

**UCI Anti-Doping Tribunal**

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**Judgment**

**case ADT 03.2017**

**UCI v. Ms Isabella Moreira Lacerda**

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**Single Judge:**

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

**Aigle, 17 August 2017**

## INTRODUCTION

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

### I. FACTUAL BACKGROUND

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

#### A. The Parties

3. The UCI is the 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 art 60 ff. Swiss Civil Code according to arts. 1(1) and 1(2) UCI Constitution.
4. The Rider is of Brazilian nationality, and at the time of the alleged anti-doping rule violation, was a mountain bike rider, affiliated to the Brazilian Cycling Federation and a License-Holder within the meaning of the UCI ADR.

#### B. The ABP, generally

5. As set forth in the UCI’s petition, the following is a brief overview of the Athlete Biological Passport (“ABP”):

*“11. The UCI introduced the ABP in January 1998. Each ABP is based on an individual, electronic record for the concerned rider, in which the results of tests collected in the context of this programme are collated. The haematological passport of each rider is composed of the results of individual blood tests over time in order to create a longitudinal profile for the athlete.*

*12. The ABP is designed to be an ‘indirect’ method of doping detection. This means that any significant variation from a rider’s ‘normal’ blood values can be an indication of possible manipulation.*

*13. It is the responsibility of the Athlete Passport Management Unit (APMU) to refer a passport to a panel of experts when it is indicative of such manipulation. The relevant experts will then assess whether the passport indicates that the athlete has committed an ADRV [anti-doping rule violation]. Following such assessment, the athlete will be asked to provide an explanation. It is important to highlight that an ADRV against the athlete can only be asserted if the experts unanimously agree on such a finding, following the review of the athlete’s explanation”.*

**C. The alleged anti-doping rule violation**

6. The UCI alleges that the Rider committed a violation of art. 2(2) UCI ADR based on conclusions drawn from the data included in her ABP.
7. The following table, Table 1 summarizes the key parameters reported in the Rider's ABP:

*Table 1 Summary of the Rider's key blood values reported as part of the Rider's ABP*

No.	Date of Sample	Sample	Hgb (g/dl)	Hct %	RET %	OFF score	White blood cells (thsnd/ml)	Platelets (thsnd/ml)
1	10 July 2015	157979	18.1	53.6	0.55	136.5	4.9	148
2	5 Nov. 2015	108294	18.5	53.3	1.56	110.1	5.99	192
3	26 Jan. 2016	153494	12.7	36.7	1.11	63.8	6.58	193
4	31 Jan. 2016	153493	11.9	34.6	0.88	62.7	6.08	186
5	21 Apr. 2016	108187	12.2	35.6	1.31	53.3	5.36	174
6	12 May 2016	108349	12.9	37.9	1.37	58.8	10.8	199
7	19 May 2016	179114	11.5	34.4	1.36	45.03	7.45	210

8. Following an initial review, the Athlete's Passport Management Unit submitted the Rider's ABP to an Expert Panel, consisting of three experienced anti-doping specialists (Giuseppe d'Onofrio, Michel Audran, and Yorck Olaf Schumacher) for independent evaluation.
9. The Expert Panel conducted a review of the Rider's ABP and competition schedule, and in a joint expert opinion dated 23 July 2016 ("Expert Opinion #1") set forth their unanimous opinion on the Rider's haematological profile, as follows:

*"Based on these facts and the information available to date, it is our unanimous opinion that in the absence of an appropriate physiological explanation, the likelihood of the abnormality described above being due to blood manipulation, namely the artificial increase of red cell mass using for example erythropoiesis stimulating substances or blood transfusions, is very high. On the contrary, the likelihood of environmental factors or a medical condition causing the described pattern is low.*

*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".*

10. On 7 October 2016, upon invitation, the Rider sent an explanation to the UCI of the circumstances surrounding the collected Samples. In short, the Rider submitted that the prolonged use of an altitude tent, excessive training, and the use of Echinacea purpurea contributed to an increase in her red blood cells seen in Samples 1 and 2. Due to health problems attributed to the altitude tent, she discontinued the use of the tent following the collection of Sample 2, and prior to the collection of Sample 3. She explained the lower values in her red blood cells seen in Samples 3 through 7 by illness, and in particular infection with the Dengue virus, medications, and breaks in training during this period.
11. On 17 October 2016, again upon invitation of the UCI, the Rider supplemented her explanation with a medical report in Portuguese and on 20 October 2016, provided English translations of this report, and other aspects of her explanation that were submitted in Portuguese.

12. On 10 November 2016, in a second expert opinion (“Expert Opinion #2”), the Expert Panel submitted comments on the Rider’s explanations. The Expert Panel took the view that the Rider’s explanations did not explain the abnormalities observed in her ABP and confirmed its

*“previous unanimous opinion that, based on the information available at this stage, it is highly likely the Athlete used a Prohibited Substance or Prohibited Method and that it is unlikely to find features of this Passport assuming any other cause”.*

13. On 29 December 2016, the Expert Panel responded to the UCI’s Cycling Anti-Doping Foundation’s inquiry as to the period(s) of time during which the Rider likely Used Prohibited Substances or Methods. According to the Expert Panel:

*“As mentioned in our joint expert opinion dated 23.07.2016, the pattern visible in the first sample displays features of supraphysiologically increased red cell mass with subsequent erythropoietic suppression. Such pattern is usually observed about 7-10 days after the discontinuation of an erythropoietic stimulant or the application of a blood transfusion. If an erythropoietic stimulant was used, it was therefore likely administered over several weeks until the end of June 2015 for sample 1.*

*For the second sample, the high reticulocytes indicate erythropoietic stimulation which is either ongoing at the time of the sample or has been discontinued shortly before the test was taken (less than 7 days). Given that the high haemoglobin concentration is also present in this sample, it is highly likely that the athlete had used a method to increase red cell mass such as erythropoietic stimulants during several weeks prior to sample 2”.*

14. On 25 January 2017, the UCI sent the Rider a letter that *inter alia*
- Informed the Rider of the Expert Panel’s conclusions and provided her with the relevant documentation;
  - Asserted that the Rider with a violation of art. 2(2) UCI ADR, the Use of a Prohibited Method and/or Prohibited Substance;
  - Provisionally suspended the Rider effective as of the date of the notification;
  - Offered the Rider a 10-day period to admit the asserted anti-doping rule violation and accept the following consequences: (i) A four-year period of Ineligibility, starting on the date the Rider accepts the sanction; (ii) Disqualification of all results between 1 June 2015 and 5 November 2015; and (iii) Reimbursement of the costs for results management (CHF 2’500) and documentation package (CHF 635); and
  - Offered the Rider the opportunity to provide substantial assistance, which may have the effect of suspending a portion of the period of Ineligibility.
15. On 25 January 2017, the Rider confirmed receipt of the letter and requested 10 days to contact a lawyer.
16. On 8 February 2017, the UCI granted the Rider an extension of the 10-day period to provide an answer until 12 February 2017.
17. On 9 February 2017, the Rider rejected the UCI’s proposal for the acceptance of consequences and requested to have her case adjudicated by a Brazilian Tribunal rather than this Tribunal.

18. On 15 February 2017, the Rider filed a request to the UCI Disciplinary Commission requesting the lifting of her Provisional Suspension. This request reiterated a number of points made in the 9 February 2017 email. The issues raised in this application can be summarized as follows:
- The UCI “without evidence, insists on condemning the athlete based on a medical report of the entity’s specialist, in other words, an academic assumption without any veracity”, emphasizing that “[a]ll the tests taken by the athlete, urine as well as blood, were negative for any substance”. In her view, her due process rights were being violated under Brazilian law, as was the presumption of innocence, as set forth in the Rome Statute of the International Criminal Court, and internationally applicable. She concluded that “sentencing someone based on assumptions is against the law” and alleged that the UCI decided “unilaterally” to condemn the Rider “without analysing her defense”;
  - The Rider’s human rights are being violated, including *inter alia* the principle of *in dubio pro reo*, presumption of innocence, the right to an effective remedy, and right to work. In support of these arguments, she cited the Universal Declaration of Human Rights of 1948, art. 7 of the Rome Statute of the International Criminal Court (addressing crimes against humanity), and (again) art. 66, dealing with the presumption of innocence; and
  - The Provisional Suspension is causing the Rider to suffer irreparable moral and material damage.
19. Her requests to the UCI Disciplinary Commission were to immediately remove the Provisional Suspension, and annul the process due to the lack of material evidence.
20. On 17 February 2017, in order to proceed with the request, the UCI Disciplinary Commission asked the Rider to supplement her request by providing concrete elements in justification of her application. The Rider did not respond to this request.
21. On 31 March 2017, the UCI referred the Rider’s case to the Tribunal by petition (the “UCI Petition”).
22. In the UCI Petition, the UCI requested the following relief<sup>1</sup>:
- *“Declaring that Ms. Moreira Lacerda has committed an Anti-Doping Rule Violation.*
  - *Imposing on Ms. Moreira Lacerda a period of ineligibility of 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 25 January 2017 shall be deducted from the period of ineligibility imposed by the Tribunal.*
  - *Disqualifying all the results obtained by Ms. Moreira Lacerda from 1 June 2015 until 5 November 2015.*
  - *Condemning Ms. Moreira Lacerda and the Brazilian Cycling Federation to pay the costs of results management by the UCI (2’500.- CHF) and the costs incurred for the documentation package of the blood samples analyzed for the Biological Passport (635.-CHF)”.*

