UNION CYCLISTE INTERNATIONALE

Anti-Doping Tribunal

UCI Anti-Doping Tribunal

Judgment

case ADT 04.2016

UCI v. Mr. Carlos Oyarzun

Single Judge:

Mr. Julien Zylberstein (France)

Aigle, 16 September 2016

INTRODUCTION

1. The present Judgment is issued by the UCI Anti-Doping Tribunal ("the Tribunal") in application of the *UCI Tribunal Procedural Rules* (the "ADTPR") in order to decide upon a violation of the *UCI Anti-Doping Rules* (the "ADR") committed by Mr. Carlos Oyarzun (the "Rider") as alleged by the UCI (collectively, the "Parties").

I. FACTUAL BACKGROUND

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

3. The Rider is a 34-year old cyclist of Chilean nationality affiliated to the Chilean Cycling Federation (the "CCF"). He became professional in 2008 and was the holder of a licence issued by the CCF at the time he participated as a road cyclist in the Road Cycling Competitions of the *2015 Pan American Games* which were held in Toronto (Canada) between 22 and 25 July 2015.

4. On 15 July 2015, the Rider provided a urine sample as well as a blood sample as part of an 'In-Competition' test carried out by the Pan American Sports Organization (the "PASO"), the ruling body of the Pan American Games. On the Doping Control Form, the Rider declared that he had taken the following medications or supplements during the seven days prior to the sample collection: "*Amino acids, Proteins, Iron, Vitamin C, Vitamin Complex, Prozac, Beta Alanine, Glutamine, Multi Vitamin*". He also confirmed that the samples were taken in accordance with the applicable procedures.

5. On 16 July 2015, the urine sample was analysed at the WADA-accredited Laboratory in Montreal, Canada (the "Laboratory").

6. On 18 July 2015, the Laboratory reported the presence of FG-4592 (the "Adverse Analytical Finding" or "AAF") in the urine A Sample. FG-4592 is listed under Class 'S2 Peptide Hormones, Growth Factors, Related Substances and Mimetics' on the 2015 and 2016 editions of the *WADA Prohibited List*. It is prohibited both In- and Out-of-Competition. Article 4.1 ADR incorporates the *WADA Prohibited List* into the ADR.

7. On 18 July 2015, the PASO informed the Chilean National Olympic Committee (the "CNOC") of:

   (a) the Rider's Adverse Analytical Finding;

   (b) the decision of the PASO to impose on the Rider a mandatory provisional suspension, in accordance with Article 7.9.1 ADR, starting on the date of the notification, i.e. 18 July 2015;

   (c) the Rider's right to request the opening and analysis of his B Sample; and

   (d) the Rider's right (i) to provide explanations on the circumstances of the AAF; (ii) to request the Laboratory's Documentation Package for the A Sample and; (iii) to ask for a hearing to be held.

8. On 19 July 2015, the CNOC informed the PASO that the Rider did not admit the alleged anti-doping rule violation and requested the opening and analysis of the B Sample. The Rider did not request the Laboratory's Documentation Package for the A Sample.

9. On 20 July 2015, the PASO informed the CNOC that the analysis of the B Sample would take place on 24 July 2015 at 10:00 local time. The CNOC stated that the information had been communicated to the Rider verbally, by phone. The Rider has disputed this, submitting that he became aware of the date of the B Sample analysis in the media on 23 July 2015.

10. On 23 July 2015, the Rider contacted the CNOC and the PASO to request the postponement of the B Sample analysis to a date where either himself or a representative appointed by him could attend.

11. On the same day, the PASO, after having consulted the CNOC, informed the Laboratory to proceed with the analysis of the B Sample on 24 July 2015, as previously agreed upon.

12. Accordingly, on 24 July 2015, and despite another request from the Rider to postpone the B Sample analysis, the Laboratory analysed the B Sample in the presence of the technical manager of the CNOC, a representative of the PASO and two observers from the Laboratory. Neither the Rider nor a representative appointed by him was present.

13. On 25 July 2015, the Laboratory submitted the test report of the B Sample analysis, which confirmed the presence of FG-4592.

