectly in line with the population mean, which is the outset upon which the subsequent normal range for the athlete is based (14.8 g/dL). Hence the subsequent limits for Sample 2 followed the normal expected ranges. The fact that the limits narrows from Sample 1 to 2 is the inherent nature of the adaptive model where the large reference range allowed for the first sample in a profile reflects the uncertainty of the athlete's 'normal' Hb value. This large reference range represents a between subject variation component on top of the within subject component. The former is markedly reduced for the second sample giving more weight to the within subject component and hence a decreased but much more individualized and specific reference range. This reduction in reference range (distance from upper to lower limit) is fixed and independent of the Rider's Hb values."

174. More importantly, the Expert Panel confirmed that the limits for Sample 2 were correctly calculated in the present case by excluding any potential bias. The Expert Panel also confirmed their previous opinion that Sample 2 which shows the highest Hb of the profile, clearly reflects a situation of highly elevated Hb mass and suppressed erythropoiesis (low RET%):

"Had the athlete presented a Hb in Sample 1 which was markedly different (e.g. lower) from the population mean (14.8 g/dL) or from the values in subsequent samples (his average Hb was 15.0 g/dL if Sample 2 and 6 are excluded), then we agree with Mr. Scott that the threshold for Sample 2 might have been 'biased' and shifted downwards making it more likely that Sample 2 would exceed the upper threshold. Nevertheless, since the Rider's Hb level in Sample 1 was very close to both the population norm and his own mean in subsequent samples, and the fact that the Hb in Sample 2 was the highest of the profile being 2.1 g/dL higher than Sample 1 and also presented a low %ret value, we maintain our opinion that Sample 2 clearly reflects a situation of a highly elevated Hbmass and a suppressed erythropoiesis (low %ret)."

Altitude stay and training do not explain the Rider's abnormal values

175. The Rider also alleged that he stayed and trained at high-altitude from 7 July to 3 August 2018. According to the Rider's expert, if such information had been considered by the Adaptive Model, Sample 2 would have stayed within the acceptance range. In any event, Mr. Scott submits that the Rider's altitude exposure in the two weeks preceding the collection of Sample 2 explained the "relatively high" Hb value.

176. As an initial matter, it is not disputed that the Rider stayed and trained at altitude in the weeks preceding the collection of Sample 2, although this information was not indicated by the Rider in the Doping Control Form at the time of the sample collection. It is also acknowledged that altitude exposure impacts an athlete's blood value, in particular HB and OFFS, and is a well-known ABP confounding factor.

177. However, contrary to Mr. Scott's allegations, it must be clarified that an altitude correction factor is not incorporated in the Adaptive Model. This is considered by the Expert Panel only:

"First of all, we acknowledge that altitude will impact the blood values of an athlete. Nevertheless, an altitude correction factor is not incorporated into the adaptive model as suggested by Sottas since altitude information can be complex and the response depends on various factors. Instead, altitude information is considered by the expert panel and interpreted in the context of the specific information available such as the severity of altitude, duration of altitude exposure and end date of altitude exposure in relation to the sample collection."

178. After careful review and considering the most relevant scientific literature, the Expert Panel concluded univocally that Sample 2 HGB and OFFS values were still much too high to be explained by a stay and training at altitude in the two weeks preceding the sample collection, even considering the most favourable scenario to the Rider:

"According to the new information provided in Mr. Scott's report, the athlete was at altitude until the 3rd of August 2018 e.g., the altitude exposure ended 14 days before Sample 2 was collected. To examine the potential impact of this altitude exposure on the blood values in Sample 2 we have first calculated the approximate altitude dosage according to Garvican-Lewis et al. 2016. Three pieces of altitude information each day from 07.07.2018 till 03.08.2.18 were presented in the report by Mr Scott; 'accommodation altitude', 'average exercise altitude' and 'peak exercise altitude'. For the majority of days the altitude reported does not differ significantly between the three categories. Since we have no information of the average exercise time per day we have hypothesized that the athlete exercised for an average of 8 hours each day (which likely is overestimated, but will benefit the athlete in our calculation) except on the 16.07.2018 and 21.07.2018 where he rested (was anticipated to be at 'accommodation altitude') and that the remaining 16 hours were spent at the 'accommodation altitude'. The total altitude dosage during the 28 days was calculated to 992 km.hr. There are several publications having examined the effect of altitude. Mr. Scott has mentioned some of these in his report, also some of which have reported results during the post-altitude period, which is the period of interest in this profile. Instead of picking only specific papers that potentially fits into the argumentation, a more scientifically correct way would be to use data from a meta-analysis, where all relevant data is examined together. Lobigs et al. 2018 provided such a paper in 2018. Here it is evident that the average increase in Hb 15 days after altitude is around 0.2 g/dL above the normal level, while the OFFscore on average is 3-4 points above baseline. Considering only values reflecting a similar altitude dosage (800-1000 km.hr) as the athlete, none of the subjects from the meta-analysis had elevations in Hbs above 1 g/dL or elevations in OFFscores of more than 20 points, 15 days post altitude. Considering all Hb values except Sample 2 and 6, the athlete's average level is 15.0 g/dL and the average OFFscore is 99 (only considering samples analyzed with the XT1 excluding Sample 2 and 6). Hence the Hb in Sample 2 is 1.6 g/dL above average and the OFFscore is 24 points above average, which highly contrast the average increase of 0.2 g/dL and OFFscore 3-4 points and above the highest single values recorded in the Lobigs study."

Plasma volume reduction is not an explanation either

179. On the basis of a scientific study conducted by Miller et al, Mr. Scott claimed that exercise induced variation in plasma volume could also explain Sample 2 “relatively high” Hb concentration in view of the fact the Rider raced 5 days prior to the collection of Sample 2.
180. More specifically, Miller and al. reported, after an Ironman competition, i) an increase of Hb of approximately 0.5, 4%, and 3% higher than the baseline on day 5, 6 and 7 post-race, and ii) an increase in RET% of 20-30% in the 5-7 days period after the competition.
181. This explanation has also been carefully assessed by the Expert Panel, which concluded that Sample 2 Hb and RET% values, 5 days after a competition, are inconsistent with the outcome of the Miller et al study:

“In the Miller paper which examined hematological changes after an Ironman competition (which might not be directly comparable to a cycling race) the Hb was actually not statistically different from the baseline 5 days after the Ironman race. In relative terms the Hb was approximately 0.5%, 4% and 3% higher than baseline on day 5, 6 and 7 post-race, respectively. Hence even a 4% increase in Hb corresponds to 0.6 g/dL, which in combination with the altitude effect still falls short of the value observed in Sample 2. Furthermore, in the Miller paper an increase in %ret of 20- 30% is reported in the 5-7 day period after the Ironman competition, which contrast the low %ret value observed in the Rider’s profile.”

182. After careful review of Mr. Scott’s explanation regarding Sample 2, the Expert Panel clearly concluded that none of the Rider explanation even taken together could explain the abnormalities in the profile:

“Hence, the results in Sample 2 are not explained by the effect of prior altitude a prior competition or the combination of both.”

Sample 6 abnormalities remain unexplained by the Rider

183. Sample 6 collected on 13 January 2019 (i.e. one week after the Australian Cycling Championships) was flagged by the Expert Panel for high OFFS and low RET%.
184. As explained by the Expert Panel in their Initial Report, a high OFFS is typically observed when the red cell mass of the organism has been supraphysiologically increased (high Hb) and the body’s own red cell production is reduced (low reticulocytes) as a consequence to downregulate the excess in red blood cells. In view of this the Expert Panel concluded that:

“This constellation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulating agent (ESA) or the application of a blood transfusion.”