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<sup>1</sup> The UCI’s request for relief was later amended, see paras 33-35, and para. 88 *et seq.*

## II. PROCEDURE BEFORE THE TRIBUNAL

23. In compliance with art. 13(1) ADT Rules the UCI initiated proceedings before the Tribunal through the filing of a petition to the Secretariat on 31 March 2017. Before referring the case to the 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 25 January 2017. The Rider did not agree to the Acceptance of Consequences by email dated 9 February 2017.
24. On 6 April 2017, the Secretariat of the Tribunal appointed Ms. Emily Wisnosky to act as Single Judge in the present proceedings in application of art. 14(1) ADT Rules.
25. On 7 April 2017, the Tribunal informed the Rider that in application of art. 14 ADT Rules, the UCI initiated a disciplinary proceeding against her before the Tribunal and that the Single Judge set a deadline of 28 April 2017 to submit her answer in conformity with art. 18 ADT Rules.
26. On 12 April 2017, the Rider submitted by email a response that *inter alia* confirmed her innocence, provided further explanation of her circumstances, and advised the Tribunal that she was unable to afford the costs to continue this case.
27. On 19 April 2017, the Tribunal informed the Rider that she still may supplement or amend her submission to the Tribunal, including the provision of additional exhibits, further evidence, or any further response to the UCI's petition until the originally stated deadline of 28 April 2017 and invited her to indicate whether she wished a hearing to be held in this matter.
28. On 28 April 2017, the Rider submitted by email a request for an extension of the deadline of at least 20 days to provide further information to the Tribunal on the basis that *inter alia* she had recently engaged a biochemist who is in the process of analysing her personal data and had not yet received any results.
29. On 2 May 2017, the Tribunal granted the Rider's request for an extension, and set a new deadline of 18 May 2017 to complete her answer. The Tribunal also offered the Rider an additional opportunity to state her preference as to whether she wished a hearing to be held in this case by the same deadline of 18 May 2017.
30. On 15 May 2017, the Rider submitted by email a response informing the Tribunal that *inter alia* she was unable to gather the money necessary to pay the biomedical expert or a lawyer to support her case, and therefore would not make any further submission. In addition, the Rider reaffirmed that she was speaking the truth, but was unable to gather any further evidence to support her claims beyond what she had already submitted.
31. On 16 May 2017, the Tribunal informed the Parties that the written proceedings were closed, and invited both Parties to submit their preference as to whether a hearing would be held by 22 May 2017.
32. On 18 May 2017, the UCI responded stating its preference for a hearing not to be held. The Rider did not respond.
33. On 24 May 2017, the Tribunal informed the Parties of the Single Judge's decision that a hearing would not be held in this case, and that the Single Judge would render her Judgment on the basis of the Parties' written submissions.
34. On 14 June 2017, the UCI requested permission to amend its petition in light of new information received after its submission. In particular, the UCI alleged that the Rider did not respect her

Provisional Suspension by participating in two Events organized by national level Event organizations following this date. Considering this, the UCI submitted that the Rider should not receive credit for any period of Provisional Suspension served against the period of Ineligibility ultimately imposed.

35. On 16 June 2017, the Tribunal granted the Rider a deadline of 26 June 2017 to submit any comments on the UCI's requested amendment, and, in particular on the allegation of the breach of the Provisional Suspension and possible consequences, as well as any exhibits or other evidence in support, and any amendments requested to the Rider's requested relief or remedies.
36. On 24 June 2017, the Rider made a written submission with accompanying exhibits contesting the UCI's allegation that she violated her Provisional Suspension.

### III. JURISDICTION OF THE TRIBUNAL

37. Art. 3(2) ADT Rules provides the following: *"Any objection to the jurisdiction of the Tribunal shall be brought to the Tribunal's attention within 7 days upon notification of the initiation of the proceedings. If no objection is filed within this time limit, the Parties are deemed to have accepted the Tribunal's jurisdiction"*.
38. During the results management process, the Rider did request the case to be heard by a Brazilian tribunal, neither party objected to the jurisdiction of the Tribunal during the present proceedings.
39. For the sake of completeness, the Tribunal notes that its jurisdiction is in any case consistent with the applicable provisions of the UCI ADR.
40. Part C of the Introduction of the UCI ADR addresses its scope of application, as follows:

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

41. The Rider is affiliated to the Brazilian Cycling Federation and held a UCI license in both 2015 and 2016, and is thus a License-Holder within the meaning of the UCI ADR and bound by the UCI ADR.
42. Art. 8(2) UCI ADR provides as follows:

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

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

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

### IV. APPLICABLE RULES

44. Art. 25 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"*.

45. All relevant Samples were collected between 10 July 2015 and 19 May 2016.
46. Art. 25(1) UCI ADR provides that effective date of the 2015 edition of the UCI ADR is 1 January 2015. Since all relevant events occurred after this date, the Tribunal shall apply the 2015 edition of the UCI ADR.
47. As to the other “standards referenced therein” mentioned in art. 25 ADT Rules, the Tribunal notes that Part E of the Introduction of the UCI ADR provides as follows:

*“Under the World Anti-Doping Program, WADA may release various types of documents, including (a) International Standards and related Technical Documents, and (b) Guidelines and Models of Best Practices.*

*The UCI may, consistent with its responsibilities under the Code, choose to (a) directly incorporate some of these documents by reference into these Anti-Doping Rules, and/or (b) adopt Regulations implementing all or certain aspects of these documents for the sport of cycling.*

*Compliance with an International Standard incorporated in these Anti-Doping Rules or with UCI Regulations (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard or UCI Regulations were performed properly.*

*All documents binding upon Riders or other Persons subject to these Anti-Doping Rules are made available on the UCI Website, in their version effective and as amended from time to time”.*

48. The Tribunal also notes that art. 7(5) UCI ADR provides as follows:

*“Review of Atypical Passport Findings and Adverse Passport Findings shall take place as provided in the UCI Testing & Investigations Regulations, the International Standard for Laboratories, WADA Athlete Biological Passport Operating Guidelines and respectively related Technical Documents ...”.*

49. Accordingly, in addition to the UCI ADR, the Tribunal will take into consideration the UCI Testing & Investigation Regulations, the International Standard for Laboratories, WADA Athlete Biological Passport Operating Guidelines (“WADA ABP Guidelines”), and the related Technical Documents to the extent relevant or necessary.

## **V. THE FINDINGS OF THE TRIBUNAL**

50. The main issues for the Tribunal to decide are whether the UCI has successfully established that the Rider committed a violation of art. 2(2) UCI ADR (A.), and if so, to decide upon the Consequences of such anti-doping rule violation (B.)
51. As a preliminary matter, the Single Judge takes note that the Rider made various allegations, particularly in her request to lift the Provisional Suspension pertaining to her human and fundamental rights, and international legal norms. The Disciplinary Commission requested the Rider to provide “concrete elements in justification of [her] application”, a request to which the Rider did not respond. Nor did the Rider provide sufficient support for these claims during the present proceedings.
52. To the Single Judge these allegations can be separated into two limbs. In the first, she in essence challenged the ABP as an acceptable means of evidence to establish an anti-doping rule violation,

alleging that the UCI's pursuit of an anti-doping rule violation "*without evidence*" violated a number of internationally-recognized legal principles and provisions, including the Brazilian Constitution, the Rome Statute of the International Criminal Court, and the Universal Declaration of Human Rights of 1948. The second limb is directed at "*irreparable moral and material damage*" allegedly caused by the Rider's Provisional Suspension, demanding "*immediate annulment*" of the same.

53. The Single Judge has reviewed the Rider's arguments raised in this context, and fails to see any basis on which she might uphold any of these arguments raised under the circumstances of this case. As to the first limb, in the Single Judge's view, overlooking momentarily the question of if and to what extent any of these principles or provisions are applicable to the current proceeding and that the Rider failed to provide concrete elements in support of this claim, this argument may also be disposed of as soon as one accepts that the ABP is an acceptable means of evidence to establish an anti-doping rule violation. The Single Judge, for the reasons set forth in the following Section, finds that it is. As to the second limb, it need not be addressed in detail, since in any case the result of this decision will be to, as requested, immediately remove the Rider's Provisional Suspension, and in this matter, replace it with a period of Ineligibility.

