

**UCI Anti-Doping Tribunal**

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**Judgment**

**case ADT 02.2016**

**UCI v. Mr Fabio Taborre**

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**Single Judge:**

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

**Aigle, 25 May 2016**

## INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal (“the UCI Tribunal”) in application of the UCI Tribunal Procedural Rules (the “ADT Rules”) in order to decide upon a violation of the UCI Anti-Doping Rules (the “UCI ADR”) committed by Mr. Fabio Taborre (the “Rider”) as asserted by the UCI (collectively, the “Parties”)

## I. FACTUAL BACKGROUND

2. The following factual background consists of facts alleged by the UCI and not contested by the Rider.
3. The Rider is a professional cyclist of Italian nationality. He was born on 5 June 1985 and is currently residing in Montesilvano (Pescara, Italy). He is affiliated to the Italian Cycling Federation (“FCI”) and was holder of a licence issued by the latter federation in 2015. The Rider started his professional cycling career in 2008. In 2015 he (re)joined the UCI Professional Continental Team Androni Giocattoli Sidermec (the “Rider’s Team”), with which he remained under contract until 27 August 2015.
4. On 16 June 2015, the Rider provided a urine Sample (number 3069684) as part of an Out-of-Competition control in Montesilvano, Italy. The control was carried out by a Doping Control Officer on behalf of the UCI. On the Doping Control Form, the Rider declared that he had taken no medications or supplements during the seven days prior to the Sample collection and that the Sample had been conducted in accordance with the relevant procedures. In the box on the Doping Control Form designated for noting comments or irregularities during the Sample Collection session, it was written that all was “OK” (“Tutto OK”).
5. The urine Sample provided by the Rider was analysed at the WADA-accredited Laboratory in Cologne, Germany (“Laboratory”). The test report submitted by the Laboratory on 1 July 2015 shows that the Rider’s A-Sample (number 3069684) contained FG-4592 (the “Adverse Analytical Finding” or “AAF”). FG-4592 is listed under Class S2 Peptide Hormones, Growth Factors, Related Substances and Mimetics on the 2015 WADA Prohibited List. According thereto, FG-4592 is prohibited both In- and Out-of-Competition. Art. 4(1) UCI ADR incorporates WADA’s Prohibited List into the UCI ADR.
6. On 27 July 2015, the Rider was notified of the Adverse Analytical Finding by the UCI. A mandatory provisional suspension was imposed on him in accordance with art. 7(9)(1) UCI ADR, starting on 27 July 2015 (i.e. the date of the notification). In UCI’s notification of the AAF to the Rider, the Rider was informed of his right to request and attend (or have a representative attend) the opening and analysis of his B Sample. The UCI also informed the FCI, the Comitato Olimpico Nazionale Italiano (“CONI”), the Rider’s Team, and the World Anti-Doping Agency (“WADA”) of the Rider’s Adverse Analytical Finding. The Rider was also provided with the Laboratory’s Documentation Package for the A Sample (number 3069684).
7. On 6 August 2015, the Rider’s counsel informed the UCI that the Rider did not request the opening and analysis of the B Sample and did not admit the alleged anti-doping rule violation.
8. On 10 August 2015, the UCI informed the Rider’s counsel that the UCI asserted a violation of arts 2(1) and/or 2(2) UCI ADR; of the potential Consequences for the alleged anti-doping rule violation; of the opportunity to admit to the anti-doping rule violation and put an end to the proceedings per art. 8(4) (Acceptance of Consequences) UCI ADR, which would prevent disciplinary proceedings before the UCI Tribunal; of the possibility to provide Substantial

Assistance; and of an invitation for the Rider to provide his explanation of the circumstances of the Adverse Analytical Finding. A response was requested within 14 days.