185. The Rider’s expert argued that RET% marker is highly variable, and its measurement is not as accurate as Hb concentration. He also stressed that Sample 6 RET% remained within the limits set by the Adaptive Model. Finally, he considered that Sample 1 to 7 RET% had to be considered separately from Sample 8 to 23 as a different analysis instrument had been used after Sample 7 and this would show that Sample 6 RET% does not differ significantly from the mean RET% for Sample 1-7.
186. The Expert Panel does not contest that Sample 6 RET% stays within the 99% reference range for the athlete and therefore within the acceptable range, and agrees with the Rider’s expert that it is better to compare Sample 6 RET% with Samples 1-7 analysed with the same instrument to avoid any analysis bias.
187. The Expert Panel is convinced that Sample 6 is clearly abnormal and indicate prior blood manipulation for the following reasons:

- i) Sample 6 RET% value of 0.38 is very low in absolute.
- ii) Sample 6 RET% value is also very low in comparison of the values of the other samples provided by the Rider and analysed with the same instruments:
 - Sample 1: 0.85 RET%
 - Sample 2: 0.56 RET%
 - Sample 3: 0.69 RET%
 - Sample 4: 0.72 RET%
 - Sample 5: 1.05 RET%
 - Sample 6: 0.38 RET%
- iii) It is scientifically established that the measurement of reticulocytes is reproducible and the marker is stable, when the blood stability score of 85 is respected.
- iv) Strict analysis requirements and quality control scheme for ABP samples are provided under the rules to ensure high quality measurements.
- v) Sample 6 was correctly analysed and showed excellent reproducibility/ precision.

188. In view of the above, the Expert Panel concluded that the low RET% value and high OFFS of Sample 6 cannot be explained by the variability and inaccuracy of the RET%.

Negative testing results are irrelevant

- 189. The Rider further claims that none of his urine samples have returned positive for ESAs and this would support the fact that he has not engaged in blood doping.
- 190. The UCI submits that these negative urine samples collected are by no means evidence that the Rider did not use any Prohibited Substance and/or Method. Indeed, as noted at the very outset of this submission, the ABP is designed to be an “indirect” method of doping detection. This means that the ABP focuses on the effects of prohibited substances or methods on the body rather than the identification of a specific substance or method in a rider’s biological sample(s). More specifically, the ABP program was established and put in place in direct response to athletes developing methods to avoid testing positive in urine and/or blood doping control tests.
- 191. Therefore, the fact that no prohibited substance has been detected in any of the Rider’s samples is irrelevant when it comes to establish an ADRV for Use of a Prohibited Substance and/or Method resulting from abnormalities detected in the Rider’s ABP.
- 192. Moreover, it is also important to note that ESA analysis are irrelevant to detect blood transfusion. Consequently, it is therefore not surprising that urine samples collected around the same time as the ABP Samples could be negative. This is also confirmed by the Expert Panel as follows:

“Finally Mr. Scott speculates that analysis for (ESAs) have been performed on many of the athlete’s samples without adverse analytical findings. First, we are not aware if ESA analysis have 5 been performed or not on the athletes’s samples. Secondly, negative ESA results do not exclude the use of an ESA due to the short detection window (Martin et al. 2016). Finally, we cannot say whether an ESA or blood transfusions have been used. In case of the latter, negative ESA analysis would be expected.”

193. Based on all of the above, the UCI submits that the Rider's explanations regarding the abnormalities identified in his ABP cannot be accepted.

The existence of a "doping scenario"

194. The UCI submits that the use of a Prohibited Substance or Method is most certainly a "plausible explanation" for the values in the Rider's ABP. Indeed, as noted in the Expert Panel's Initial Opinion, the Rider's ABP bears several patterns indicative of blood manipulation, with clear "off phases" around competition in August 2018 and January 2019:

"Specifically, sample 2 (high Hb, high OFF score) was collected at start of the Tour de l'Avenir, Sample 6 (high OFF score, low rets%) was collected one week after the national championships and has a low %ret value. No altitude is reported in connection with these samples.

A high OFF score is typically observed when the red cell mass of the organism has been supraphysiologically increased (high hemoglobin) and the body's own red cell production is reduced (low reticulocytes) as a consequence to downregulate the excess in red blood cells. This constellation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulating agent (ESA) or the application of a blood transfusion.

[...] In summary, there are several occasions that the athlete has a suppressed erythropoiesis at or after competitions which indicate a supraphysiological Hbmass."

195. In its Second Opinion, the Expert Panel further confirmed that the Rider's arguments do not explain the stimulation/suppression pattern and that it is highly likely that a Prohibited Substance and/or Method has been used.
196. Moreover, the fact that the Rider's alternative explanations have been considered and ruled out by the Expert Panel adds greater force to this conclusion.
197. Also, as noted by the Expert Panel, the timing of the ADRV(s) coincides in particular with the Tour de l'Avenir 2018, a Under 23 cycling event which is well known for serving as springboard for joining a first division team. This is, by the way, exactly what happened in the present case. Indeed, one month later, the Rider signed his first ever contract with a UCI WTT and took part in his first WorldTour race in January 2019 with his new team after taking part in the Australian National Championships.
198. Considering the above, in conjunction with the fact that "[b]lood manipulation is – unfortunately – a frequently encountered phenomenon in endurance sports such as cycling", the UCI submits that doping is a – more than – plausible explanation for the values in the Rider's ABP.

The UCI submits that it has been established that the Rider has committed an ADRV pursuant to Article 2.2 of the UCI ADR 2015 and that the Tribunal can be comfortably satisfied that this is the case.

The Expert Panel's Fourth Opinion

199. After the hearing as determined by the Single Judge, the UCI submitted a fourth opinion from the Expert Panel, in which the Expert Panel stated that:

"[...] This Joint Expert Opinion will focus specifically on the following topics brought up at the hearing on the 12th April 2024:

a. Hematological Opinion of Professor Phil Fink related to the effect of heat exposure on the athlete profile, specifically the high OFFscore in Sample 6.

b. Hematological Opinion of Dr. Locatelli Massimo related to the effect of age on the athlete's blood values, specifically the increase in hemoglobin concentration (Hb) from Sample 1 to Sample 2 and the additional scientific article by Romero et al. 2009 referenced by Dr. Locatelli. 3.

3. Having reviewed the additional scientific articles and the arguments put forward by Prof. Fink and Dr. Locatelli we maintain our conclusion that both sample 2 and sample 6 of the Athlete's profile are the result of doping and cannot be explained by confounding factors such as heat exposure or maturation.