#### **A. Anti-doping rule violation**

##### **1. Establishing an anti-doping rule violation based on the ABP**

54. The UCI submits that the Rider has committed a violation of art. 2(2) UCI ADR, which provides as follows:

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

*2.2.1 It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body and that no Prohibited Method is Used. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping rule violation for Use of a Prohibited Substance or a Prohibited Method.*

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

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

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

55. As to the burden and standard of proof, 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 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. ...”.*

56. As to the methods of establishing facts and presumptions, art. 3(2) UCI ADR provides

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

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

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

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

*3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures*

*in accordance with the International Standard for Laboratories. The Rider or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding.*

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

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

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

57. Thus, the burden of proof to establish that the Rider committed a violation of art. 2(2) UCI ADR rests with the UCI. The standard of proof, according to art. 3(2) UCI ADR is “*comfortable satisfaction, bearing in mind the seriousness of the allegation... . This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt*”.
58. The Rider suggested that the ABP was an inadequate means to establish an anti-doping rule violation. The Rider maintained that the UCI’s allegations were premised only on an “*academic assumption*”, emphasizing that she had been subject to many anti-doping tests that all yielded negative results. According to the UCI, the ABP is a reliable means of evidence, a notion it draws directly from art. 3(2) UCI ADR that provides “[*f]acts related to anti-doping rule violations may be established by any reliable means*”, and more precisely, the Comment to art. 3(2) UCI ADR that includes among the examples of reliable means “*conclusions drawn from the profile of a series of the Rider’s blood or urine Samples, such as data from the Athlete Biological Passport*”. Thus, it deemed “*the Rider’s allegation that the Expert did not prove or find any illegal substances or banned method*” to be “*entirely irrelevant*”.
59. In addition, the UCI produced support from CAS case law accepting the ABP – in particular to the extent that it does not ‘directly detect’ doping – as an acceptable means of evidence to establish an anti-doping rule violation:

*“While direct detection methods aim to detect the doping agent itself, the focus of the ABP is not on the detection of prohibited substances but rather on the effect of those substances on the body. Designed, as they are, to create physiological enhancements, biological markers of disease are used in*

*medicine to detect pathological conditions. Biomarkers of doping are used to detect doping. The comment to article 3.2 of the WADA Code which refers to 'conclusions drawn from the profile of a series of the Athlete's blood or urine samples' gives an authoritative imprimatur to the principle of using such evidence".<sup>2</sup>*

60. Taking into account the above, the Single Judge accepts that the ABP may serve as a reliable means of evidence to establish an anti-doping rule violation. This remains true even though it is also accepted that the ABP operates to indirectly detect the Use of a Prohibited Substance or Prohibited Method.
61. As an additional preliminary matter, the UCI further submitted that it is not necessary for the UCI to establish a reason for the alleged anti-doping rule violation. A violation of art. 2(2) UCI ADR is evaluated according to the principle of 'Strict Liability'. The principle of Strict Liability allows for a violation of art. 2(2) UCI ADR to be established without regard to a Rider's intent, Fault, negligence or knowing Use (art. 2(2)(1) UCI ADR). To this extent, the 'reason' or motivation behind the potential blood manipulation is irrelevant. This does not mean, however, that the existence of a credible doping scenario is also irrelevant.
62. As set forth by the UCI, the "*most fundamental requirement*" of establishing an anti-doping rule violation on the basis of a longitudinal haematological profile is that
- "all experts – independently 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".<sup>3</sup>*
63. Sections L.5 and L.6 of the WADA ABP Guidelines also provide relevant insight in this regard, instructing the Expert Panel that reporting an Adverse Passport Finding requires the Expert Panel to take the position "*that it is likely that a Prohibited Substance or Prohibited Method had been used, and highly unlikely that it is the result of any other cause*".
64. These statements are in line with recent CAS case law, that has emphasized "*a pitfall to be avoided [in the context of the ABP] is the fallacy that if the probability of observing the values assuming a normal or pathological condition is low, then the probability of doping is automatically high*".<sup>4</sup> 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*".<sup>5</sup>
65. In short, and as set forth above, in order to establish a violation of art. 2(2) UCI ADR based on an ABP, the UCI must comfortably satisfy the Tribunal that there were abnormalities in the ABP (2.a.) and that the cause of these abnormalities was the Use of a Prohibited Substance or Prohibited Method (2.b.).

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<sup>2</sup> CAS 2010/A/2235, *UCI v. Valjavec*, Award of 21 April 2011, para. 7.

<sup>3</sup> CAS 2010/A/2174, *De Bonis v. UCI*, Award of 15 June 2011, para. 4.4.2.b.

<sup>4</sup> CAS 2016/O/4464, *IAAF v. Sharmina*, Award of 29 November 2016, para. 150.

<sup>5</sup> *Id. quoting* Marjolaine Viret (2016) *Evidence in Anti-Doping at the Intersection of Science and Law*, T.M.C. Asser Press, The Hague, p. 774.

66. It is against this background that the Tribunal will analyse the evidence presented by both Parties.

**2. Were there abnormalities in the Rider's ABP that were caused by the Use of a Prohibited Substance or Prohibited Method?**

67. As set forth below, upon consideration of the submissions of the Parties, and all evidence and arguments before it, the Single Judge is comfortably satisfied that abnormalities do exist in the Rider's haematological profile that were caused by the Rider's Use of a Prohibited Substance or Prohibited Method, thus the Rider committed a violation of art. 2(2) UCI ADR.

**a. The Parties' submissions**

68. The following section summarizes the key positions taken by the Parties throughout the proceeding.

69. The Expert Panel, in Expert Opinion #1 recognized abnormalities in the Rider's ABP, as set forth in the following passages:

*"In the automated analysis by the adaptive model, which determines whether fluctuations in the biomarkers of the Athlete Biological Passport are within the expected individual reference ranges for an athlete or not, the profile was flagged with abnormalities at 99% specificity in haemoglobin for all samples (upper limit for samples 1 and 2, lower limit for samples 3-7). For OFF score, only one sample (sample 2) is within the calculated limits (sample 1 ranges above, all other samples below). For reticulocytes, only sample 2 is above the individual reference ranges.*

*It has to be noted that the high number of tests outside the individual reference ranges for haemoglobin and OFF score is probably due to the important abnormality of the two first samples, which skew the calculations and cause the subsequent samples (which are likely normal) to be outside the individual reference ranges.*

*The sequences for haemoglobin concentration and OFF score are abnormal at >99.9%.*

...

*In our view, the data of the athlete bears as main abnormal feature a very high haemoglobin concentration (18.1 and 18.5g/dl) in samples 1 and 2. In sample 1, the high haemoglobin is paired with low reticulocytes (0.55%), resulting in a high OFF score (136). Both suspicious samples have been obtained during the competitive season; sample 1 was a pre-competition test before the 2015 Panamerican Games. In contrast, samples 3-7, taken over a period of 5 months are distinctively different from the first two tests and represent very likely the true baseline of the athlete, as they are within the expected range for a female endurance athlete".*

*It is typical to observe a picture such as seen in sample 1 of the profile assuming blood manipulation: The pattern of the profile is classically observed when red blood cell mass has been artificially increased and erythropoiesis is subsequently downregulated to re-balance the increased number of red cells. It is pathognomonic for the use and discontinuation of an erythropoietic stimulant or the recent application of a blood transfusion (1,2).*

Sample 2 also displays a highly abnormal haemoglobin concentration suggesting increased red cell mass. Reticulocytes are high in comparison to the rest of the profile, probably due to a different timing of the sample related to the manipulation.

Both features are unlikely assuming any pathological condition, as in the available data, there is no evidence that any disease of the erythropoietic system is present, all red cell indices are within the expected normal range and the cell distributions in the available scattergrams do not show any signs pointing towards the presence of pathology. Also, the various supplements declared by the athlete on the Doping control form of sample 1 cannot cause the changes observed in the profile.

Based on these facts and the information available to date, it is our unanimous opinion that in the absence of an appropriate physiological explanation, the likelihood of the abnormality described above being due to blood manipulation, namely the artificial increase of red cell mass using for example erythropoiesis stimulating substances or blood transfusions, is very high. On the contrary, the likelihood of environmental factors or a medical condition causing the described pattern is low.

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”.