9. On 31 August 2015, the Rider's counsel informed the UCI that the Rider does not admit the anti-doping rule violation; that the Tribunal Nazionale Antidoping in Rome – Second Section (“TNA 2nd Section”) should have jurisdiction over the case rather than the UCI Tribunal; and the Rider is not able to provide Substantial Assistance.
10. On 14 September 2015, the UCI offered the Rider an Acceptance of Consequences pursuant to art. 8(4) UCI ADR. In the same communication, the UCI also informed the Rider that in the event that the Rider did not perform the Acceptance of Consequences, the matter would be referred to the UCI Tribunal.
11. The UCI made several attempts to contact the Rider through his counsel to determine his intention with regard to the Acceptance of Consequences.
12. The UCI considered that the Acceptance of Consequences was rejected due to the failure to receive a response to the proposal and the time that passed in the interim, and thus referred the Rider's case to the UCI Tribunal by petition dated 23 February 2016 (the “UCI Petition”).
13. In the UCI Petition, the UCI requested the following:
  - *Declaring that the Rider has committed an Anti-Doping Rule Violation.*
  - *Imposing on the Rider a period of ineligibility of 4 years.*
  - *Disqualifying all the results obtained by the Rider from 16 June 2015 until he was provisionally suspended.*
  - *Condemning the Rider to pay a fine of [REDACTED].*
  - *Condemning the Rider to pay the costs of results management by the UCI (2'500.- CHF) and the costs incurred for Out-of-Competition Testing (1'500.- CHF).*

## **II. PROCEDURE BEFORE THE UCI TRIBUNAL**

14. In compliance with art. 13(1) ADT Rules the UCI initiated proceedings before the UCI Tribunal through the filing of a petition to the Secretariat on 23 February 2016. Before referring the case to the UCI Tribunal, the UCI offered the Rider an Acceptance of Consequences within the meaning of art. 8(4) UCI ADR and art. 2 ADT Rules by letter dated 14 September 2015. The Rider did not respond to the Acceptance of Consequences.
15. On 25 February 2016, the Secretariat of the UCI Tribunal appointed Ms. Emily Wisnosky to act as Single Judge in the present proceedings in application of art. 14(1) ADT Rules.
16. In application of art. 14(4) ADT Rules, the Rider was informed on 26 February 2016 that disciplinary proceedings had been initiated against him before the UCI Tribunal. The Rider was also informed that any objection to the jurisdiction of the UCI Tribunal shall be brought to the Secretariat within 7 days of the receipt of the correspondence and that a deadline of 14 March 2016 was granted to submit his answer in conformity with arts. 16(1) and 18 ADT Rules.
17. By letter dated 8 March 2016, the Rider's counsel stated that the Rider received the UCI Petition on 4 March 2016, raised an objection to the jurisdiction of the UCI Tribunal and requested that the UCI file be transmitted to the Ufficio Procura Antidoping of CONI in Rome for initiation of proceedings. CONI's Anti-Doping Rules, ie the *Norme Sportive Antidoping: Documento tecnico-*

*attuativo del Codice Mondiale Antidoping WADA e dei relativi Standard internazionali* version 1/2015 (the “CONI ADR”) was included as an exhibit to the jurisdictional objection.

18. On 10 March 2016, the UCI Tribunal acknowledged the Rider’s jurisdictional objection and set a deadline of 18 March 2016 for the UCI to submit comments thereto. In the same communication and pursuant to arts. 8(3) and (5) of the ADT Rules, the UCI Tribunal invited the Rider to submit by 18 March 2016 an English translation of the relevant provisions of CONI ADR. In addition, the UCI Tribunal informed the Parties that pursuant to art. 3(3) ADT Rules it would decide on the objection to jurisdiction in its Judgment and confirmed that the Rider’s deadline of 14 March 2016 to submit his answer to the UCI Petition remained applicable.
19. On 14 March 2016, the Rider’s counsel submitted a statement of defence, with enclosed exhibits written in the Italian language.
20. On 17 March 2016, the Secretariat acknowledged receipt of the Rider’s submission and informed the Parties that the UCI Tribunal would issue further procedural directions on 21 March 2016, following the expiry of the Parties’ aforementioned deadlines on 18 March 2016.
21. On 18 March 2016, the UCI submitted its comments to the Rider’s objection to the jurisdiction of the UCI Tribunal, which included as an attachment a letter from the Italian National Anti-Doping Organization (“NADO Italia”) and a comment directed at the Rider’s statement of defence. The Rider did not submit a translation of the relevant provisions of the CONI ADR.
22. On 21 March 2016, the Secretariat acknowledged receipt of the UCI’s comments to the Rider’s objection to the jurisdiction of the UCI Tribunal and invited the Rider to submit comments on the UCI’s comment directed at the Rider’s statement of defence by 1 April 2016. Furthermore, the Parties were also granted a deadline of 1 April 2016 to submit an indication of whether they wished a hearing to be held and to provide English translations of any documents submitted so far in the proceedings.
23. By correspondence dated 1 April 2016, the UCI stated its preference to the UCI Tribunal that no hearing be held. In addition, it provided an English translation of Exhibit UCI-24 of the UCI Petition (the Rider’s 2015 contract). The Rider did not submit any response to the Secretariat’s 21 March 2016 correspondence.
24. On 5 April 2016, the Secretariat acknowledged receipt of the UCI’s 1 April 2016 submission and advised the Parties that the Single Judge decided that a hearing would not be held in this matter, the investigation phase was now closed, and that the Single Judge would render her Judgment on the basis of the written submissions.