4. Heat Exposure

a. Prof. Fink argues that the elevated OFFscore in Sample 6 is due to Mr. Stannard being exposed to a high environmental temperature during training rides for three weeks before the sample was collected. He refers to two studies by Ronnestad et al. (2021 and 2022a), where an increase in the hemoglobin mass was observed after two and a half week of heat exposure (Ronnestad et al. 2021) and that the adaptation can persist if the heat exposure is maintained. Prof. Fink further states 'Thus, there should be absolutely no surprise that an increase in HBmass has occurred and can explain the high Hb and low RET% which has concerned the experts'.

b. In addition, Prof. Fink provides Training Peaks data of Mr. Stannard during this period arguing that the level thermal and cardiovascular stresses that Mr. Stannard was exposed to supersede the exposure in the Ronnestad studies. When asked, Prof Fink was not sure where exactly the temperature data from Training Peaks was derived from, but it was presumed the temperature was recorded by a power meter mounted on Mr. Stannard's bike (and Mr. 2 Stannard did not deny that despite being present with his lawyers during the hearing). Such temperature data is not considered to be accurate and thus it is a stretch to claim that the thermal load in which Mr. Stannard was exposed to, exceeds that of a carefully controlled environmental laboratory study.

c. Also, we are concerned that Prof. Fink has confused Hbmass with Hb concentration (Hb). This basic mistake can be explain by the fact that Prof Fink is a statistician and acknowledge during the hearing that he has no hematology expertise. Hbmass is defined as the total circulating hemoglobin in the body, while the Hb is a concentration reflecting the Hbmass relative to the plasma volume (the fluid surrounding the hemoglobin in the circulation). Looking at the data from the two Ronnestad publications it is correct that the Hbmass increases after the heat exposure intervention. On the other hand, and much more relevant to the current case, is the fact that the Hb (which is the marker measured in the Athlete Biological Passport and only measured in the Ronnestad et al. 2021) does not change. This is also confirmed in a third Ronnestad study from 2022 (Ronnestad et al. 2022b).

d. Prof. Fink then opines in his expert report that 'the reduced %RET likely reflects the reduced exposure to increased body temperature during exercise, and thus the stimulus for Hb accretion, that is occurring with the lowering ambient temperatures and changed workload leading up to the timing of Sample 6'. This claim, which was put forward for the first time just before the hearing, is entirely speculative and indeed scientifically wrong. e. First of all, there is no data on %ret in any of the Ronnestad studies. Secondly, in order for the Hbmass to increase, the %ret would firstly need to increase since the %ret reflects the production of red blood cells and hence hemoglobin. Therefore, if the heat exposure that Mr. Stannard was subject to in the weeks leading up to the collection of Sample 6 would have caused an increase in Hbmass, it is much more likely that the %ret value in Sample 6 would have been high and not low.

f. Further, Prof Fink provides no evidence that Mr. Stannard's thermal load decreased, either from lowering ambient temperatures or from a reduced workload, leading into the collection of Sample 6.

5. Effect of age

a. Dr. Locatelli brings in a new publication by Romeo et al. 2009 describing the development in different hematological markers in a population of Spanish adolescents (boys and girls) between the age of 13 and 18.5 years to speculate that the increase in Mr. Stannard's Hb between Sample 1 and 2 was caused by maturation (Power Point: 'Robert Stannard Athlete Biological Passport, April 2024' by Locatelli and Sabetta). In table 1 in the publication it is evident that the average Hb in boys increases from 15.14 g/dL in the group of 16 years olds to 15.57 g/dL in the group of 17-18.5 yrs olds resulting in an increase/difference of 0.43 g/dL over a period of 1 yr and 9 months (from 16 to 17.75y i.e. the average age of the 17-18.5y group) corresponding to an annual Hb increase of 0.25 g/dL.

b. While we understand that the Romeo study was not admitted into the tribunal record for procedural reasons, we would like to emphasize that it would in any event be irrelevant in the context of Mr. Stannard blood profile since the subjects measured in the Romeo study were between 13-18.5 yrs old, while Mr. Stannard was 18 yrs and 8 months when his first sample (Sample 1) was collected.

c. Moreover, considering that an increase of around 0.25 g/dL in Hb continuous after the age of 18.5 yrs e.g. from Sample 1 to Sample 2, the values in the Romeo study is in line with our previous conclusion on the effect of age on Mr. Stannard's blood profile inferred from the Sachdev study and mentioned in our 3rd report: 'In terms of maturation, the increase in HGB from age 18 to 19 is ~0.3 g/dL...'. As previously stated, this potential increase in Hb is much less than the increase observed between Sample 1 and Sample 2 (increase of 2.1 g/dL) and that sample 2 is the highest of the profile. Therefore, if the increase was caused by age, similar values should be more common in the following samples. However, the influence of increased training load should also be considered, and thus should exert an opposite effect on Hb due to plasma volume expansion creating the pseudo "athlete's anemia", which is not evident in sample 2.

d. Finally, it is not the high Hb alone, which makes sample 2 highly atypical – it is the combination of high Hb and low %ret which are typical of an "OFF picture". When we evaluate a profile, we consider all the parameters associated with each sample, as well as the profile as a whole.

6. Conclusion

In summary, we maintain our opinion that there are several occasions that the athlete has a suppressed erythropoiesis at or after competitions, which indicate a supraphysiological Hbmass. We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause."

3. The position of the Single Judge

a) The ABP as reliable evidence

200. The Single Judge finds that the ABP constitutes a reliable means of evidence for the purpose of establishing the use of a prohibited substance or prohibited method within the meaning of Article 2.2 UCI ADR 2015. That the ABP constitutes a reliable means of evidence has been confirmed by

numerous CAS decisions² and by this Tribunal,³ and it also follows from the comment to Article 3.2 UCI ADR 2015 that *“the UCI may establish an anti-doping rule violation under Article 2.2 based on [...] conclusions drawn from the profile of a series of the Rider’s blood or urine Samples, such as data from the Athlete Biological Passport”*.

201. The UCI bases its allegation of an ADRV pursuant to Article 2.2. UCI ADR 2015 based on the abnormalities detected in the Rider’s haematological profile resulting from his ABP and the evaluations and reports from the Expert Panel.

b) Requirements of the ABP data

202. As set forth by the UCI in the Petition, the fundamental requirement of establishing an ADRV on the basis of a longitudinal profile is that:

“[...] all experts – independent from each other – come to the conclusion that doping is a plausible and likely explanation for the abnormal variation and that there is no other plausible cause ascertained with a significant degree of probability”.⁴

203. As previously emphasised by this Tribunal⁵ in quoting CAS:⁶

*“a pitfall to be avoided [in the context of the ABP] is the fallacy that if the probability of observing values that assume a normal or pathological condition is low, then the probability of doping is automatically high”. Concretely this has been said in legal literature to mean that “if the ADO is not able to produce a ‘doping scenario’ with a minimum degree of credibility (‘density’), the abnormality is simply unexplained, the burden of proof enters into play and the ADO’s case must be dismissed since there is no evidence pleading in favour of the hypothesis of ‘doping’ any more than for another cause.”*⁷

204. It has further been stated by this Tribunal, that since the mere fact that the Rider’s haematological values are abnormal is no proof of doping, the UCI must both demonstrate that doping is a plausible source for the abnormal ABP values, as well as *“establish – in principle – that all other alternative explanations for these values can be excluded. This puts the UCI in a difficult evidentiary position”*.⁸ As previously emphasized by this Tribunal,⁹ this position has been described, and solved, by a CAS Panel as follows (CAS 2011/A/2384 & 2386, *UCI & WADA v. Alberto Contador Velasco & RFEC*, para. 252 et seq.):

“The exceptions concern cases in which a party is faced with a serious difficulty in discharging its burden of proof (“état de nécessité en matière de preuve”, “Beweisnotstand”). A cause for the latter

² See e.g. CAS 2015/A/4006, para. 103; CAS 2016/O/4481, para. 133; CAS 2016/O/4464, para 148; CAS 2010/A/2174, para 9.8; CAS 2010/A/2176; CAS 2010/A/2235.