70. On 7 October 2016, upon invitation by the UCI, the Rider submitted the following explanation:

*“The pointed variations occurred because in the year of 2015 I started to make use of the altitude tent [...], when I was competing for the 2016 Olympic spot.*

*In addition, that same year, 2015, I was training excessively and using the altitude tent, which reflected the increase in red blood cells, according to experts.*

*In the Pan American Games, I did a surprise test on Friday, July 10, 2015, and competed on Sunday the 12, the examination showed 53,6% of hematocrit. At that point I was using the altitude tent and I was taking Echinacea purpurea, which is a plant that enhances immunity [...].*

*Moreover, continued with strong training throughout the season and with the use of the tent and Echinacea purpurea, on November 5, 2015, I had the second surprise examination, the examination showed once again 53,3%.*

*However, over time, using the altitude tent I began to feel severe headache and a lot of acceleration in the heart and sometimes shortness of breath.*

*So at the end of November 2015, I stopped with my training and still continued to have headache and accelerations in the heart. With that, I stopped for 20 days training and when I returned I felt very weak, as if with anemia.*

*After this fact, I decided not to use the altitude tent anymore because of the pain and the effects caused me, At the first week of January I was very sick with a fever and sore throat. I had to go to the doctor and he prescribed me antibiotics, [...]. I continued with the training and medication, as in late January I compete on the Costa Blanca, a four day competition in Spain. In this competition, I had antidoping test, on Tuesday, 26/01/2016, the eve of*

the race, which gave 36.7% and on Sunday after the competition, 31/01/2016, gave 34.6%, acceptable variation due to weakness of the body, experts say. I fill up the form of the UCI antidoping [...], and I informed that I had used the altitude tent for a while, but had to stop due to accelerations in heart and anemia.

On March 24, 2016, I was diagnosed with symptoms of **dengue virus** and went to the hospital to take serum and take the exams, as attested attached [...]. I was 15 days without training and could not compete the Pan-American Championship. It has been two months without being able to train properly due to the remnants of the virus. Several Brazilian websites published on my embezzlement in the national team in the Pan-American because of dengue, second you see below: [links omitted]

On April 21, 2016, I made another surprise exam, but had barely returned to training after dengue, and the screen was 35.6%.

On May 12, 2016, Thursday, I did another examination, which gave 37.9%, the eve of the second stage of CIMTB. Competition on Friday with Sprint time making eliminator, and on Saturday the final sprint. With this accumulation of competitions on Sunday, in the race cross country, I almost fainted in the middle of the first lap and I had to leave the competition due to poor post-dengue recovery, my body still felt a lot of the effects of the virus. What lasted almost the whole year.

I was competing in the World Cup in Germany, where again did another examination May 19, 2016, which gave 34.4% and again could not compete and had to leave the competition because of the remnant of the dengue virus in my body.

So, I was in an Olympic cycle trying to get a spot. I was looking forward to getting a spot for the Olympics, and I didn't get the spot. It was very disappointing.

The exposure to the altitude tent for a long time, over-training, and use of *Echinacea purpurea* contributed to the increase in red blood cells, at the same time exposure to the dengue virus, breaks in training, and the drugs contributed to the fall in red blood cells. This underlies the variations of the tests, being a case of force majeure". (references to attachments omitted)

71. Upon invitation from the UCI, the Rider supplemented her explanation with the following medical report dated 17 October 2016:

*"To whom it may concern, I account for appropriate purposes that the patient Isabella Moreira Lacerda used the tend 'Altitude training systems-hypoxico' along with the herb 'Echinacea Purpurea 450 mg' at a dose of 6grams per day with the intention of elevation on the hematocrit in the period of January through November 2015 managing to reach her goal. She presented some adverse effects during the use which was suspended from December 2015 coincided with the beginning of her vacation.*

*From this date the patient didn't made use of the tent and herb anymore returning to training in January 2016 in an irregular manner due to have presented comorbidities such as infection by the dengue virus reflecting low hematocrit due to the need for vigorous intravenous hydration and medications to fight the infections".*

72. As per her use of medication, the Rider submitted a Medical Declaration, dated 5 January 2016 that read as follows:

*“To whom it may concern, I account for appropriate purposes that the patient Isabella Moreira Lacerda has been in medical care due to sinus infections. The patient came presenting fever, asthenia and appetite loss. Meditated with clavulin for 14 days patient is unable to perform strenuous physical activity, should stay home until the end of treatment”.*

73. She also submitted photographs of herself using hypoxic devices.

74. The following declarations in this regard were recorded on her submitted Doping Control Forms:

- On 16 December 2015 (a Sample that was not included in the Rider’s ABP): *“The athlete declare she was sick with a sore throat, fever, and used a hypoxic tent”;*
- On 26 January 2016 (Sample 3): *“I have the tent altitude and I made use of it, but I stopped using it because it was having accelerations heart, headache and feeling weak and might be with anemia. I think I stopped using it more than two weeks ago”.*
- On 31 January 2016 (Sample 4): *“The athlete used the tent altitude during 2015 and stopped using two weeks ago from heart acceleration reasons, headache and feeling weak with anemia”.*

75. With respect to Dengue fever:

- The Rider declared that she had had Dengue fever on the Doping Control Form associated with Sample 5, dated 21 April 2016;
- The Rider submitted various links to Brazilian websites that discussed her affliction with Dengue fever; and
- The Rider also submitted a medical declaration, as follows:

*“To whom it may concern, I account for appropriate purposes that the patient Isabella Moreira Lacerda has been in medical care due acute dengue. The patient came presenting fever, asthenia, appetite loss, arthralgias and myalgia. Meditated with symptomatic and vigorous hydration. Patient is incapacitated to perform strenuous physical activity for at least 10 days”.*

76. The Expert Panel evaluated the Rider’s arguments in Expert Opinion #2. The following passages are relevant to the Rider’s arguments with respect to the use of a hypoxic device:

*“The athlete declares having used a hypoxic device when the two first samples of the profile were taken (from January to end of November 2015). She then stopped using the tent as she noted side effects, which made a continuous use impossible. No details on the use are provided (duration, degree of hypoxia/ height etc.).*

*First of all, it must be stated that even from a population perspective, the likelihood of finding an OFF score of 136, such as observed in the present profile, in an undoped female athlete is lower than 1:100000, even when considering all confounding factors such as altitude in favour of the athlete.*

*There is an ample body of literature on the effects of altitude/ hypoxia on the erythropoietic system of an athlete. The hypoxia of altitude can increase total red cell mass, depending on duration and degree of hypoxic exposure.*

*Relating these facts to haemoglobin concentration (the measure used in the passport), which describes the concentration of the total circulating haemoglobin diluted by the plasma volume, it can safely be assumed that hypoxic exposure at altitudes commonly used for training by athletes will trigger changes ranging around 1g/dl with some inter-individual variability, depending on the degree/duration of exposure and various other factors such as training, iron availability etc. In view of the data of the athlete, it is obvious that even assuming the most generous natural altitude exposure for extended periods of time, an increase of haemoglobin concentration from ~12 to 18g/dl (such as seen in the athlete if taking the average of samples 3-7 as her normal baseline) is extremely unlikely to be caused by hypoxia alone*

*In addition to the magnitude of changes, it is also important to consider the timing of blood tests in relation to hypoxic exposure: In fact, the haematological system displays distinct features depending on whether the athlete has just arrived at altitude, has been at altitude for some time or has recently descended from altitude or stopped hypoxic exposure. The pattern visible in sample 1 of the athlete suggests that there has been an increase in haemoglobin mass (indicated by the increased haemoglobin concentration), but the body is trying to downregulate this unphysiologically high haemoglobin mass by cutting its own red cell production (indicated by the very low reticulocytes). Such constellation only presents if the stimulus to the erythropoietic system has suddenly changed: Either the athlete descended from altitude to sea level (thereby needing less red cells due to the increased oxygen content at sea level) and/ or stopped the use of artificial, erythropoiesis stimulating substances. Given that (according her explanations) she used the hypoxic device throughout the year 2015, the first option becomes highly unlikely, even more so when all studies on the topic report a very mild increase in OFF score of about 10-20 units for such situations (for example from 80 to 100). The athlete's OFF score in sample 1 is more than 70 units higher when compared to other occasions (see figure 1 below).*

*The pattern mismatches the hypothesis of the athlete even more when scrutinising the second test (sample 2), where haemoglobin is still high, but reticulocytes are higher than in sample 1, highlighting the difference in both samples despite the continuous use of an hypoxic device.*

*Considering the explanations of the athlete, it is also important to point out that hypoxic exposure needs to reach a minimum threshold to trigger measurable haematological changes: All studies using intermittent hypoxic training (minutes to a few hours, such as obviously performed by the athlete) have failed to demonstrate any measurable effect of the haematological markers used in the passport, independent of the degree of hypoxia (see for example (2,3)). There is consensus that repetitive exposure of more than 8 hours per day to altitudes greater than 1800m for several weeks is necessary to induce measureable changes in erythropoiesis.*