14. On the same day, the PASO imposed on the Rider an exclusion from the *2015 Pan American Games*.

15. On 2 August 2015, the UCI received the Documentation Package from the Laboratory.

16. On 13 August 2015, the PASO provided the UCI with a set of documents comprising:

    (a) the test report dated 18 July 2015;

    (b) the Doping Control Form of 15 July 2015;

    (c) the notification of the AAF submitted by the PASO to the CNOC on 18 July 2015; and

    (d) the Rider's request to have his B Sample analysed.

17. On 20 August 2015, the UCI received a copy of the decision taken by the PASO against the Rider (as referred to in Paragraph 14 of this Judgment).

18. On the same day, the UCI informed the PASO that it would start with the results management of the case with regard to the sanctions and Consequences applicable beyond the Rider's exclusion from the *2015 Pan American Games*, in accordance with Article 7.1.1 ADR.

19. On 21 August 2015, the UCI contacted the Rider to inform him that:

    (a) the UCI was now in charge of the result management of the case;

    (b) he had the right to submit explanations and/or provide substantial assistance in accordance with Article 10.6.1 ADR; and

    (c) the UCI alleged that Mr. Oyarzun had committed an anti-doping rule violation for the 'Presence' and 'Use' of FG-4592 under Articles 2.1 and 2.2 ADR.

20. On 3 September 2015, the Rider submitted to the UCI a statement as well as a package of documents in Spanish, including an Expert Report. Relevant English translations were provided

on 28 September 2015. In substance, the Rider alleged that the B Sample results should be disregarded because:

(a) the PASO deprived him from his right to attend the opening of the B Sample; and

(b) the Laboratory committed several departures from the International Standards for Laboratories (ISL) during the analysis of the urine sample.

Accordingly, the Rider requested that the proceedings opened against him be closed.

21. On 10 September 2015, the UCI requested from the PASO, the CNOC and the Laboratory to complete the information and documents submitted by the PASO on 13 August 2015. In particular, the UCI sought more information regarding the circumstances which led the PASO to decide to proceed to the analysis of the B Sample on 24 July 2015 despite the request from the Rider to postpone such analysis.

22. On the same day, the PASO submitted its reply in which it indicated that it could not accommodate the Rider's request essentially because of the late nature of such request.

23. On 12 November 2015, the Laboratory submitted its opinion in which it contested any departures from the ISL during the analysis of the samples. The WADA-accredited Laboratory of Köln (Germany) was also asked to provide its opinion on the testing procedure followed by the Montreal Laboratory. In its report dated 26 January 2016, the Cologne Laboratory validated the procedure followed by the Montreal Laboratory after having noted that "*[n]one of the deviations alleged by the [R]ider's expert could have caused the AAF*".

24. On 18 December 2015, at the request of the UCI, the Hematological Profile of the Rider was submitted to an Athlete Biological Passport Expert from the Athlete Passport Management Unit (the "APMU Expert") of the Lausanne Laboratory for a general review and assessment. The APMU Expert was not informed of the AAF for the presence of FG-4592 in the Rider's urine sample.

25. On 21 December 2015, the APMU Expert concluded that the passport of the Rider was "*suspicious*" and requested "*further data*" to complete his analysis.

26. On 8 January 2016, the UCI informed the APMU Expert of the AAF for FG-4592 and requested the APMU Expert's opinion on whether the Hematological Profile of the Rider was consistent with the use of FG-4592.

27. On 23 February 2016, the APMU Expert sent his final opinion to the UCI. Such opinion stated the following:

"I confirm that (…) the above described hematological variations are suspicious and that these suspicious changes are fully consistent, on temporal, physiological and scientific bases, with the use of FG-4529".

28. In his opinion the APMU Expert also observed that an identical finding could be observed between the blood sample of the Rider and the blood parameters of another athlete who tested positive for FG-4592.

29. On 26 February 2016, the UCI contacted the Rider to:

(a) provide him with a copy of the APMU Expert's opinion;

(b) give him a second opportunity to provide explanations and/or provide substantial assistance within the context of Article 10.6.1 ADR;

(c) inform him that, after having examined his arguments and having verified the validity of the AAF with the laboratories of Montreal and Köln, the UCI considered that a violation of Article 2.1 and Article 2.2 ADR was established;

(d) inform him of the potential Consequences for the alleged anti-doping rule violation;

(e) propose him an Acceptance of Consequences pursuant to Article 8.4 ADR which would prevent disciplinary proceedings before the Tribunal; and

(f) advise him that if he did not agree with the proposed Acceptance of Consequences, the case would be referred to the Tribunal in accordance with Article 13.1 ADTPR.