³ UCI ADT 03.2017, *UCI v. Isabella Moreira Lacerda*, para 60, UCI ADT 06.2017, *UCI v. Alex Correia Diniz*, para 54, UCI ADT 02.2018, *UCI v. Jaime Roson Garcia*, para 55, UCI ADT 03.2018, *UCI v. Juan José Cobo Acebo*, para 78, UCI ADT 04.2019, *UCI v. Roberto Pinheiro*, para 64, UCI ADT 01.2020, *UCI v. Raul Alarcon Garcia*, para 86 and UCI ADT 01.2021, *UCI v. Edgar Miguel Lemos Pinto*, para 66.

⁴ CAS 2010/A/2174, *Francesco De Bonis v. CONI & UCI*, para 4.4.2 (b).

⁵ UCI ADT 03.2017, *UCI v. Isabella Moreira Lacerde*, para 64 and UCI ADT 06.2017, *UCI v. Alex Correia Diniz*, para 82.

⁶ CAS 2016/O/4464, *IAAF v. ARAF & Ekaterina Sharmina*, para 150.

⁷ Id. quoting Marjolaine Viret (2016), *Evidence in Anti-Doping in the Intersection of Science and Law*, T.M.C Asser Press, The Hague, p. 774.

⁸ UCI ADT 06.2017, *UCI v. Alex Correia Diniz*, para 68.

⁹ *Ibid.*

may be that the relevant information is in the hands or under the control of the contesting party and is not accessible to the party bearing the burden of proof (cf. ATF 117 Ib 197, 208 et seq.). Another reason may be that, by its very nature, the alleged fact cannot be proven by direct means. This is the case whenever a party needs to prove 'negative facts'. According to the Swiss Federal Tribunal, in such cases of "Beweisnotstand", principles of procedural fairness demand that the contesting party must substantiate and explain in detail why it deems the facts submitted by the other party to be wrong (ATF 106 II 29, 31 E. 2; 95 II 231, 234; 81 II 50, 54 E 3; FT 5P.1/2007 E. 3.1; KuKo-ZGB/Marro, 2012, Art. 8, no 14; CPC-Haldy, 2011, Art. 55, no 6). The Swiss Federal Tribunal has described in the following manner (ATF 119 II 305, 306 E 1b) this obligation of the (contesting) party to cooperate in elucidating the facts of the case:

'Dans une jurisprudence constante, le Tribunal fédéral a précisé que la règle de l'art. 8 CC s'applique en principe également lorsque la preuve porte sur des faits négatifs. Cette exigence est toutefois tempérée par les règles de la bonne foi qui obligent le défendeur à coopérer à la procédure probatoire, notamment en offrant la preuve du contraire (ATF 106 II 31, consid. 2 et les arrêts cités). L'obligation, faite à la partie adverse, de collaborer à l'administration de la preuve, même si elle découle du principe général de la bonne foi (art. 2 CC), est de nature procédurale et est donc exorbitante du droit fédéral – singulièrement de l'art. 8 CC –, car elle ne touche pas au fardeau de la preuve et n'implique nullement un renversement de celui-ci. C'est dans le cadre de l'appréciation des preuves que le juge se prononcera sur le résultat de la collaboration de la partie adverse ou qu'il tirera les conséquences d'un refus de collaborer à l'administration de la preuve'. [...]

205. As previously stated by this Tribunal "it follows from the above that difficulties in proving 'negative facts' result in a duty for the party not bearing the onus of proof to cooperate in establishing the facts. That party – i.e. the Rider – must cooperate in the investigation and clarification of the facts of the case. It is up to him to submit and substantiate other plausible sources for the abnormal values. It will then be up to the UCI to contest those other alternatives and, ultimately, for the Single Judge to evaluate the evidence before him in relation to the various scenarios. Nonetheless, the burden of proof, i.e. the risk that a certain scenario cannot be established or discarded, remains with the UCI."¹⁰ This means, as stated in the Diniz-case cited above, that the standard of proof on the Rider's part is that the Rider shall "submit and substantiate other plausible sources for the abnormal values". Then, "It will be up to the UCI to contest those other alternatives and, ultimately, for the Single Judge to evaluate the evidence before him in relation to the various scenarios."¹¹ At the end of the day, it is for the Single Judge to decide, if the UCI has fulfilled its burden of proving, to the comfortable satisfaction of the Single Judge, that the Rider has committed a violation of the UCI ADR.

c) Were the abnormalities in the Rider's ABP established?

206. The ABP in the case at hand is based on the Expert Panel's evaluation of 22 valid samples, the documentation of which was included as evidence in the UCI's submissions.
207. The Rider's ABP was flagged with abnormalities at 99.0% specificity for Haemoglobin concentration (HGB) in Sample 2 (upper limit), for OFF-score in Sample 2 (upper limit), for HGB in Sample 10 (lower limit), and for OFF-score in Sample 20 (lower limit).
208. As reported by the Expert Panel the Rider's profile contained several abnormal features in the samples collected in August 2018 and January 2019. The Expert Panel particularly noted the following:

¹⁰ *Ibid.*, para 68-69.

¹¹ *Ibid.*, para 69.

"[...] In our view, the data of the athlete bears several patterns indicative of blood manipulation, with clear off phases around competition in August 2018 and January 2019.

Specifically, sample 2 (high Hb, high OFF score) was collected at start of the Tour de l'Avenir, Sample 6 (high OFF score, low rets%) was collected one week after the national championships and has a low %ret value. No altitude is reported in connection with these samples.

A high OFF score is typically observed when the red cell mass of the organism has been supraphysiologically increased (high hemoglobin) and the body's own red cell production is reduced (low reticulocytes) as a consequence to downregulate the excess in red blood cells. This constellation is pathognomonic for the use and recent discontinuation of an erythropoiesis stimulating agent (ESA) or the application of a blood transfusion [...]"

209. The Expert Panel in the Expert Panel's First Opinion also stated that:

"[...] In summary, there are several occasions that the athlete has a suppressed erythropoiesis at or after competitions which indicate a supraphysiological Hbmass.

We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause. In summary, the profile bears several features of blood manipulation during the preparation for competition."

210. This opinion was confirmed in the Expert Panel's Second Opinion after having examined the Rider's submissions: *"[...] In our view, none of the arguments provided by Mr. Scott has offered any credible alternative explanation for the abnormalities observed in the profile. We therefore confirm the opinion expressed in our Joint Expert Opinion that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause."*

211. The Expert Panel concluded in the Expert Panel's Third Opinion that: *"[...] we maintain our opinion that there are several occasions that the athlete has a suppressed erythropoiesis at or after competitions, which indicate a supraphysiological Hbmass. We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause"*. The same conclusion was reached by the Expert Panel at the hearing.

212. In light of the above, and after examining the documentation in the case at hand, the Single Judge finds the Expert Panel's opinions to be well-founded, logical and compelling, thus the Single Judge concludes that important abnormalities did exist in the Rider's haematological profile.

d) Were the abnormalities in the Rider's ABP caused by the Use of a Prohibited Substance or Prohibited Method?

213. As stated above, it is not enough to establish that abnormalities exist in the Rider's haematological profile. The UCI must also establish that the abnormalities were caused by the Use of a Prohibited Substance or Prohibited Method, and not by any other cause.

214. The UCI has submitted (based on the Expert Panel's opinions) that the abnormal values in the Rider's haematological profile can be explained with the use of a prohibited substance or prohibited method.