*In addition to these theoretical thoughts, several studies have specifically described the effect of hypoxia and altitude training in relation with the Athlete biological passport (ABP) or its markers (4-6): None of the studies, (even when considering the most extreme individual results) showed changes*

*of the magnitude such as observed in the athlete. The figure below (from (5)) demonstrates the impact of altitude (2000-2500m) on the OFF score, one of the key measures of the ABP.*

*Even a study conducted on athletes with permanent exposure to extreme altitude (3000-4000m) (6) did not report changes of the magnitude such as seen in the present profile.*

*Based on these facts, it is highly unlikely that hypoxic exposure alone has caused the changes visible in the profile. This argument of the athlete can therefore be dismissed.*

77. The following passages from Expert Opinion #2 are relevant to the Rider's arguments with respect to the use of Echinacea purpurea:

*"Echinacea purpurea is a plant which has historically been used as a herbal remedy for various medical purposes. However, there is only little evidence on its efficiency when investigating potential effects in randomised controlled settings.*

*The athlete claims that the substance has contributed to the visible increase in her haemoglobin levels in samples 1 and 2. The limited scientific evidence suggests however that there is no measurable effect of the intake of Echinacea purpurea on the haematological system. Whitehead et al. (7) investigated 24 men over 4 weeks of supplementation with high doses of Echinacea purpurea and could not demonstrate any significant changes in their blood picture and the markers relevant to the ABP.*

*Therefore, it is highly unlikely that Echinacea purpurea alone or in combination with other factors has caused the haematological changes visible in the profile of the athlete".*

78. The following passages from Expert Opinion #2 report are relevant to the Rider's arguments with respect to Dengue fever:

*The athlete claims to have suffered from Dengue fever (diagnosed on 24.3.2016), which has continuously affected her health and thus her blood profile over the time of samples 3 to 7 (taken between 26.1.2016 and 19.5.2016). These changes thereby made samples 1 and 2 look very abnormal.*

*Dengue fever is a viral disease transmitted by Mosquitos. It is endemic in Brazil and other warm countries and causes flu-like symptoms. The incubation period is usually 1 week and the disease is self-limiting after about 14 days. The disease does not cause any or only mild symptoms in the majority of infected subjects (80%, "uncomplicated Dengue") but, in rare cases, can have a more critical course with bleeding and shock like symptoms (5%, "severe Dengue").*

*From a laboratory perspective, acute Dengue will exhibit a low white blood cell count, reduced platelets and hemoconcentration (high haemoglobin due to fluid loss) (see for example (8)). Scrutinizing the white blood cell- and platelet data from the athlete in view of these changes, it appears that in the samples in question (samples 3 to 7) none of the Dengue features described above is visible (Table 1). The results are very similar to those observed in the "pre-Dengue" samples 1 and 2: [table omitted, but see Table 1, above]*

*As mentioned previously, the athlete further suggests that the values of haemoglobin seen in samples 3 to 7 are unnaturally low due to the Dengue infection.*

*Dengue usually causes high haemoglobin due to haemoconcentration but in the mentioned samples of the athlete, rather typical or even low haemoglobin levels for a female athlete are measured (normal range between 12 and 15g/dl, depending on the reference collective (9,10)). It is also worth noting that reticulocytes are very much normal in all of the samples in question, ranging from 0.88-1.37%. In the absence of any factor affecting bone marrow activity, these normal reticulocyte level indicates that the haematological system was in balance at the time of the sampling, as neither high reticulocytes (to compensate for any blood loss through bleeding or haemolysis) or low reticulocytes (to compensate for a supraphysiological red cell mass) were visible. Thus, these samples very likely represent the true baseline of the athlete.*

*It is therefore highly unlikely that Dengue fever alone or in combination with other factors has caused the haematological changes visible in the profile of the athlete”.*

79. Upon addressing the Rider’s explanations, the Expert Panel concluded as follows:

*“In summary, we conclude that the information provided by the athlete do not explain the abnormalities observed in her profile.*

*We therefore confirm our previous unanimous opinion that, based on the information available at this stage, it is highly likely the Athlete used a Prohibited Substance or Prohibited Method and that it is unlikely to find the features of this Passport assuming any other cause”.*

80. In her 15 February 2017 request to lift her Provisional Suspension, the Rider also brought up a problem with depression as part of her defence, but did not provide any support or specific argumentation as to how this might have affected her haematological profile.

81. In her 12 April 2017 submission in the present proceeding, the Rider confirmed by email to the Tribunal, that in particular: *“I have never taken anything illegal and never did any illegal method to take advantage of cycling. I am against any kind of do[.]ping and stuck a lot for this”*. However, she stated that she cannot get any *“concrete proof beyond ALL [her] negative exams, which were all made surprise”*. She stated as a reason for her inability to provide a *“scientific medical report”* as follows: *“I do not have it and have never had a personal doctor”*, emphasizing that the reality in Brazil is very different from that of Switzerland and Europe. She further stated that she had no money to pay a lawyer, nor to continue working on this case, i.e. to defend herself against the UCI’s charges.

82. On 15 May 2017, the Rider reconfirmed in a subsequent submission by email that she remained unable to find the money to engage a biomedical expert and lawyer to assist her in the case, and again confirmed that she was speaking the truth, that her explanations were coherent, but that she was unfortunately unable to submit any evidence beyond what she had already submitted to the UCI.

**b. Were the abnormalities established?**

83. The ABP in the Rider's case is based on the Expert Panel's evaluation of 7 valid samples<sup>6</sup>, the documentation for which was included as evidence in the UCI's submissions. As reported by the Expert Panel, the main important abnormality in the Rider's passport is "*a very high haemoglobin concentration (18.1 and 18.5 g/dl) in samples 1 and 2*". In addition, the Expert Panel noted that Sample 1 was paired with low reticulocytes (0.55%), resulting in a high OFF score (136), whereas Sample 2 was paired with high reticulocytes. These two abnormal Samples were followed by 5 Samples (Samples 3 through 7) characterized as "*distinctively different*" from the first two Samples (Samples 1 and 2).
84. The Tribunal takes note that the Expert Panel considered both that the values themselves and the sequence of values were abnormal. According to the Expert Panel, all Samples displayed abnormalities at 99% specificity in haemoglobin (above the upper limit for Samples 1 and 2, and below the lower limit for Samples 3 through 7), and for the OFF score, only one Sample (Sample 2) fell within the calculated limits (Sample 1 was above, and Samples 3 through 7 were below). The Expert Panel noted that the likelihood of finding an OFF score such as that found in Sample 1 in an undoped female athlete is less than 1:100000. The Expert Panel qualified this observation by noting that the "*important abnormality*" of the first two Samples probably skewed the calculations for Samples 3 through 7, causing values the Expert Panel considered as most likely being normal to fall below the individual reference ranges. In the Expert Panel's view, the sequence of values for both haemoglobin concentration and OFF score are abnormal at > 99.9%.
85. The Rider did not challenge the Expert Panel's conclusions as to the presence of the abnormalities in her profile. Nor did she make any supported allegations as to the existence of procedural irregularities that may have impacted the Adverse Passport Finding.
86. In light of the above, and after examining the documentation on record with respect to the various Samples, the Single Judge finds the Expert Panel Opinions to be well-founded, logical and compelling, thus is comfortably satisfied that important abnormalities did exist in the Rider's haematological profile.

**c. Were the abnormalities in the Rider's ABP caused by the Use of a Prohibited Substance or Prohibited Method?**

87. As mentioned, it is not enough to establish that abnormalities exist in the Rider's haematological profile; the Single Judge must also be comfortably satisfied that the cause of the abnormalities was the Use of a Prohibited Substance or Prohibited Method, and not any other cause. The Single Judge finds this to be the case, for the reasons set forth below.
88. In short, it was the Expert Panel's view that the Rider's ABP showed important abnormalities in Samples 1 and 2 that were caused by the Use of a Prohibited Substance or Prohibited Method, whereas the relatively lower values associated with Samples 3 through 7 "*represent very likely the true baseline of the athlete, as they are within the expected range for a female endurance athlete*".
89. The Expert Panel concluded that the blood values in the Rider's Sample 1 and 2 indicated the Use of a Prohibited Substance or Method. In Sample 1, a very high haemoglobin concentration (18.1 g/dl) was paired with low reticulocytes (0.55%), a constellation that according to the Expert

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<sup>6</sup> The Single Judge notes that the Rider included a Doping Control Form relating to a Sample Collection that took place on 16 December 2015 in her submissions. Neither party provided any explanation as to why this Sample was not included in the Rider's haematological profile.