### **III. JURISDICTION OF THE UCI TRIBUNAL**

25. The Rider, through his counsel, filed an objection to the jurisdiction of the UCI Tribunal on 8 March 2016. After reviewing the submissions and arguments of the Parties, the UCI Tribunal confirms its jurisdiction to hear the present matter.
26. The UCI Tribunal’s jurisdiction is based on art. 8(2) UCI ADR, as set forth below. As a preliminary matter, the UCI Tribunal notes that the Rider was bound by the UCI ADR (A.). The UCI Tribunal will then address the timeliness of the Rider’s jurisdictional objection (B.) before turning to the merits of the Rider’s jurisdictional objection (C.).

**A. Is the Rider bound by the UCI ADR?**

27. The UCI Tribunal finds this to be the case for the following reasons.

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

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

29. A License-Holder is defined in the Appendix 1: Definitions, as follows:

*“A Person who is a holder of a license or who has applied for a license under the UCI Cycling Regulations”.*

30. It was not contested that the Rider was a professional cyclist, holding a license for the 2015 season issued by the FCI. Thus he was a “License-Holder” according to the definition in the UCI ADR.

31. Art. 1(1)(004) of the UCI Cycling Regulations provides that *“anyone requesting a licence thereby undertakes to respect the constitution and regulations of the UCI, the UCI continental confederations and the UCI member Federations”.*

32. As a License-Holder, the Rider undertook to respect and is thus bound by the UCI Cycling Regulations, including the UCI ADR and ADT Rules.

**B. Timeliness of the Rider’s jurisdictional objection**

**1. Position of the Parties**

33. In his challenge to the jurisdiction of the UCI Tribunal, submitted on 8 March 2016, the Rider’s counsel stated that the Rider received the UCI Petition on 4 March 2016. The UCI submits that pursuant to art. 9 ADT Rules, the Rider’s challenge regarding the UCI Tribunal’s jurisdiction is belated.

**2. Position of the UCI Tribunal**

34. Art. 3(2) ADT Rules addresses time limits for an objection to the jurisdiction of the UCI Tribunal:

*“Any objection to the jurisdiction of the [UCI] Tribunal shall be brought to the Tribunal’s attention within 7 days upon notification of the initiation of the proceedings. ...”.*

35. In light of the foregoing, the question is whether the objection to the jurisdiction of the Tribunal was *“brought to the Tribunal’s attention within 7 days upon notification of the initiation of the proceedings...”*.

36. More specifically, the UCI Tribunal must resolve whether ‘notification’ to the Rider occurred at the time that the Rider’s counsel was notified of the initiation of the proceedings (i.e. via email from the Secretariat on 26 February 2016) or at the time that the Rider himself received the written petition (i.e. according the Rider’s counsel on 4 March 2016).

37. The UCI Tribunal finds that the Rider was notified of the initiation of the proceedings within the meaning of the ADT Rules on 26 February 2016 via email to his counsel.

38. The UCI Tribunal adopts the position taken by the Swiss Supreme Court that notification to a party may be properly made by notification to the party's counsel.<sup>1</sup> This interpretation has the further benefit of favouring the legal predictability of time limits set by the UCI Tribunal by avoiding a situation where a Rider's counsel could delay the tolling of the 7-day time limit simply by delaying the notification to his or her client.
39. In the UCI Tribunal's view, since the notification was deemed to have properly occurred to the Rider's counsel on 26 February 2016 and the Rider's objection to the jurisdiction of this Tribunal was received on 8 March 2016, it was not received within the 7-day time limit.
40. That said, the UCI Tribunal notes that the Rider also submitted a challenge to the jurisdiction of the UCI Tribunal in favour of the TNA 2nd Section, on 31 August 2015, which the UCI referenced and responded to in the UCI petition. In light of this, it would appear overly formalistic in this case to declare the Rider's jurisdictional objection inadmissible.
41. Be that as it may, the UCI Tribunal does not need to make a final ruling on the admissibility of the jurisdictional objection, since the latter is in any event without merit.