215. As already stated above, the Rider objected to this conclusion.

216. The Expert Panel, however, addressed all the arguments raised by the Rider and came to the conclusion, in four Expert Opinions, that these arguments did not offer any suitable explanation to the abnormalities in the Rider's ABP.
217. The Single Judge has carefully reviewed all the allegations, arguments and evidence brought to the proceedings by the Parties and is comfortably satisfied that the abnormalities in the Rider's haematological profile are highly likely to be the result of the use of a prohibited substance or prohibited method and that there is no other plausible explanation for the referred abnormalities.
218. The Single Judge finds that the Expert Panel's First Opinion is clear, unambiguous and well-founded:
- "We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause."*
219. The same can be said regarding the Expert Panel's Second, Third and Fourth Opinions, which are also unambiguous, well-founded and duly reasoned and are consistent with the Initial Opinion. In the Expert Panel's Second Opinion, the Expert Panel clearly asserted, after analysing the explanations and arguments raised by the Rider on the exclusion of a doping scenario, that:
- "[...] In our view, none of the arguments provided by Mr. Scott has offered any credible alternative explanation for the abnormalities observed in the profile. We therefore confirm the opinion expressed in our Joint Expert Opinion that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause."*
220. In the Expert Panel's Third and Fourth Opinions, the Expert Panel clearly asserted, after analysing the explanations and arguments raised by the Rider on the exclusion of a doping scenario, that:
- "[...] In summary, we maintain our opinion that there are several occasions that the athlete has a suppressed erythropoiesis at or after competitions, which indicate a supraphysiological Hbmass. We therefore conclude that it is highly likely that a prohibited substance or prohibited method has been used and that it is unlikely that the passport is the result of any other cause."*
221. In the Expert Panel's Fourth Opinion the Expert Panel also further concluded that:
- "[...] Having reviewed the additional scientific articles and the arguments put forward by Prof. Fink and Dr. Locatelli we maintain our conclusion that both sample 2 and sample 6 of the Athlete's profile are the result of doping and cannot be explained by confounding factors such as heat exposure or maturation [...]"*
222. The timing of the abnormalities with the Rider's competition schedule is also an element reinforcing the Single Judge's conviction: as stated in the Expert Panel's First Opinion: *"In our view, the data of the athlete bears several patterns indicative of blood manipulation, with clear off phases around competition in August 2018 and January 2019. Specifically, sample 2 (high Hb, high OFF score) was collected at start of the Tour de l'Avenir, Sample 6 (high OFF score, low rets%) was collected one week after the national championships and has a low %ret value. No altitude is reported in connection with these samples."*
223. Also, the explanations and answers given by Dr. Laura Lewis, Dr. Jakob Mørkeberg and Dr. Paulo Paixao, members of the Expert Panel, at the hearing were, in the Single Judge's opinion, solid, conclusive and consistent with the reasoning contained in the First, the Second the Third and the Fourth Expert Opinions.

224. On the contrary, the Single Judge is not convinced by the arguments, explanations and expert opinions raised by the Rider to exclude a doping scenario, for the following reasons:

- Concerning the Rider's allegation that the result of Sample 2 can be explained by variability in haematological values and confounding factors not taken into account (age, attitude, heat exposure, training load, time between the tests, maturation, increase in training volume and intensity), the Single Judge finds that the explanations given on this matter by the Expert Panel's Second, Third and Fourth Opinions, and the criticism and objections made to the Rider's appointed experts conclusions, are consistent and reliable.
- After examining the evidence brought to the proceedings and in particular the expert reports filed by each of the Parties and the expert opinions elaborated on during the hearing and the experts discussions at the hearing, the Single Judge is convinced (i) that relevant confounding factors are already taken into account by the Expert Panel in evaluating the Rider's explanations, (ii) that regarding the question if variability can be added on top of each other, Dr. Mørkeberg convincingly explained at the hearing that this can only be done if the variability, that is potentially added, is not already accounted for in the model, and that the variabilities are correctly addressed and evaluated by the ABP and the Expert Panel in the case at hand; (iii) that the increase in HB mass due to heat exposure cannot explain the low RET% in Sample 6 of 0,38 RET%; and (iv) that the low RET% in Sample 6 is not normal and therefore not in line with values in "*healthy young male individuals*" and also the RET% value does not represent "*changes in [the Rider's] physiological maturation*".

225. The Single Judge also finds the following explanations given by the Expert Panel to be well-founded, logical and compelling:

- Prof. Locatelli explained that a profile, that consist of samples that are analysed on different instruments cannot be compared. The Single Judge is convinced of the explanation given by the Expert Panel and at the hearing by Dr. Mørkeberg who explained that there is already a correction in the model for the different Sysmex instruments; the transition between instruments that induces a bias is already included in the model, as it is seen in the RET% values and the upper and lower thresholds from Sample 7 to Sample 8. Dr. Mørkeberg also stressed that when experts receive data to be analysed, a number of quality control data from the analyser are included. Dr. Mørkeberg also explained that regarding Sample 6 the results are perfect, and there is no indication that the measurements have not been in line with other measurements.
- Dr. Lewis explained that Prof. Philip Fink explained variability in Mathematics. Dr. Lewis explained that this does not equate to variability in physiology since the human body is far more sophisticated than mathematical models. Dr. Lewis also explained that when adding all the variabilities "*in the world*" we would see very different HGB and HGB in the twenties frequently.
- Dr. Lewis also explained that for example when adding different effects on the body: variabilities regarding huge training load, a bit of dehydration, followed by consecutive days of racing, and staying at altitude, the HGB would quickly reach a HGB level of 22 which is not the physiological state the body would be in.
- Dr. Lewis explained and elaborated on the purpose and findings of the Gore study as was put forward in the Fink report of 9 April 2024 on page 5 (Gore et al 2013). Dr. Lewis explained that the study is about haemoglobin mass. Dr. Lewis explained that when Prof. Philip Fink refers that haemoglobin mass in the Gore et al study was estimated to be 3,3% higher after 20 days after altitude – this is about the amount of haemoglobin (mass) and not haemoglobin concentration (HGB). Also, Haemoglobin mass is not measured in the ABP.