Panel is “*pathognomonic for the use and discontinuation of an erythropoietic stimulant or the recent application of a blood transfusion*”. In Sample 2, the Expert Panel suggested that the “*highly abnormal haemoglobin concentration*” and comparatively high reticulocytes, was “*probably due to a different timing of the sample related to the manipulation*”, thus providing further support that a Prohibited Substance or Method was Used. In the Expert Panel’s view (i) these features are unlikely assuming a pathology, especially given that no evidence of a disease of the erythropoietic system was present since the pertinent values fell within the normal range; and (ii) none of the declared supplements were capable of causing the changes observed in the profile.

90. The Rider submitted that the values (in particular the increase in red blood cells) in Samples 1 and 2 were abnormally high due to her use of a hypoxic device (in particular, an altitude tent) throughout much of 2015, over-training, and the use of a supplement named ‘Echinacea purpurea’. She did not argue that any pathology or any other supplement might have directly contributed to the abnormalities observed in Samples 1 and 2. The UCI did not contest the veracity of any of the Rider’s explanations, submitting only that they fail to explain the abnormalities in the Rider’s ABP.
91. The Expert Panel found the Rider’s explanations for the abnormalities in her ABP did not account for the constellation of values observed in Samples 1 and 2. The Single Judge finds this to be correct.
92. The Rider’s alleged use of a hypoxic device does not explain the abnormalities observed in her haematological profile, supported by two key reasons set forth by the Expert Panel: (i) the large magnitude of variation in the Rider’s haemoglobin levels and OFF score, and (ii) incoherence between the pattern of the Rider’s blood values and the alleged timing of the use of the hypoxic device.
93. As to the magnitude, various studies found that the use of hypoxic exposure for training purposes by athletes could increase haemoglobin concentrations in the range of “*1 g/dl with some inter-individual variability*” (depending on the degree/duration of exposure and other factors such as training, iron availability, etc.), whereas the variability between the Rider’s values were much more pronounced, i.e. approaching 6 g/dl (e.g. Sample 2: 18.5 g/dl and Sample 3: 12.7 g/dl). According to the Expert Panel, none of the studies, “*even when considering the most extreme individual results*” showed changes of the magnitude displayed by the Rider. This large variation, rendered the possibility that the variation was caused by a hypoxic device alone not just highly unlikely, but “*extremely unlikely*” to the Expert Panel. As to the OFF score, the relevant studies reported only a “*mild increase*” in an athlete’s OFF score due to the use hypoxic training (on the order of 10-20 units), whereas the Rider’s variation in her OFF score “*is more than 70 units higher when compared to other occasions*”. In other words, the Expert Panel viewed the magnitude change of both the haemoglobin concentration and the OFF score observed in the Rider’s haematological profile as too large to be explained by the use of a hypoxic device alone.
94. Even if one were to overlook the unlikeliness of a hypoxic device producing results as extreme as those observed in the Rider’s Sample, the Rider’s explanations still fail – nor even attempt – to explain the observed variations in her reticulocytes. It was both the haemoglobin concentration and the pairing of the haemoglobin concentration in Sample 1, with low reticulocytes that led the Expert Panel to the conclusion that the values were pathognomonic for the Use of a Prohibited Substance or Method, a conclusion supported by a subsequent rise in reticulocytes in Sample 2.
95. The Expert Panel stated that the pattern visible in Sample 1, in particular the high haemoglobin concentration paired with the low reticulocytes only occur

*“if the stimulus to the erythropoietic system has suddenly changed: Either the athlete descended from altitude to sea level (thereby needing less red cells due to the increased oxygen content at sea level) and/ or stopped the use of artificial, erythropoiesis stimulating substances”.*

96. The Rider’s submissions are difficult to square with this possibility, since she claimed use of the hypoxic device during the entire relevant time period. More so, according to the Expert Panel

*“[t]he pattern mismatches the hypothesis of the athlete even more when scrutinising the second test (sample 2), where haemoglobin is still high, but reticulocytes are higher than in sample 1, highlighting the difference in both samples despite the continuous use of an hypoxic device”.*

97. The Rider also claimed that the use of Echinacea purpurea contributed to the increase in red blood cells, however, the Single Judge views this possibility as too remote to be afforded any substantial weight in her evaluation. According to the Expert Panel, little scientific evidence exists describing the effect of Echinacea purpurea on the haematological system, but the limited literature that does exist suggests *“no measurable effect of the intake of Echinacea purpurea on the haematological system”*. The Expert Panel viewed the prospect as *“highly unlikely”* that the Echinacea purpurea *“alone or in combination with other factors has caused the haematological changes visible in the profile of the athlete”*.

98. As to the Rider’s arguments concerning excessive training, the Single Judge does not find these persuasive. The Expert Panel took into account the fact that the Rider was a female endurance athlete, as well as her competition schedule in its evaluation of her ABP. The Rider submitted no evidence that her training exceeded the level that would be expected from a typical athlete in her situation.

99. The Expert Panel considered Samples 3 through 7 as distinctively different from Samples 1 and 2, characterising them as very likely representing the true baseline of the Rider. While the Rider’s haemoglobin concentration is 18.1 g/dl and 18.5 g/dl for Samples 1 and 2, respectively, it varied from 11.5 g/dl to 12.9 g/dl in Samples 3 through 7. Overall, the Expert Panel considered the values observed in Samples 3 through 7 fell within the expected range for a female endurance athlete. Moreover, the ‘normal’ (i.e. not high or low) reticulocyte values observed in these Samples appeared to indicate to the Expert Panel that the *“haematological system was in balance at the time of sampling”*.

100. The Rider disagreed, arguing that the *“fall in red blood cells”* in Samples 3 through 7 was caused by physiological reasons, and more specifically illness, medications, and breaks in training. The Expert Panel, already in Expert Opinion #1 considered the possibility unlikely that the Rider’s haematological profile reflected a pathological condition, noting the lack of evidence that *“any disease of the erythropoietic system”* was present, noting in particular that *“all red cell indices are within the expected normal range and the cell distributions in the available scattergrams do not show any signs pointing towards the presence of pathology”*. The Rider’s explanations did not change the Expert Panel’s opinion.

101. The Rider argued that infection with the Dengue virus and its effects contributed to the decreased *“red blood cells”* observed in her Samples. While it is not contested that the Rider did suffer from Dengue fever (diagnosed on 24 March 2016) the Single Judge rejects the notion that the Dengue fever had the effects claimed by the Rider. The Expert Panel maintained that the typical incubation period of the Dengue virus is reportedly one week, and the disease is *“self-limiting”* after 14 days. Moreover, her blood values reported in Samples 3 through 7 do not reflect the changes expected for Dengue virus. According to the Expert Panel, *“acute Dengue will exhibit a low white blood cell count, reduced platelets and haemoconcentration (high*

*haemoglobin due to fluid loss*). However, the Rider's white blood cell count and platelet levels remained similar to her earlier values, and her haemoglobin concentrations decreased as compared to Samples 1 and 2; and then remained within a rather typical or even low range for female athletes.

102. As per illness, the Rider also described being treated for a sinus infection. In particular, she submitted that the variation in the HCT % in these Samples 3 and 4 (36.7 % and 34.6 %, respectively) was due to "*weakness of the body*", and was, according to experts, an "*acceptable variation*". However, she did not (even upon the invitation of the UCI) provide any further evidence or explanation of this. The Rider did not report her sinus infection, nor her use of antibiotics (though she did declare other supplements), at the time Samples 3 and 4 were taken in January 2016. She did, however, make statements on her Doping Control Forms for Samples 3 and 4 that seem to suggest she stopped using her hypoxic device approximately two weeks prior, due to ill effects, which is curious given that she alleged in her explanation dated 7 October 2016 (as confirmed in her 17 October 2016 medical declaration) that she stopped using it almost two months prior, i.e. at the end of November 2015. She did not explain whether the weakness of the body was due to her earlier sinus infection, a remnant of stopping her use of the hypoxic device, or associated with the later diagnosis of Dengue fever.
103. The October 2016 medical report unfortunately does not provide much further support for the Rider's position. According to this report, her low haematocrit was attributed to the need for "*vigorous intravenous hydration and medications to fight the infections*". While the Rider did mention taking serum at the hospital around the time of her diagnosis and her medical declaration of 24 March 2016 also mentioned "*vigorous hydration*", these references appeared limited to the period of time around her diagnosis. To the Single Judge, the Rider did not suggest, let alone provide supporting evidence, that she engaged in intravenous, or any other type of "*vigorous*" hydration that might contribute to explaining any of the decreased blood values over the almost four-month period in which Samples 3 through 7 were taken. Further, the Single Judge finds this general reference to "*medications to fight infections*" lacking in concrete detail.
104. Reinforced by the Expert Panel's conclusions, especially that the Rider's haematological profile does not exhibit any signs of pathology, rather it appears to be in balance, and Samples 3 through 7 fall within the expected range of a typical female endurance athlete, the Single Judge rejects the Rider's arguments that Dengue fever alone or in combination with the other ailments, medications, and breaks in training could have caused the effects alleged by the Rider, in particular, the decrease in red blood cells.
105. The Single Judge acknowledges that the Rider strongly denied the allegations that she used a Prohibited Substance or Method. She pointed to her many negative anti-doping tests as evidence of her innocence. However, as noted by this Tribunal, "*a simple denial without any supporting evidence should be afforded at most limited evidentiary weight*".<sup>7</sup> To the extent that the Rider invites the Single Judge to generally rely on the existence of her negative tests as persuasive evidence that she never Used a Prohibited Substance or Method, the Single Judge declines this invitation. Indeed, the ABP aims to uncover anti-doping rule violations that are not or cannot be directly detected by Testing.
106. Finally, it must be noted that Samples 1 and 2 were taken during the competitive season. The collection date of Sample 1 (10 July 2015) coincided with the beginning of the Pan American Games (10 July – 26 July 2015). Sample 2 was taken less than two weeks after the Brasil Ride, and just before the UCI MTB Marathon Series Race in Congonhas, Brazil – the final race on the

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<sup>7</sup> See ADT 02.2016, *UCI v. Taborre*, Judgment of 25 May 2016, para. 85; see also ADT 04.2016, *UCI v. Oyarzun*, Judgment of 16 September 2016, para.