### **C. Merits of the Rider's objection to the jurisdiction of the UCI Tribunal**

#### **1. The position of the Parties**

42. The Rider submits that pursuant to art. 24 and the preface of the CONI ADR, the TNA 2nd Section shall have jurisdiction in the present matter. The Rider submits the following in support of his position:
- The anti-doping test was conducted in Italy;
  - The TNA 2nd Section shall have jurisdiction over International-Level Athletes; and
  - Proceedings in front of the TNA 2nd Section would relieve the Rider of the need to use an interpreter and of the related costs.
43. The UCI's position can be summarized as follows: The jurisdiction of the UCI Tribunal (and not the TNA 2nd Section) flows from the fact that, the UCI initiated and directed the Rider's Sample collection. Because of this, the 2015 World Anti-Doping Code ("WADC 2015"), which has been incorporated into both the UCI ADR and the CONI ADR, recognizes the UCI as holding the responsibility to conduct results management and hearings, and the same is governed by the ADT Rules. In this case, the UCI did conduct results management, and as a consequence, asserted an anti-doping rule violation against the Rider.
44. In addition, the UCI submitted a letter from NADO Italia, confirming the jurisdiction of the UCI (and the lack of jurisdiction of the TNA 2nd Section). In particular, the letter offered the following interpretation of the rules applied to the facts of this case:

*"With regard to the jurisdiction issue, in accordance with art. 7.1 and 7.2 of WADA Code, we deem that UCI has jurisdiction to conduct result management over the Athlete's AAF. Indeed, UCI is the testing authority that initiated and directed the sample collection.*

*For the sake of completeness, we note that art. 24 of the Italian Anti-Doping Rules does not create any conflict of jurisdiction. Although it refers to athletes listed in the international RTP or violations in connection with participation in international event, the applicability of such provision is limited to cases where NADO Italia is the testing authority*

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<sup>1</sup> Decision of the Swiss Supreme Court, 4P.273-275-277-279-280-281-282-283/1999 of 20 June 2000, para. 5.

*or the organization that discovers the violation. For other instances, NADO Italia can carry out result management only after being delegated by the ADO in charge”.*

## **2. The position of the UCI Tribunal**

45. The UCI Tribunal rules in favour of its jurisdiction since in this case “[a]n anti-doping rule violation is asserted by the UCI based on a results management process under Article 7 [UCI ADR]” (a.), and the Rider’s arguments challenging the jurisdiction of the UCI Tribunal (and in favour of the TNA 2nd Section) are misconceived (b.).

### **a. The UCI Tribunal’s jurisdiction**

46. Art. 3(3) ADT Rules provides that “[t]he Tribunal shall rule on its own jurisdiction in its Judgment”.

47. The jurisdiction of the UCI Tribunal is based on Art. 8(2) UCI ADR *ab initio* (and confirmed in art. 3(1) ADT Rules), which provides as follows:

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

- *An anti-doping rule violation is asserted by the UCI based on a results management process under Article 7 [UCI ADR]; ...”.*

48. Art. 7(1) UCR ADR *ab initio* provides

*“results management and hearing shall be the responsibility of, and shall be governed by, the procedural rules of the Anti-Doping Organization that initiated and directed Sample collection”.*

49. As indicated on the Doping Control form, the UCI was the Testing authority with respect to the Rider’s Sample collection. Hence, the UCI Tribunal is satisfied that the Rider’s Sample collection was “initiated and directed” by the UCI, within the meaning of art. 7(1) UCI ADR, granting it responsibility for results management and hearings. Following the Rider’s Sample collection, the UCI and in particular its Legal Anti-Doping Service, conducted results management.

50. As a consequence of this results management process, the UCI asserted an anti-doping rule violation against the Rider in a letter dated 10 August 2015, which was reaffirmed in the UCI Petition, submitted on 23 February 2016.

51. In light of the foregoing, the UCI Tribunal confirms its jurisdiction to hear the Rider’s case.

### **b. The Rider’s jurisdictional objection**

52. The Rider argues that pursuant to the CONI ADR, in particular its preface and art. 24 CONI ADR, the CONI and the TNA 2nd Section shall have jurisdiction in this case. The Rider supports his position by stating that the Sample collection took place in Italy and that the TNA 2nd Section has jurisdiction over International-Level Riders. He further states that since the proceedings in front of the TNA 2nd Section are in Italian (and not English or French, as is the case in front of the UCI Tribunal) he would be relieved of the need to use an interpreter and of the associated costs.