- Also in the Gore study Prof. Philip Fink removed the values from athletes training below 1800 meters of altitude. Livigno, where the Rider trained is about 1800 altitude meters.
- Dr. Lewis explained that in the Lobigs Study (Expert report nr. 2) the HGB concentration was analysed, and analysis showed that HGB concentration returns to baseline values within 2 weeks (with some individual variation).
- Dr. Lewis also explained about the Ashenden study (evaluated by Prof. Fink in his Expert report of 9 April 2024, page 5): In Prof. Philip Fink's report there is an extract from table 1, showing the Toluca study from 2000; Prof. Fink chose to include the 2000 study and included therefore only the 2000 study and not the 1996 study: Prof. Philip Fink chose only some samples/findings. The studies show that HGB was back at baseline in 9 days with no changes at 21 days. The doses of altitude were greater in the Toluca (and Kenyan) studies than in the Rider's case, and also the analyser instruments were different.
- Prof. Philip Fink elaborated at the hearing his explanation related to the effect of heat exposure on the Rider's ABP profile, specifically the high OFF-score in Sample 6.
- Two studies by Ronnestad et al. (2021 and 2022a) were discussed at the hearing. In those studies, an increase in the haemoglobin mass was observed after two and a half weeks of heat exposure (Ronnestad et al. 2021) and that the adaptation can persist if the heat exposure is maintained. Prof. Philip Fink stated that *"Thus, there should be absolutely no surprise that an increase in Hbmass has occurred and can explain the high Hb and low RET%"*. Prof. Philip Fink also provided Training Peaks data from the relevant period arguing that the level thermal and cardiovascular stresses that the Rider was exposed to supersede the exposure in the Ronnestad studies. When asked, Prof. Philip Fink was not sure where exactly the temperature data from Training Peaks was derived from, but it was presumed the temperature was recorded by a power meter mounted on the Rider's bike. The Expert Panel explained that such temperature data is not considered to be accurate, and the Expert Panel stated in the Expert Panel's Fourth Opinion that it is a stretch to claim that the thermal load in which the Rider was exposed to, exceeds that of a carefully controlled environmental laboratory study.
- The Expert Panel at the hearing also stressed that the Expert Panel was concerned that Prof. Philip Fink has confused Hbmass with Hb concentration (Hb).
- The Expert Panel explained at the hearing and in the Fourth Expert Opinion that Hbmass is defined as the total circulating hemoglobin in the body, while the HGB is a concentration reflecting the Hbmass relative to the plasma volume (the fluid surrounding the hemoglobin in the circulation). Looking at the data from the two Ronnestad publications it is correct that the Hbmass increases after the heat exposure intervention. On the other hand, and much more relevant to the current case, is the fact that the HGB (which is the marker measured in the Athlete Biological Passport and only measured in the Ronnestad et al. 2021) does not change. This is also confirmed in a third Ronnestad study from 2022 (Ronnestad et al. 2022b).
- Prof. Philip Fink explained in his expert report that *"the reduced %RET likely reflects the reduced exposure to increased body temperature during exercise, and thus the stimulus for Hb accretion, that is occurring with the lowering ambient temperatures and changed workload leading up to the timing of Sample 6"*.
- The Expert Panel at the hearing and in the Fourth Expert Opinion explained that this standpoint is indeed scientifically wrong. First of all, there is no data on RET% in any of the Ronnestad studies. Secondly, in order for the Hbmass to increase, the RET% would firstly need to increase since the RET% reflects the production of red blood cells and hence

haemoglobin. Therefore, according to the Expert Panel, if the heat exposure that the Rider was subject to in the weeks leading up to the collection of Sample 6 would have caused an increase in Hbmass, it is much more likely that the RET% value in Sample 6 would have been high and not low. As Dr. Mørkeberg stressed at the hearing, it is the totally opposite – than explained by Prof. Philip Fink - that is seen in Sample 6.

- Dr. Mørkeberg also elaborated that in general a RET% of 0,38 is very low, and this level of RET% is not even seen in every study regarding e.g. the use of EPO.
 - Dr. Lewis also convincingly explained at the hearing that the arguments from the Rider regarding heat can be dismissed. Dr. Lewis explained that when training in heat/under heat expose, the plasma volume expands: In referring to the Carsten Lundby study and Prof. Philip Finks report of 9 April 2024, Dr. Lewis explained that the body's way of coping with the heat is more blood volume. When plasma volume increases, the HGB (which is a concentration) decrease in this situation or at the very minimum HGB keep steady.
 - The Expert Panel also explained that changes in plasma volume does not affect RET%.
 - Also, the Single Judge does not agree that there is a lack of reliability of RET% measurement for Sample 6.
 - As regards the Rider's arguments regarding the fact that there are no positive doping tests, the Single Judge finds that the use of the ABP as evidence does not require a positive doping test.
 - Finally, the Single Judge is convinced by the Expert Panel, as it was also persuasive explained by Dr. Lewis and Dr. Paixao at the hearing, that it is not the high HGB alone, which makes Sample 2 highly atypical – it is the combination of high HGB and low RET% which are typical of an "OFF picture". Dr. Paixao elaborated that this combination is not caused by plasma volume variation. The Expert Panel also at the hearing confirmed that in this case there is no explanation that is physiologically sound and explains the changes in Sample 2 and Sample 6.
 - The Expert Panel was asked at the hearing on conclusion on the doping scenario. Dr. Lewis concluded that it cannot, based on the data alone, be concluded whether it is EPO or blood transfusions, but the Expert Panel can conclude that it is blood manipulation in the lead up to competition; Tour de l'Avenir close to Sample 2 and the national championships close to Sample 6.
226. In conclusion, the Single Judge is of the opinion that there is no evidence in the case at hand that renders the doping scenario, as presented by the UCI, implausible.

e) Standard of proof

227. The final question to resolve is, if the UCI has proven to the comfortable satisfaction of the Single Judge that the Rider engaged in doping within the meaning of Article 2.2 ADR 2015.
228. The Rider argued at the hearing that burden of proof has to be mitigated when a negative fact, that happened more than 5 years ago, shall be proven. He referred to CAS 2016/4534.
229. The Single Judge agree that the burden of proof for the UCI is high and that it shall *"bear in mind the seriousness of the allegation which is made"*.

f) Conclusion

230. In evaluating all the facts, allegations, arguments and evidence before her, and applying said standard of proof in the context of the assessment of the evidence before her, the Single Judge is comfortably satisfied that the Rider committed an ADRV of Article 2.2 UCI ADR 2015 in the form of Use of a Prohibited Substance or Prohibited Method.

B. Consequences of the ADRV

231. Comfortably satisfied that the Rider committed an ADRV, the Tribunal must decide upon the consequences of the violation.

1. Period of Ineligibility

a) The position of the UCI

232. The UCI submitted that the Tribunal must impose a four-year period of Ineligibility, which is the standard sanction set out in Article 10.2.1.1 UCI ADR, on the Rider. As per the second limb of Article 10.2.1.1 of the UCI ADR, the Rider bears the burden of proof of establishing that the ADRV was not intentional. The standard of proof is by a balance of probabilities.

233. The UCI further submitted, that according to the Expert Panel, the abnormalities shown in the Rider's Profile are highly likely due to the use of a Prohibited Substance and/or Method, namely the artificial increase of red cell mass using erythropoiesis stimulating substances or blood transfusions. None of these Prohibited Substances and Prohibited Methods are specified substances under the Prohibited List. Therefore, the first limb of Article 10.2.1.1 UCI ADR 2015 is fulfilled, i.e. the substance or method in question is a Prohibited, non-Specified Substance or Method.

234. The UCI argues, that aside from the explanations that have been dismissed by the Expert Panel, the Rider has not provided any indication as to how his ADRV may have occurred. In addition, he has not put forward – nor do there appear to exist – any exceptional circumstances that could somehow establish a lack of intent without first proving the source of the substance or the method used.

235. According to the UCI, it follows from this and in view of the nature of the Prohibited Substance and/or Method used, that the Rider has failed to meet his burden of proof to establish that his ADRV was not intentional. Therefore, a standard sanction of 4 years is applicable under Article 10.2.1.1 of the UCI ADR 2015. No mitigating provision, as set forth under Articles 10.4, 10.5 and 10.6 *Idem* can be applied to reduce the standard four-year sanction in the case at hand.

b) The position of the Rider

236. The Rider submitted that the UCI's request of sanction and consequences is not proportionate. The Rider argued, that in the unlikely event that a sanction is imposed on the Rider, the following circumstances shall be taken into consideration:

- i. The age of the Rider at the date of the alleged ADRV,
- ii. the Rider's collaboration in the explanation of the ABP values both by providing the experts' reports and by inquiring the UCI on the result of all urine samples collected in "contested period",
- iii. the lack of intentional violation,
- iv. the length of time between the ADRV and the disciplinary proceedings.