30. On 21 March 2016, the Rider informed the UCI that he did not accept the Acceptance of Consequences.

31. On 11 May 2016, the UCI filed a Petition to the Tribunal in accordance with Article 8 ADR and Article 13 ADTPR and requested that the following decisions be taken against the Rider:

(a) To declare that the Rider has committed a violation of the ADR;

(b) To impose on the Rider a period of ineligibility of 4 (four) years;

(c) To disqualify all the results obtained by the Rider between 15 and 18 July 2015;

(d) To order the Rider to pay the costs of results management incurred by the UCI; and

(e) To order the Rider to pay a contribution towards the costs of the Tribunal and towards the legal and other costs of the UCI in connection with these proceedings.

II. JURISDICTION AND ROCEDURE BEFORE THE TRIBUNAL

32. The jurisdiction of the Tribunal follows from Article 8.2 ADR and Article 3.1 (a) ADTPR which provides that "*the Tribunal shall have jurisdiction over all matters in which an anti-doping rule violation is asserted by the UCI based on a results management or investigation process under Article 7 ADR*".

33. In accordance with Article 13.1 ADTPR, the UCI initiated proceedings before the Tribunal through the filing of a Petition to the Secretariat of the Tribunal on 11 May 2016. Before referring the case to the Tribunal, the UCI offered the Rider an Acceptance of Consequences pursuant to Article 8.4 ADR and Article 2 ADTPR by letter dated 26 February 2016. The Rider decided not to accept the Acceptance of Consequences.

34. On 13 May 2016, the Secretariat of the Tribunal appointed Mr. Julien Zylberstein to act as Single Judge in the present proceedings in application of Article 14.1 ADTPR.

35. On the same day, the Rider was informed that:

(a) disciplinary proceedings had been initiated against him before the Tribunal in accordance with Article 14.4 ADPTR;

(b) any objection to the jurisdiction of the Tribunal should be brought to the Secretariat within 7 days of the receipt of the correspondence; and

(c) he was granted until 28 May 2016 to submit his Answer, pursuant Articles 16.1 and 18 ADTPR.

36. By letter dated 20 May 2016, the Rider:

(a) acknowledged receipt of the UCI Petition of 11 May 2016;

(b) raised an objection to the jurisdiction of the Tribunal; and

(c) requested the case file to be transmitted to the National Anti-doping Organisation of Chile.

37. On 25 May 2016, the Tribunal:

(a) acknowledged the Rider's jurisdictional objection;

(b) set a deadline of 1st June 2016 for the UCI to submit comments thereto;

(c) advised the Parties that pursuant to Article 3.3 ADTPR it would decide on the objection to jurisdiction in its Judgment; and

(d) confirmed the deadline of 28 May 2016 for the Rider to submit his Answer.

38. On 25 May 2016, the Rider's counsel contacted the Tribunal to:

(a) request a three-week extension (i.e. until 20 June 2016) of the deadline to file the Answer;

(b) request for the production of documents, such as "*the complete case file, including the documents and notifications produced by the PASO and the UCI*", as well as other documents, such as (i) a copy of the Test Distribution Plan for professional cyclist which was circulated at the *2015 Pan American Games*; (ii) a copy of the Doping Control Officer (the "DCO") reports and all documentation produced by him/her in connection with the Doping Control/Sample Collection of the Rider, including every written communication and notification from PASO, WADA and/or UCI to the Rider in connection with the Doping Control; (iii) a copy of the notification and form signed by the Rider when he was approached by the designated DCO and/or Chaperone; (iv) a copy of the written notifications to Rider in connection with AAF in his urine A and B Samples; (v) a copy of the Samples Collection notification signed by the Rider ; and (vi) a copy of the results and documents in connection with the Rider's Blood Sample which had not been provided to the Rider.

(c) invite the Tribunal to clarify (i) which was the Sample Collection Authority responsible for the Competition; (ii) the identity of the Chaperone appointed to accompany the Rider at the sample collection; and (iii) the identity of the doping controller officer.