53. The Rider’s arguments are misconceived.

54. Neither the Rider's mother tongue, the Rider's level of competition, nor the geographical location where the Sample collection took place<sup>2</sup> are relevant factors under art. 8(2) (in connection with art. 7(1)) UCI ADR.
55. According to the *Kompetenz-Kompetenz* doctrine, as crystallized in art. 3(3) ADT Rules, it is only for the UCI Tribunal to make a ruling on its own jurisdiction, and not that of any other hearing authority, including the TNA 2nd Section.
56. That said, the UCI Tribunal notes that it is reinforced in its jurisdictional ruling by the confirmation of NADO Italia, which supported both the jurisdiction of the UCI to conduct results management with respect to the Rider, as well as the lack of conflicting jurisdiction of the TNA 2nd Section in the CONI ADR.

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

57. The ADT Rules provide that *"the Single Judge shall apply the [UCI] ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law"*. The alleged anti-doping rule violation took place on 16 June 2015 (the relevant point of time being that of Sample collection). The 2015 edition of the UCI ADR is thus applicable to the current matter (art. 25(1) UCI ADR).

58. Art. 2 UCI ADR defines the relevant anti-doping rule violation as follows:

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

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

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

59. Art. 3(1) UCI ADR reads as follows:

*"The UCI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the*

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<sup>2</sup> See also, CAS 2014/A/2, *Drug Free Sport New Zealand v. Gemmell*, Award of 1 December 2014, para. 62, where the Panel found that *"the fact that the testing was being carried out in the USA was irrelevant from a legal standpoint"*.

*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. ...”.*

60. As for the standard period of Ineligibility art. 10(2) UCI ADR provides as follows:

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

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

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

*10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.*

*10.2.3 As used in Articles 10.2 and 10.3, the term ‘intentional’ is meant to identify those Riders who cheat. The term therefore requires that the Rider or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. 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”.*

61. As for the possibilities to reduce the aforementioned periods of Ineligibility based on fault, the UCI ADR 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”.*

62. As for the Disqualification of results, art. 10(8) UCI ADR provides as follows:

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

63. In relation to the commencement of the period of Ineligibility art. 10(11) UCI ADR 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. ...*

*10.11.3.1 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. ...”.*

64. As for the financial Consequences of the alleged anti-doping rule violation, art. 10(10)(1) UCI ADR directs the following:

*“In addition to the Consequences provided for in Article 10.1-10.9, violation[s] 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.*

...

*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. ...*

*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.*  
...”.

65. As for the liability for costs of the procedures, art. 10(10)(2) UCI ADR provides as follows:

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

1. *The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*
2. *The cost of the results management by the UCI; the amount of this cost shall be CHF 2'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal.*

...

4. *The cost of Out-of-Competition Testing; the amount of this cost shall be CHF 1'500, unless a higher amount is claimed by the UCI and determined by the UCI Anti-Doping Tribunal*

...

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

## **V. THE FINDINGS OF THE UCI TRIBUNAL ON THE MERITS**

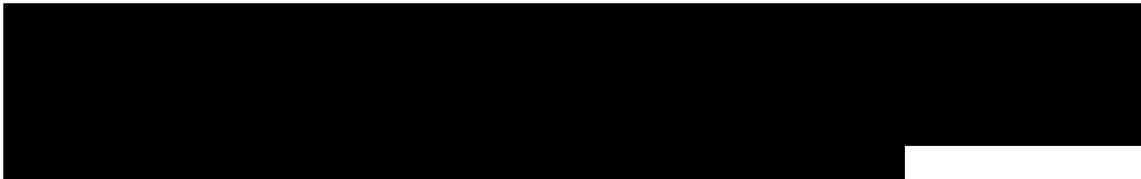
### **A. Preliminary matters**

66. As a preliminary matter, the UCI Tribunal underscores that the Rider was informed of every step of the procedure. Notably, the Rider was informed that in accordance with art. 3(3) ADT Rules, the jurisdiction of this Tribunal would be addressed in her Judgment, which would also address the merits of the UCI's petition.

67. The Rider submitted a statement of defence that stated the Rider did not admit to the alleged anti-doping rule violation, but did not provide any other supporting evidence nor make any other assertions to support this statement. The Rider submitted neither any arguments nor any evidence as to his position regarding the potential Consequences to the alleged anti-doping rule violation.