237. The Rider also submitted, that at the time of the alleged ADVR the Rider was a twenty years old young boy thrown from Australia to Europe, his emotional situation could be compared to a Protected Athlete as defined under UCI ADR 2023 – applicable to the present case on the basis of the *lex mitior* principle. Therefore, pursuant to art. 10.3 (iii) UCI ADR 2023, the period of Ineligibility shall be in a range between a maximum of two (2) years and, at a minimum, a reprimand and no period of Ineligibility, depending on the Protected Person degree of Fault.
238. The Rider also argued that the Rider established that any potential ADVR was not intentional, and also – if an ADVR is established - it was conducted with no fault or negligence or with no significant fault or negligence. The Rider submitted that there should be no period of ineligibility, and in any case the period of ineligibility shall not be higher than the period already served.

c) The position of the Single Judge

239. For first time violations of Article 2.2 UCI ADR 2015, the starting point in determining the period of ineligibility is Article 10.2 UCI ADR 2015. According to Article 10.2.1.1 UCI ADR 2015, the period of Ineligibility to be imposed shall be four years where the ADVR does not involve a Specified Substance, unless the Rider or other Person can establish that the ADVR was not intentional.
240. Since blood manipulation by Use of a Prohibited Substance or Prohibited Method is not a Specified Substance according to Article 4.2.2 UCI ADR 2015, Article 10.2.1.1 *Idem* applies. Article 10.2.1.1 UCI ADR 2015 provides that the four-year period of Ineligibility may be reduced only if the Rider is able to establish that the ADVR was not intentional. The standard of proof placed on the Rider in this regard is a balance of probability (Article 3.1 UCI ADR 2015).
241. In evaluating the submissions and evidence before her, the Single Judge concludes that the Rider failed to discharge his burden of proof to convince this Tribunal, on a balance of probability, that the violation was not intentional.
242. In this respect, it shall be recalled that in accordance with this Tribunal’s precedents, 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. Joseburg 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”*.
243. As regards the Riders argument, that his *“emotional situation could be compared to a Protected Athlete as defined under the UCI ADR 2023 – applicable to the present case on the basis of lex mitior principle”* the Single Judge in referring the definition of a Protected Person: *“A Rider or other natural Person who at the time of the anti-doping rule violation: (i) has not reached the age of sixteen (16) years; (ii) has not reached the age of eighteen (18) years and is not included in any Registered Testing Pool and has never competed in any International Event in an open category; or (iii) for reasons other than age has been determined to lack legal capacity under applicable national legislation”*, the Single Judge cannot accept the argument that the Rider was and therefore shall be sanctioned as a Protected Person.
244. In conclusion, the Single Judge finds that a period of Ineligibility of four years shall be imposed on the Rider.

245. This being said, the Single Judge does not agree with the Rider that the Rider is entitled to the elimination or to the reduction of the period of ineligibility based on article 10.4 (No Fault or Negligence) or 10.5 (No Significant Fault or Negligence).

2. Commencement of the period of Ineligibility

246. A period of Ineligibility of four years is imposed on the Rider. The Tribunal has to determine the commencement of the period of Ineligibility.

247. The UCI finds that the Period of Ineligibility shall start on the date of notification of the Tribunal's decision. The UCI notes that Article 10.11 of the UCI ADR 2015 provides that, as a general rule, the period of ineligibility shall start on the date of the Tribunal's decision.

248. The Rider submits that pursuant to Article 10.11 UCI ADR 2015, in case of delay not attributable to the Rider, the ineligibility period may start as to the date of the sample collection.

249. The Rider argues that the UCI is indeed guilty of substantial delays because the UCI waited until August 2023 to bring forward a case relating to alleged rule violations taking place between August 2018 and January 2019. These delays were not attributable to the Rider.

250. The Rider submits that pursuant to C.2.2.1 UCI Regulations for Results Management ("UCI RMR") *"A Passport generating an Atypical Passport Finding, or for which a review is otherwise justified, shall be sent by the Athlete Passport Management Unit to an Expert for review in ADAMS. This should take place within seven (7) days following the generation of the Atypical Passport Finding in ADAMS."*

251. The Rider argues, that in the present case, inexplicably, the UCI did not proceed with any claims for over four years, notwithstanding the Adaptive Model automatically processes the blood data, causing very serious consequences in the Rider career, who, in the best of his career despite a normal ABP and no positive doping controls, saw his contract suspended and terminated on 31 December 2023. Consequently, any eventual sanction should be backdated to the date of the last alleged violation (i.e. 13 January 2019) pursuant to article 10.11 UCI ADR.

252. Article 10.11.1 UCI ADR 2015 provides that *"Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Rider or other Person, the UCI may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified. [...]"*

253. The Single Judge agrees with the Rider, that pursuant to UCI RMR Article C.2.2.1 *"A Passport generating an Atypical Passport Finding, or for which a review is otherwise justified, shall be sent by the Athlete Passport Management Unit to an Expert for review in ADAMS. This should take place within seven (7) days following the generation of the Atypical Passport Finding in ADAMS."*

254. The first sample that was flagged was Sample 2. (Flagged with upper limit HGB and upper limit OFFs).

255. The Single Judge reiterates that the first sample that the Expert Panel evaluated as being highly atypical – because of its combination of high HGB and low RET% which are typical of an "OFF picture", is also Sample 2.

256. The Single Judge also agrees with the Rider's viewpoint, that since Sample 2 was flagged, Sample 2 must have been – or at least should have been - sent by the Athlete Passport Management Unit to an Expert for review in ADAMS pursuant to UCI RMR Article C.2.2.1.

257. The Single Judge finds, that since the abnormalities in Sample 2 are as clear as the Expert Panel has concluded in four written opinions; after having examined the Rider's line of arguments and Expert Reports; and as elaborated on and concluded again at the hearing, Sample 2 either should have - or must have - been subject to assessment in connection with the sample being flagged.
258. The Single Judge finds that there has been a delay in the management process regarding Sample 2.
259. The Single Judge in applying article 10.11.1 UCI ADR 2015, finds, that in this case there have been delays in some aspects of the Doping Control that are not attributable to the Rider, since the Single Judge agrees that the flagging of Sample 2 either has been - or should have been - "sent by the Athlete Passport Management Unit to an Expert for review in ADAMS" and from the time of this action – or when this action should have happened – the process regarding Sample 2 should have been initiated due to the clear abnormality and the clear evaluation of the results regarding Sample 2 by the Expert Panel.
260. Therefore, and since the Single Judge is not bound by the Parties' prayers for relief in accordance with Article 27 UCI ADR, the Single Judge decides that the 4-year period of ineligibility shall commence on 17 August 2018 (the date of collection of Sample 2). Therefore, the period of ineligibility ended 4 years after the 17 August 2018 that means the 16 August 2022.
261. Since the period of ineligibility has ended, the provisional suspension is lifted.

3. Disqualification

262. The UCI in its Petition requests the Tribunal to disqualify all the results obtained by the Rider from the date of collection of Sample 2 (i.e. on 17 August 2018), until 31 January 2019. This submission is based on the Expert Panel's opinions that the abnormalities featured in the Rider's profile suggest the use of a Prohibited Substance and/or Method at least between Sample 2, collected on 17 August 2018 during the Tour de l'Avenir (17-28 August 2018) and Sample 6 collected on 13 January 2019.
263. The Rider maintains that he did not commit an ADRV and, therefore, that no results should be disqualified.
264. The Rider submits, for the sake of defence, in the unlike event this Tribunal should impose a sanction, the fairness exception and the proportionality principle shall apply to the present case.
265. The Rider argues, that in the present case it would not be fair to disqualify any results of the Athlete between 17 August 2018 and 13 January 2019, considering that there is no evidence that the Athlete used doping substances or methods during this period and that he is not accountable for the fact that the result management process got started a long time after the relevant ABP samples became known to the UCI (cf. inter alia CAS 2016/O/4481).
266. According to Article 27 of the UCI ADT Rules the Single Judge is not bound by the Parties' prayers for relief.
267. Article 10.8 UCI ADR 2015 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 antidoping 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."