(d) reserve his right to ask for a hearing to be held in accordance with Article 22.1 ADTPR.

39. On 27 May 2016, the Tribunal:

(a) acknowledged receipt of the Rider's counsel's letter submitted to the Tribunal on 25 May 2016;

(b) granted the Rider an extension of the deadline to submit his Answer until 13 June 2016 in accordance of Article 9.6 ADTPR; and

(c) dismissed the request for the production of the documents (as described in Paragraph 38 (b) of this Judgment) in that the cumulative conditions laid down in Article 19.6 ADTPR were not fulfilled.

40. On 1 June 2016, the UCI responded to the objection to the Tribunal's jurisdiction raised by the Rider. The UCI referred in particular to Article 8.2 ADR, which provides that the Tribunal has jurisdiction over all anti-doping violation asserted by the UCI based on a result management process within the meaning of Article 7 ADR, as was the case in the present proceedings. Accordingly, the UCI requested the Tribunal to assert jurisdiction and proceed with the case.

41. On 13 June 2016, the Rider's counsel sought a further extension of 4 (four) days for the submission of his Answer (i.e. until 17 June 2016).

42. On 14 June 2016, the Tribunal agreed to extend such deadline until 17 June 2016.

43. On 17 June 2016, the Rider's counsel:

(a) filed his Answer consisting of a statement of defence and exhibits;

(b) reiterated the request for the production of documents (as described in Paragraph 38 (b) of this Judgment);

(c) withdrew the Rider's objection to the jurisdiction of the Tribunal; and

(d) did not request a hearing to be held.

44. On 30 June 2016, the Tribunal:

(a) acknowledged receipt of the Answer;

(b) rejected the request for the production of documents (as described in Paragraph 38 (b) of this Judgment) in that it was partially immaterial and not sufficiently substantiated;

(c) decided to render the Judgment on the basis of the Parties' submissions;

(d) stressed that the Parties shall not be authorised to supplement or amend their submissions nor produce new exhibits or further evidence unless otherwise specified, in accordance with Article 17.1 ADTPR.

45. On the same day, the Rider's counsel acknowledged receipt of the aforementioned and requested the Tribunal to provide him with an estimate date for the decision to be issued.

46. On 6 July 2016, the Rider's counsel reiterated for the second time the request for the production of documents (as described in Paragraph 38 (b) of this Judgment) and requested the Tribunal to reconsider its decision to dismiss such request.

47. On 13 July 2016, the Secretariat informed the Rider's counsel that the Single Judge had decided that the renewed request for the production of documents shall not be granted, and that the Judgment would be rendered in due course on the basis of the written submissions.

48. On 20 July and 23 August 2016, the Rider's counsel sent a letter to the Secretariat in which he requested the Single Judge to render his Judgment shortly.

49. On 26 August 2016, the operative part of this Judgment was notified to the parties, in accordance with Article 27.4 ADTPR.

III. APPLICABLE RULES AND REGULATIONS

50. In his Answer submitted on 17 June 2016, the Rider's counsel stated that the Tribunal should apply primarily the *PASO Anti-Doping Regulations*, the *PASO Regulations and Statutes*, along with the *WADA Code 2015*, the *2015 WADA IST*, the *2015 WADA ISL*, the UCI ADR and subsidiarily Swiss law.

51. The Tribunal, the jurisdiction of which has eventually been accepted by the Rider, stresses that it is bound, in accordance with Article 25.1 ADTPR to "*apply the ADR and the standards referenced therein as well as the UCI Constitution, the UCI Regulations and, subsidiarily, Swiss law*". The alleged anti-doping rule violation took place on 16 June 2015 (the relevant point of time being that of Sample collection). The 2015 edition of the ADR, in force on such date, is thus applicable to the current matter.

52. This is further supported by the UCI ADR, the WADA Code and the PASO Regulations themselves, which all provide in Article 7 that results management and the conduct of hearings for a test conducted by a Major Event Organisation (i.e. the PASO) shall be referred to the applicable International Federation in relation to Consequences beyond exclusion from the event (Article 7.1.3.3 of the UCI ADR, Article 7.1.1 of the WADA Code and Article 7.1.2 of the PASO Anti-Doping Rules).