68. According to the ADT Rules, the UCI Tribunal may proceed with the case and render a Judgment even if a Defendant fails to submit an answer at all (art. 16(2) ADT Rules). Thus, the UCI Tribunal finds itself in a position to reach a final determination as to both the alleged anti-doping rule violation and its Consequences, despite not having the benefit of a submission from the Rider with respect to the potential Consequences of the alleged anti-doping rule violation.

69.



70.



[REDACTED]

71.

[REDACTED]

72.

**B. Anti-doping rule violation**

73. The UCI bears the burden of proof to establish that the Rider committed an anti-doping rule violation; the standard of proof is “*comfortable satisfaction*” (art. 3(1) UCI ADR).

74. The UCI alleged that the Rider committed a violation of art. 2(1) UCI ADR (Presence of a Prohibited Substance or its Metabolites or markers in a Rider’s Sample). The Rider stated that he did not admit the alleged anti-doping rule violation.

75. A violation of art. 2(1) UCI ADR is evaluated according to the principle of ‘strict liability’. The principle of strict liability allows for a violation of art. 2(1) UCI ADR to be established without regard to a Rider’s Fault (Comment to art. 2(1) UCI ADR). In particular, the UCI ADR instructs that sufficient proof of an anti-doping rule violation is established – *inter alia* – by the “*presence of a Prohibited Substance or its Metabolites or Markers in the Rider’s A Sample where the Rider waives the analysis of the B sample and the B Sample is not analyzed*”. Thus, a violation of art. 2(1) UCI ADR may be found in the absence of an admission by the Rider, indeed, in the absence of an indication of the Rider’s level of Fault at all. Thus, the Rider’s statement that he does not admit to the violation of the UCI ADR does not play a role in the determination of whether a violation of art. 2(1) UCI ADR occurred.

76. In this case, the Rider’s A sample analysis, conducted by a WADA-accredited laboratory revealed the presence of FG-4592. FG-4592 is a Prohibited Substance listed under Class S2 Peptide Hormones, Growth Factors, Related Substances and Mimetics and prohibited at all times. The Rider waived the analysis of his B Sample, thus the presence is established only through the presence of the Prohibited Substance in his A Sample (art. 2(1)(2) UCI ADR). FG-4592 is not a threshold substance, which means that the presence of any quantity is sufficient to establish an anti-doping rule violation (art. 2(1)(3) UCI ADR).

77. The analysis was conducted at a WADA-accredited laboratory; thus the analysis is presumed to have been conducted in accordance with the International Standard for Laboratories (art. 3(2)(2) UCI ADR). The UCI ADR grants the Rider the possibility to “*rebut this presumption by establishing that a departure from the International Standards for Laboratories occurred which could*

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<sup>3</sup> UCI submission to the UCI Tribunal of 18 March 2016.

<sup>4</sup> See also CAS 2007/A/396, *UCI v. Valverde*, Award of 31 May 2010, section 18.

*reasonably have caused the Adverse Analytical Finding*". In this case, the Rider made no claim that such a departure occurred.

78. In considering the evidence before it, the UCI Tribunal finds itself comfortably satisfied that the Rider committed an anti-doping rule violation within the meaning of art. 2(1) UCI ADR.

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

79. Satisfied that the Rider committed an anti-doping rule violation, the UCI Tribunal turns to the Consequences of the violation.

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

80. The UCI submits that the Rider should be subject to a four-year period of Ineligibility. The Rider did not make any submissions as to the length of the period of Ineligibility.
81. For first time violations of art. 2(1) UCI ADR, the starting point is art. 10(2) UCI ADR. This provision defines the circumstances that will lead to a four-year period of Ineligibility, with different burdens of proof depending on whether the violation involved a Specified Substance.
82. FG-4952 is not a Specified Substance according to art. 4(2)(2) UCI ADR. For non-Specified Substances, art. 10(2)(1)(1) UCI ADR provides that a reduction of this four-year period of Ineligibility may be granted only if the Rider is able to establish that the violation was not intentional in the sense of art. 10(2)(3) UCI ADR. The standard of proof placed on the Rider in this regard is a balance of probability (art. 3(1) UCI ADR).
83. In the UCI's view, the Rider "*entirely failed*" to discharge his burden that the anti-doping rule violation was not intentional, pointing to the numerous unanswered invitations it made to the Rider to explain or justify the presence of FG-4592 in his urine Sample.
84. The Rider stated that he did not admit to the anti-doping rule violation. This statement was not substantiated by any evidence, nor accompanied by any further explanation as to the Rider's specific circumstances.
85. Even if the UCI Tribunal were to go so far as to interpret the Rider's lack of admission as a denial of the anti-doping rule violation, it is well-established in CAS case law that a simple denial without any supporting evidence should be afforded at most limited evidentiary weight.<sup>5</sup> Likewise, the UCI Tribunal considers the Rider's lack of admission to carry almost no evidentiary weight in the question of whether the violation was not intentional.
86. In evaluating the evidence before it, the UCI Tribunal concludes that the Rider failed to discharge its burden of proof to convince this Tribunal, on a balance of probability, that the violation was not intentional.
87. The UCI Tribunal is of the opinion that since the Rider was not able to establish that the violation was not intentional in the sense of art. 10(2)(3) UCI ADR, he is precluded from establishing that any Fault-related reduction is available (arts. 10(4) and 10(5) UCI ADR). Nor are any other