Rider's 2015 Calendar. Moreover, as stated by the Rider, this was a particularly important competitive season, given its relevance for participation in the 2016 Olympic Games in Rio de Janeiro. While the fact that the Samples were drawn during an (important) competitive season is certainly not definitive, it does provide further support of 'credible doping scenario'.

107. On balance, and in consideration of all the Parties' submissions, arguments and evidence, the Single Judge finds the Expert Panel's opinions and conclusions to be well-founded and logical, and is comfortably satisfied that the Rider committed a violation of art. 2(2) UCI ADR.

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

108. Comfortably satisfied that the Rider committed an anti-doping rule violation, the Single Judge turns to the Consequences of the violation.

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

109. 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".*

110. As for the relevant possibilities to reduce the period of Ineligibility based on Fault, the UCI ADR provides 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".*

111. The UCI submits that the Tribunal must impose a four-year period of Ineligibility on the Rider. The Rider did not make any submissions specifically addressing the length of the period of Ineligibility.

112. For first time violations of art. 2(2) UCI ADR, the starting point is art. 10(2) UCI ADR. Since blood manipulation by Use of a Prohibited Substance or Prohibited Method is not a "Specified Substance" according to art. 4(2)(2) UCI ADR, art. 10(2)(1)(1) UCI ADR applies. 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. The standard of proof placed on the Rider in this regard is a balance of probability (art. 3(1) UCI ADR).

113. In the UCI's view, the Rider entirely failed to discharge her burden that the anti-doping rule violation was not intentional. The Rider submitted that the alleged abnormalities in her haematological profile were caused by the use of a hypoxic device, excessive training, and the ingestion of Echinacea purpurea, coupled with illness, and in particular infection with the Dengue virus, and the associated breaks in training and medications. As discussed above, the Single Judge accepts that the important abnormalities in the Rider's haematological profile resulted from the Use of a Prohibited Substance or Prohibited Method. The Rider made no further arguments that any Use of a Prohibited Substance or Method was not intentional. The Rider, therefore, failed to discharge her burden that the violation was not intentional in the sense of art. 10(2)(1)(1) UCI ADR. In consideration of the Rider's submissions, nor are any Fault-related reductions available (arts. 10(4) and 10(5) UCI ADR) or any other 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.

114. In conclusion, the Single Judge holds that the period of Ineligibility of four years shall be imposed on the Rider.

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

115. 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. ...”.*

116. Thus, as a general rule the period of Ineligibility shall start on the date of the final decision providing for Ineligibility, with credit given for the period of the Provisional Suspension provided that the Provisional Suspension was respected by the Rider.
117. The UCI submitted that the Rider should not receive any credit for the period of the Provisional Suspension due to the Rider’s failure to respect the same. Specifically, the UCI alleged that the Rider violated her Provisional Suspension through her participation in two Events organized by national level Event organizations:
- *“On 20 and 21 May 2017, (...) Stage 2 of the Event Chaoyang Brasil Enduro Series, a mountain bike race organized by the national level Event organisation Brasil Enduro Series”;* and
  - *“On 3 June 2017, (...) the Event Ultramaratona de MTB 120k, a mountain bike race organized by the national level Event organisation Warriors Outdoor Sports”.*
118. The UCI did not provide any support or explanation as to why it considered the Event organizers to be “national-level Event organizations” beyond a link to the Event organizers’ respective websites (in Portuguese).
119. In short, the Rider does not contest that she participated in the two Events. Rather, she contests that the participation amounted to a violation of her Provisional Suspension. In particular, she submitted that the two competitions were not part of the UCI calendar nor did they share any link with the national nor regional federations. She also stated that she had no knowledge that the races would amount to a violation of her Provisional Suspension, and that she had checked with the Event organizers to ensure that there would be no issue given her status. According to the Rider, both assured her there would be no issue, emphasizing that they had no links to the UCI, that the races were regional (amateur) races and with no score given for rankings.
120. Since it is not contested that she did participate in these two Events, the issue for resolution is whether her participation amounted to a violation of her Provisional Suspension according to the UCI ADR. For the reasons set forth below, the Single Judge finds that it does not.
121. Art. 10(11)(3)(1) UCI ADR does not provide guidance as to what it means to “respect” a Provisional Suspension. Appendix 1 UCI ADR defines a Provisional Suspension as follows: *“Provisional Suspension means the Rider or other Person is barred temporarily from participating in any Competition or activity prior to the final decision at a hearing conducted under Article 8”.* The Single Judge is unable to find any further provision in the UCI ADR that provides more instructions as to the specific scope of activities prohibited while serving in particular, a Provisional Suspension. Applying this – very broadly worded – definition alone, the Rider’s participation in the Events at stake would certainly amount to a violation of her Provisional

Suspension. While this may be the most straightforward approach, it seems reasonable to consult art. 10(12)(1) UCI ADR (which applies to “*Ineligibility*”) as a source of guidance – and limitation – to the interpretation of the scope of prohibited activities in the context of Provisional Suspensions as well. The Single Judge takes comfort from the fact that in CAS case law that has discussed this issue, a comparable conclusion has been reached.<sup>8</sup>

122. According to art. 10(12)(1) UCI ADR (in relevant part) an Ineligible Rider may not participate “*in Competitions authorized or organized by any professional league or any international or national level Event organization*”, and according to the Comment to art. 10(12)(1) UCI ADR this may also include international- or national-level Event organisations that are not Signatories to the World Anti-Doping Code (the “*WADA Code*”).<sup>9</sup>
123. In this case, the issue is whether either of the two organisations fall within the definition of a “*national-level Event organization*”. That the organisations may be private or independent from the UCI is not decisive. The Comment to art. 10(12)(1) UCI ADR makes clear that Events run by non-Signatories may fall within the scope of this definition. No definition of “*national-level Event organization*” is otherwise provided in the UCI ADR. The UCI ADR does define “*National Event*” but it is not clear whether the similar, but not identical terminology, used in art. 10(12)(1) UCI ADR is intended to recall this term or a different situation.<sup>10</sup> Neither party made any submissions specifically addressing the scope of this term. Nor is there, to the knowledge of the Single Judge, a line of CAS case law that provides helpful insight to its interpretation under the circumstances of the case at hand.<sup>11</sup>
124. Thus, the Single Judge will take as a starting point a plain understanding of the term. According to the Rider’s submission, one of the Event organisations at stake: the “*Chaoyang Brasil Enduro Series*” aims to “*grow the endure/freeride demand in Brazil*”; it does not make clear the current (or intended future) extent of its activities. As to the other Event organiser at stake, “*Warrior Outdoor Sports*” the Rider emphasized the regional nature of the Event in which she participated and that it was the first Event of its kind organised by this Event organisation. As to the links the UCI provided to the Event organisations’ websites in Portuguese, the Single Judge notes that, as provided in art. 8(5) ADT Rules, “[*t*]he Tribunal may accept or disregard any document not provided in the Language of the proceedings”.
125. In light of all of the above, the Single Judge is not convinced by the evidence on file that the Events at stake were organized by “*national-level Event organizations*”, or otherwise fell within the scope of activities prohibited by the relevant provisions. Thus, the UCI’s allegation that the Rider did not respect her Provisional Suspension must fail.
126. In application of art. 10(11) UCI ADR, the Single Judge holds that the commencement date of the Rider’s period of Ineligibility shall correspond to the date of the present decision, i.e. 17 August

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<sup>8</sup> See CAS 2015/A/3876, *Stewart v. FIM*, Award of 27 April 2015, para. 88; see also CAS 2014/A/3820, *WADA v. Robinson*, Award of 14 July 2015, para. 108.