53. The case concerns an alleged violation of the ADR.

54. Article 2.1 ADR defines an anti-doping rule violation for 'Presence' as follows:

> *"2.1.1 It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*
>
> *2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Rider's A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed; or, where the Rider's B Sample is analyzed and the analysis of the Rider's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider's A Sample; or, where the Rider's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle. …*
>
> *2.1.3 Except those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample shall constitute an anti-doping rule violation…".*

55. Article 2.2 ADR defines an anti-doping violation for 'Use' as follows:

> *"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".

56. As per the burden and standard of proofs, Article 3 ADR reads as follows:

"3.1 Burdens and Standards of Proof

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.

3.2 Methods of Establishing Facts and Presumptions

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.]

3.2.2 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. As for the standard period of Ineligibility, Article 10.2 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".*

58. Article 7.1.3.3 ADR reads as follows:

> *"Results management and the conduct of hearings for Testing conducted by the International Olympic Committee, the International Paralympic Committee, or another Major Event Organization, or an anti-doping rule violation discovered by one of those organizations, shall be referred to the UCI in relation to consequences beyond exclusion from the event, disqualification of event results, forfeiture of any medals, points, or prizes from the event, or recovery of costs applicable to the anti-doping rule violation".*

59. As for the possibilities to eliminate or reduce the aforementioned periods of Ineligibility based on fault, the ADR states 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".*

60. As for the Disqualification of results, Article 10.8 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*".

61. In relation to the commencement of the period of Ineligibility, Article 10.11 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. …"*.

62. As for the financial Consequences of the alleged anti-doping rule violation, Article 10.10.1 ADR directs the following:

> *"In addition to the Consequences provided for in Article 10.1-10.9, violation[s] under these Anti-Doping Rules shall be sanctioned with a fine as follows.*
>
> *10.10.1.1 A fine shall be imposed in case a Rider or other Person exercising a professional activity in cycling is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3.*
>
> *…*
>
> *The amount of the fine shall be equal to the net annual income from cycling that the Rider or other Person was entitled to for the whole year in which the anti-doping violation occurred. …*
>
> *The net income shall be deemed to be 70 (seventy) % of the corresponding gross income. The Rider or other Person shall have the burden of proof to establish that the applicable national income tax legislation provides otherwise.*
>
> *Bearing in mind the seriousness of the offence, the quantum of the fine may be reduced where the circumstances so justify, including:*
>
> 1. *Nature of anti-doping rule violation and circumstances giving rise to it;*
> 2. *Timing of the commission of the anti-doping rule violation;*
> 3. *Rider or other Person's financial situation;*
> 4. *Cost of living in the Rider or other Person's place of residence;*
> 5. *Rider or other Person's Cooperation during the proceedings and/or Substantial Assistance as per article 10.6.1.*
>
> *…"*.

63. As for the liability for costs of the procedures, Article 10.10.2 ADR provides as follows:

> *"If the Rider or other Person is found to have committed an anti-doping rule violation, he or she shall bear, unless the UCI Tribunal determines otherwise:*
>
> *1. The cost of the proceedings as determined by the UCI Anti-Doping Tribunal, if any.*

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

…''.

IV. FACTUAL AND LEGAL APPRECIATION BY THE TRIBUNAL

64. In essence, the questions the Tribunal must determine are whether, in the circumstances of this case:

(a) The rider committed an anti-doping rule violation; and

(b) If so, what are the Consequences of the anti-doping rule violation.

A. Did the Rider breach the ADR?

65. The Rider is charged with alleged violations of Articles 2.1 and 2.2 ADR, which relate respectively to the 'Presence' and 'Use' of a prohibited substance in a rider's sample. Pursuant to Article 3.1 ADR, the UCI bears the burden of proof to establish that the Rider committed such violations to the "*comfortable satisfaction*" of the Tribunal.

a. Alleged violation of Article 2.1 of the ADR

66. The ADR imposes on riders a regime of 'strict liability'. More specifically, Article 2.1.2 ADR provides that sufficient proof for an anti-doping rule violation can be established by the "*presence of a Prohibited Substance (...) in the Rider's A Sample (…) where the Rider's B Sample is analysed and the analysis of the Rider's B Sample confirms the presence of the Prohibited Substance (…) found in the Rider's A Sample".*

Evidence of the 'Presence' of a Prohibited Substance

67. In the present case, the analysis of both the A and B samples of the Rider's urine reported the presence of FG-4592.

68. While the Rider has contested these findings, alleging that he "*has not committed an anti-doping violation*", the Tribunal considers that the mere denial of the Rider to have committed any violation of the ADR has no bearing in the determination of whether a violation of Article 2.1 ADR has occurred. As noted by this Tribunal, "*a simple denial without any supporting evidence should be afforded at most limited evidentiary weight*" (see ADT, 02-2016, UCI v. Mr Fabio Taborre, Judgment of 25 May 2016, paragraph 85).