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<sup>5</sup> See, e.g. CAS 2014/A/3615, *WADA v. Daiders*, Award of 30 January 2015, para. 51. In this case, the Panel observed, in the context of considering the WADC 2015's allocation of burden of proof among the parties that "*it is rare for a person charged with a doping offence to admit to deliberate ingestion. For this reason, the weight to be given to an outright denial is diminished by the fact that it is as likely to be the approach taken by a person who is guilty as by one who is not*".

reductions or suspensions of this period of Ineligibility for reasons other than Fault as set forth in art. 10(6) UCI ADR available in the case at hand.

88. In conclusion, the UCI Tribunal holds that the period of Ineligibility of four years shall be imposed on the Rider.

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

89. UCI submits that the period of Ineligibility ought to start on the date of this Tribunal's decision, with a credit for the time the Rider was subject to a provisional suspension. The Rider did not challenge the UCI's submission.
90. Art. 10(11) UCI ADR provides as a general rule that the period of Ineligibility shall start on the date of the final decision providing for Ineligibility. However, art. 10(11)(3)(1) UCI ADR also provides that the Rider receives credit for any provisional suspension that was imposed on him, provided that he respected the terms of the provisional suspension.
91. The UCI Tribunal holds that the commencement date of the Rider's period of Ineligibility shall correspond to the date of the present decision, i.e. 25 May 2016. The Rider in the present case has been provisionally suspended since 27 July 2015. It is not contested that the Rider respected this provisional suspension. Accordingly, the UCI Tribunal holds that the Rider shall receive a credit for the period of the provisional suspension, i.e. from 27 July 2015 until the date of the present decision.

## **3. Disqualification**

92. UCI requests the UCI Tribunal to Disqualify all of the Rider's competitive results between the date of the Sample collection and the date that his Provisional Suspension commenced. The Rider made no submission with respect to Disqualification.
93. According to art. 10(8) UCI ADR, for an Out-of-Competition test, "*all other competitive results of the Rider obtained from the date a positive Sample was collected...shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences, including the forfeiture of any medals, points and prizes*".
94. The Rider did not submit that fairness requires otherwise. In light of the evidence before it, nor does the UCI Tribunal find any reasons of fairness that would justify a derogation from the principle set forth in art. 10(8) UCI ADR.
95. In consequence, the UCI Tribunal holds that all results obtained by the Rider between the date of the Sample collection (16 June 2015) and the date of the commencement of the provisional suspension (27 July 2015) shall be Disqualified, which according to the UCI includes the Rider's results from the Tour of Slovenia (18-21 June 2015), the Italian National Championships (27 June 2015) and in the Sibiu Tour (1-5 July 2015).

## **4. Mandatory fine and costs**

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

96. The UCI requests the UCI Tribunal to impose on the Rider a mandatory fine pursuant to art. 10(10)(1) UCI ADR. The Rider made no submission with respect to the fine.

97. Pursuant to art. 10(10)(1)(1) UCI ADR: “[a] fine shall be imposed in case a Rider or other Person exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3 [UCI ADR]”.
98. In this case, the Parties do not dispute that the Rider was exercising a professional activity in cycling.
99. Furthermore, the Rider did not establish that the anti-doping rule violation was not intentional within the meaning of art. 10(2)(3) UCI ADR.
100. Therefore, the UCI Tribunal holds that the Rider is subject to a mandatory fine.