<sup>9</sup> In relevant part, the Comment to art. 10(12)(2) UCI ADR provides as follows: “*For example, subject to Article 10.12.2 below, an Ineligible Rider cannot participate in ... Events organized by a non-Signatory International Event organization or a non-Signatory national-level Event organization without triggering the Consequences set forth in Article 10.12.3*”.

<sup>10</sup> Appendix 1 defines a National Event as follows: “*A sport Event or Competition involving International- or National-Level Riders that is not an International Event or an UCI International Event within the meaning of the second paragraph of the definition of International Event*”.

<sup>11</sup> One matter found that the NCAA, and NCJAA, which are, according to the CAS award, the national governing body of collegiate athletics and junior college athletics in the United States, “*easily meet the definition of ‘national-level Event organization[s]’*”. CAS 2014/A/3820, *WADA v. Robinson*, Award of 14 July 2015, para. 110.

2017. Since art. 10(11)(3)(1) UCI ADR allows the Rider to receive credit for any Provisional Suspension that was imposed if she respected the Provisional Suspension, the Rider shall receive credit for her Provisional Suspension served since it was imposed on 25 January 2017.

### 3. Disqualification

127. As for the automatic Disqualification of results, art. 9 UCI ADR provides as follows:

*“An anti-doping rule violation in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes”.*

128. 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”.*

129. The UCI requests the Tribunal to Disqualify all of the Rider’s competitive results from 1 June 2015 until 5 November 2015. As justification, it points to the Expert Panel’s conclusion that *“[i]f an erythropoietic stimulant was used, it was therefore likely administered over several weeks until the end of June 2015 for sample 1”*. As to Sample 2, the Expert Panel concluded that *“[g]iven that the high haemoglobin concentration is also present in this sample, it is highly likely that the athlete had used a method to increase red cell mass such as erythropoietic stimulants during several weeks prior to sample 2”*. The Rider made no specific submission with respect to Disqualification.

130. The general rule of art. 9 UCI ADR leads to Disqualification of results in connection with an In-Competition test only. The general rule of art. 10(8) UCI ADR requires Disqualification of all competitive results following *“the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred”*.

131. While the Doping Control Form for Sample 1 states that the Sample was collected Out-of-Competition, the Rider’s ABP Documentation Package indicates that Sample 1 was collected In-Competition. The Single Judge need not reach a conclusion as to which classification is correct, since as set forth below, applying art. 9 and art. 10(8), or only art. 10(8) ADR – which does not depend on the nature of the Test – leads to the same outcome.

132. The general rule of art. 10(8) UCI ADR provides an unfortunate lack of clarity in the situation involving a violation based on an ABP. The Single Judge has been unable to find a definition of a *“positive Sample”* in the UCI ADR; the term appears to be used exclusively in connection with art. 10(8) UCI ADR. The Single Judge sees fit to understand the reference to a *“positive Sample”* in the phrase *“the date a positive Sample was collected”* (as opposed to a more precise defined term such as *“Adverse Analytical Finding”*) here as a means to create a rule that distinguishes between violations based on collected Samples from other types of violations, such as art. 2(4) UCI ADR (Whereabouts Failure) or art. 2(10) UCI ADR (Prohibited Association), or even violations of art. 2(2) UCI ADR that are based on non-analytical evidence. As a consequence, for violations that arise based on collected Samples, such as those based on an ABP, the Disqualification period

would start on the date of Sample collection. The Single Judge feels comforted in this view by the consistent line of CAS case law that, in the context of the Disqualification for ABP violations, links the timing of the violation to the timing of the relevant Sample collection.<sup>12</sup>

133. In this case, and as set forth above, the Single Judge considers that the values observed in Samples 1 and 2, and particularly Sample 1, indicate the Use of a Prohibited Substance or Method. Thus, the starting date for Disqualification shall be 10 July 2015, coinciding with the collection date of Sample 1.
134. Art. 10(8) UCI ADR requires Disqualification of all results following this date up to the date the Provisional Suspension was imposed, unless “*fairness requires otherwise*”. The UCI submits that this phrase may be interpreted as requiring the Disqualification only of the results obtained in competitions affected by the violations established. The Single Judge notes that the UCI, in its prayers for relief, asked only for the Disqualification of the Rider’s results until 5 November 2015,<sup>13</sup> however according to art. 26 UCI ADR “[t]he Single Judge is not bound by the Parties’ prayers for relief”. Thus, the question for the Single Judge to resolve is whether fairness requires not Disqualifying any of the results following the date collection of Sample 1, up until 25 January 2017, i.e. the date the UCI imposed the Provisional Suspension on the Rider. The Single Judge finds that it does.
135. As already explained, the Single Judge found that the blood values found in Sample 2 also support the notion that the Rider Used a Prohibited Substance or Method. Samples 3 through 7, by contrast and as set forth above, most likely indicate the true baseline of the Rider, and would therefore suggest that Prohibited Substances and/or Methods were not Used during this period. To the Single Judge, this indication can be considered a reason of fairness that would call for not Disqualifying all of the Rider’s results from (at a minimum) 26 January 2016 (i.e. the date of Sample 3) through 25 January 2017 (i.e. the date of the Rider’s Provisional Suspension). As to the results obtained between the date of Sample 2 and Sample 3, the Single Judge notes that the Rider only participated in one Competition in this period, three days after the collection of Sample 2 (i.e. on 8 November 2015).
136. Thus the Single Judge, in exercise of her discretion, Disqualifies all results obtained by the Rider between the date of the Sample 1 collection (10 July 2015) and the date of the Rider’s final Competition of 2015 (8 November 2015), including forfeiture of any medals, points and prizes.

#### 4. Costs

137. The UCI requests the Tribunal to condemn the Rider and the Brazilian Cycling Federation to pay the costs of the results management by the UCI (CHF 2’500) and the costs incurred for the documentation package of the blood samples analysed for the ABP (CHF 635).
138. As for the liability for costs of the proceeding, 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.*

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<sup>12</sup> See, e.g. CAS 2010/A/2235, *UCI v. Valjavec*, Award of 21 April 2011, para. 117; CAS 2014/A/3469, *IAAF v. Alhamdah*, Award of 12 January 2015, para. 44; CAS 2014/A/3614, *IAAF v. Dominguez*, Award of 19 November 2015, para. 404; and CAS 2016/O/4463, *IAAF v. Ugarova*, Award of 29 November 2016, para. 133.

<sup>13</sup> The UCI did, in its submissions request the Tribunal to Disqualify the Rider’s results in each Competition from 1 June 2015 until 5 November 2015 “[a]t a minimum”.

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.*

...

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

...

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

139. The 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); and
- The cost for the documentation package of Samples analysed for the ABP of CHF 635 (art. 10(10)(2)(6) UCI ADR).

140. In application of art. 28(1) ADT Rules, the Tribunal has to determine the cost of the proceeding as provided under art. 10(10)(2)(1) UCI ADR. In light of art. 28(2) ADT Rules, and in consideration of the circumstances of this case, the Tribunal decides that the present Judgment is rendered without costs.

141. Notwithstanding the above, 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 (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.

142. 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 Tribunal finds it appropriate to refrain from ordering the Rider (as the unsuccessful party) to pay a contribution towards the UCI's costs.

143. While the Tribunal acknowledges that art. 10(10)(2) UCI ADR provides that the National Federation of the Rider "*shall be jointly and severally liable for its payment to the UCI*", it will limit its decision to the Parties appearing before it, i.e. the Rider. That said, the Tribunal sees no reason that the UCI may not seek the payment of these costs from the Rider or the Brazilian Cycling Federation as so provided in the UCI ADR.

## **VI. RULING**

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

- Ms. Moreira Lacerda has committed a violation of art. 2(2) UCI ADR.
- To impose a period of Ineligibility of four years on Ms. Moreira Lacerda. The period of Ineligibility shall commence on the date of this decision, i.e. 17 August 2017.

- The Provisional Suspension already served by Ms. Moreira Lacerda, starting from 25 January 2017, shall be credited against the four-year period of Ineligibility.
  - All results obtained by Ms. Moreira Lacerda from 10 July 2015 until 8 November 2015 shall be Disqualified.
  - Ms. Moreira Lacerda shall pay the costs of results management by the UCI (CHF 2'500) and the costs incurred for the documentation package of the blood samples analysed for the ABP (CHF 635).
2. All other and/or further reaching requests are dismissed.
  3. This judgment is final and will be notified to:
    - Ms. Isabella Moreira Lacerda;
    - The Brazilian National Anti-Doping Organisation;
    - WADA; and
    - UCI.
  4. This Judgment may be appealed before the CAS pursuant to art. 30(2) ADT Rules and art. 74 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