268. Additionally, according to Article 10.11.1 UCI ADR 2015, whenever the period of ineligibility starts at an earlier date than the date of the final hearing decision, all competitive results achieved during the period of Ineligibility, including retroactive ineligibility, shall be disqualified.
269. Therefore, all results obtained by the Rider between 17 August 2018 and 16 August 2022 (ie., the ineligibility period) shall be disqualified.

4. Mandatory Fine and Costs

270. According to Article 10.10.1.1 UCI ADR 2015, a fine shall be imposed in case a Rider exercising a professional activity in cycling is found to have committed an intentional ADRV within the meaning of Article 10.2.3 UCI ADR 2015. This prerequisite is fulfilled in the case at hand.
271. The UCI submits with respect to the calculation of the fine, that according to the Expert Panel, the ADRV in this case occurred between 17 August 2018 (date of collection of Sample 2) and 13 January 2019 (date of collection of Sample 6). For the purposes of the mandatory fine to be applied, the UCI thus considers that the ADRV relates to 2018 and 2019. The Rider was racing for a team registered with the UCI during these years and, based on his employment contracts, he received a total income of ██████████.- (i.e. ██████████.- from 8 October 2018 until 31 December 2019 + ██████████ as ██████████ in 2018).
272. The UCI argues that a mandatory fine of ██████████.- (i.e. ██████████ = ██████████, 70% of ██████████ = ██████████) should be imposed, unless the Rider can establish that a reduction of the quantum of the fine would be justified by one or more of the criteria set out in Article 10.10.1.1 of the UCI ADR.
273. The Rider maintains that he did not commit an ADRV and, that in any case the alleged ADRV was not intentional, therefore, no mandatory fine should be imposed.
274. According to the Rider, should the Tribunal impose a financial sanction, the following should be taken into account:
- The Rider has shown that the result management process was started a long time after the relevant ABP samples became known to the UCI and the delay is not attributable to the Rider
 - Such delay has had impact on the Rider's financial situation, whose contract has been suspended since August 2023, terminated on 31 December 2023 and who is without a financial sustainment since August 2023. Moreover, the Rider had to incur in significant legal costs.
 - The application of the fine in the amount required by the UCI would be disproportionate and an abuse of the UCI dominant position, hence a reduction of the fine to the 10% of the gross income, namely from ██████████ to ██████████ is justified by the delay in management process and by the Athlete's financial situation (cf. CAS 2010/A/2063, para. 91-95, where the Panel was furnished with no material other than a mere declaration to justify any reduction).
275. The Single Judge finds that the Rider's income in 2018 and 2019 is relevant regarding the calculation of the fine, since according to the Expert Panel, the ADRV in this case can be established in relation to the ABP regarding Sample 2 taken on 17 August 2018 and Sample 6 taken on 13 January 2019.
276. According to Article 10.10.1.1 UCI ADR 2015, "*[i]n 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. [...] The net income shall be deemed to be 70 (seventy) % of the corresponding gross income".

277. Based on the information on file, the single Judge finds that the Rider's gross income for 2018 and 2019 was [REDACTED] (ie., [REDACTED] corresponding to the period between 1 March 2018 to 7 October 2018 and included as a [REDACTED] in the contract between the Rider and UCI WorldTeam Mitchelton Scott covering the period of 8 October 2018 to 31 December 2019, plus [REDACTED] corresponding to the period between 8 October 2018 and 31 December 2019).
278. Therefore, a monetary fine in the amount of [REDACTED] is imposed on the Rider.
279. The Single Judge in applying Article 10.10.1.1 UCI ADR 2015, from where it follows that the quantum of the fine may be reduced where the circumstances so justify, including: "[...] *Nature of anti-doping rule violation and circumstances giving rise to it; Timing of the commission of the anti-doping rule violation; Rider or other Person's financial situation; Cost of living in the Rider or other Person's place of residence; Rider or other Person's Cooperation during the proceedings and/or Substantial Assistance as per article 10.6.1. [...]*" concludes that the fine should not be reduced in the case at hand.
280. The Rider submits that on the basis of all the above considerations this Tribunal should determine no costs to bear. In conclusion the Tribunal decision should be rendered with no costs on the Rider.
281. In application of Article 10.10.2 UCI ADR, the Single Judge holds that the Rider shall reimburse to the UCI the following amounts:
- CHF 2'500.- for the costs of the results management by the UCI (Article 10.10.2.2 UCI ADR); and
 - EUR 3'129.- for costs of the documentation packages of the blood samples analysed for the ABP (Article 10.10.2.6 UCI ADR).

VII. COSTS OF THE PROCEEDINGS

282. In application of Article 29.2 of the UCI ADT Rules, the Tribunal decides that the present Judgment is rendered without costs.
283. Notwithstanding the above, the Tribunal may 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 UCI ADT Rules). The provision states that if the prevailing Party was represented by a legal representative the contribution shall also cover legal costs.
284. The Parties were invited at the hearing to submit their account of costs. The Rider submitted in letter dated 29 April 2024 the following account of costs: i) Legal fees: [REDACTED]; ii) Expert fees (report and consultant): [REDACTED]; [REDACTED] and [REDACTED] and iii) travel costs: [REDACTED]. Total fees and costs in [REDACTED]. The UCI submitted in letter dated 3 May 2024 the following account of costs: i) Expert fees: [REDACTED]; and ii) Legal fees: [REDACTED].
285. In light of all of the circumstances of this case and in line with the UCI ADR recent jurisprudence, the Single Judge finds it appropriate to not order the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

VIII. RULING

286. In light of the above, the Tribunal decides as follows:

1. **Mr. Robert Stannard has committed an Anti-Doping Rule Violation (Article 2.2 UCI ADR).**
2. **Mr. Robert Stannard is suspended for a period of ineligibility of four (4) years. The period of ineligibility shall commence on the date of Sample 2, i.e. 17 August 2018. Since Mr. Robert Stannard's period of ineligibility effectively began on 17 August 2018, it ended four years from this date, i.e. 16 August 2022.**
3. **The Provisional Suspension of Mr. Robert Stannard is lifted.**
4. **The results obtained by Mr. Robert Stannard during the period of ineligibility 17 August 2018 - 16 August 2022 are disqualified.**
5. **Mr. Robert Stannard is ordered to pay to the UCI the amount of [REDACTED]- as monetary fine.**
6. **Mr. Robert Stannard is ordered to pay to the UCI:**
 - a) **the amount of CHF 2'500.- for the costs of the results management; and**
 - b) **the amount of EUR 3'129.- for costs of the documentation packages of the blood samples analysed for the Biological Passport.**
7. **All other and/or further reaching requests are dismissed.**
8. **This Judgment is final and will be notified to:**
 - a) **Mr. Robert Stannard;**
 - b) **National Anti-Doping Organisation of Australia;**
 - c) **UCI; and**
 - d) **WADA.**

287. This Judgment may be appealed before the CAS pursuant to Article 31.2 of the UCI 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 UCI ADR.

Helle Qvortrup Bachmann
Single Judge