**b. Amount of the mandatory fine**

101. The UCI submits that the Rider should be subject to a fine of 70 % of his gross annual income from cycling, i.e. [REDACTED].
102. The modalities of calculating a mandatory fine are set forth in art. 10(10)(1)(1) UCI ADR, according to which

*“[t]he 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 rule violation occurred. ...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”.*

103. In this case, the Rider’s 2015 employment contract provided for an annual gross income from cycling of [REDACTED]. According to the formula set forth in art. 10(10)(1)(1) UCI ADR, this means that the Rider’s annual net income is deemed to be 70 % of [REDACTED], or [REDACTED].
104. The Rider did not provide any evidence that applying the national income tax legislation of Italy would lead to a different figure for the Rider’s net income.
105. Thus the UCI Tribunal holds that the starting point for the amount of the Rider’s fine shall be [REDACTED].
106. Art. 10(10)(1)(1) UCI ADR provides that this amount may be subject to reduction, bearing in mind the seriousness of the offence, “where the circumstances so justify”, including those listed in art. 10(10)(1)(1) UCI ADR. CAS panels have considered the mandatory fine adopted in the UCI ADR, in particular the possibility to reduce the fine based on the circumstances of the case, to be in accordance with the principle of proportionality.<sup>6</sup>
107. In this case, despite being represented by counsel, the Rider did not allege, let alone establish, any particular circumstances, financial or otherwise, that might justify a reduction of this fine. Nor did he suggest that the fine as requested by the UCI would be disproportionate in his situation.
108. In light of the foregoing, bearing in mind the seriousness of the anti-doping rule violation, and the criteria listed in art. 10(10)(1)(1) UCI ADR, the UCI Tribunal holds that a fine in the amount of [REDACTED] shall be imposed on the Rider. The UCI Tribunal finds no basis upon which it may conclude that this fine would be disproportionate under the circumstances of this case.

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<sup>6</sup> See, e.g. TAS 2011/A/2325, *UCI c. Paulissen*, Award of 23 December 2011, para. 178-182.

**c. Costs**

109. The UCI Tribunal holds that the Rider shall bear the following costs, as a result of being found to have committed an anti-doping rule violation (10 (10)(2) UCI ADR):
- The cost of result management set at an amount of CHF 2'500 (art. 10(10)(2)(2) UCI ADR)
  - The cost of Out-of-Competition testing, set at an amount of CHF 1'500 (art. 10(10)(2)(4) UCI ADR)
110. According to art. 10(10)(2) UCI ADR, the National Federation of the Rider shall be jointly and severally liable for the payment of these costs to the UCI.

**VI. COST OF THE PROCEEDINGS**

111. In application of art. 28(1) ADT Rules, the UCI Tribunal has to determine the cost of the proceedings as provided under art. 10 (10)(2)(1) UCI ADR.
112. The Tribunal decides, pursuant to art. 28(2) ADT Rules, that the present Judgment is rendered without costs.
113. Notwithstanding the above, the UCI 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 (art. 28(4) ADT Rules). The provision states that if the prevailing party was represented by a legal representative the contribution shall also cover legal costs.
114. In light of all of the circumstances of this case, especially the fact that there was no hearing in this matter and the UCI was not represented by external counsel, the UCI Tribunal finds it appropriate to refrain from ordering the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

**VII. RULING**

115. In light of the above, the UCI Tribunal decides as follows:
1. Mr. Taborre has committed a violation of art. 2(1) UCI ADR.
  2. Mr. Taborre is suspended for a period of Ineligibility of four years. The provisional suspension already served by Mr. Taborre, starting from 27 July 2015 shall be credited against the four-year period of Ineligibility. The period of Ineligibility shall commence on the date of this decision, i.e. 25 May 2016.
  3. All results obtained by Mr. Taborre in the period between the date of his Sample collection (16 June 2015) and the date his provisional suspension began (27 July 2015), including the Tour of Slovenia (18-21 June 2015), the Italian National Championships (27 June 2015) and in the Sibiu Tour (1-5 July 2015), are Disqualified.
  4. Mr. Taborre is condemned to pay a fine in the amount of [REDACTED].

5. Mr. Taborre is condemned to pay the costs of the results management by the UCI (CHF 2'500) and the costs incurred for Out-of-Competition Testing (CHF 1'500).
  6. All other and/or further reaching requests are dismissed.
  7. This judgment is final and will be notified to:
    - a) Mr. Fabio Taborre;
    - b) CONI;
    - c) WADA; and
    - d) UCI.
116. This Judgment may be appealed before the CAS pursuant art. 30(2) ADT Rules and art. 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in art. 13(2)(5) UCI ADR.

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**Emily WISNOSKY**  
**Single Judge**