69. Similarly, the contention of the Rider that the quantity of prohibited substance found in his A and B Samples was "*extremely low*" is irrelevant since FG-4592, is not subject to any quantitative threshold Pursuant to Article 2.1.3 ADR the presence of any quantity of a substance that is not specifically identified as being subject to a quantitative threshold on the WADA Prohibited List is sufficient to establish an anti-doping rule violation.

70. The analysis of the A and B Samples of the Rider's urine was conducted at a WADA-accredited laboratory. It is therefore presumed to have been conducted in accordance with the ISL unless, pursuant to Article 3.2.2 ADR, the Rider can "*rebut this presumption by establishing that a departure from the International Standards for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding*". In the present case, it is not disputed that the Laboratory is a WADA-accredited laboratory and the Rider confirmed through his signature on

the 'Doping Control Form' that the urine samples (which evidenced the presence of FG-4592) were taken in accordance with the relevant procedures, namely the IST.

Alleged departures invalidating the B Sample analysis

71. As noted above at Paragraph 20 of this Judgment, the Rider submits that the PASO failed to comply with certain procedural safeguards prescribed by the ISL.

72. In substance, he argues that the procedure relating to the analysis of the B Sample was materially flawed because he had not been informed of the date and time when such analysis would take place – in breach of Article 7.3 ADR and ISL 5.2.4.3.2.6 – until he became aware of it through a social media. The Rider also contends that he was effectively deprived from his right conferred under Article 7.3 ADR and ISL 5.2.4.3.2.6 to attend or ask a representative chosen by him to be present at the opening of the B Sample, with the consequence that the results of the B Sample analysis should be declared inadmissible.

73. The Rider's argument is that "*UCI's/PASO's failure to adhere to its own rules in analysing the B sample without informing Mr. Oyarzun or giving him an opportunity to attend,* ***renders the B sample results automatically invalid and inadmissible and therefore incapable of satisfying the requirement of Article 2.1.2 of the UCI*** *ADR"* (emphasis in original).

74. The Rider submits that this violation is so fundamental "*there is no need to examine whether or not the corresponding violation of ISL 5.2.4.3.2.6 could or could not reasonably have caused the adverse analytical finding for the purposes of Article 3.2.1*".

75. The UCI considers for its part that these errors are not sufficiently material to call into question the results of the B Sample analysis.

76. The Tribunal notes that, according to Article 7.3 (d) ADR, riders shall be notified of "*the scheduled date, time and place for the B Sample analysis if the Rider (…) chooses to request an analysis of the B Sample*". It is well established in CAS jurisprudence that this right is considered central to the fairness of the doping control regime and serious departures from such right will result in the inability of the B Sample to "*confirm the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample*" as required by Article 2.1.2 of the ADR. (for example in CAS 2002/A/385, T. v International Gymnastics Federation, Award of 23 January 2003, paragraph 29).

77. By not communicating the relevant information in a fair and timely manner, the Tribunal holds that the PASO violated one of the important rights a rider has in the course of a doping test procedure. It follows that the right conferred to the Rider under Article 7.3 (d) ADR was, in the present case, breached.

78. Furthermore, Article 7.3 (e) ADR enshrines the right of riders to attend in person or be represented at the B Sample opening and analysis. As noted by CAS, such right is so fundamental, that "*if not respected, the B sample results must be disregarded*" for the purposes of determining whether an athlete has committed a violation of "presence" (CAS 2010/A/2161, Wen Tong v. International Judo Federation, Award of 23 February 2011, paragraph 9.8), irrespective of whether the "*denial of that right is unlikely to affect the result of a B sample analysis*" (CAS 2015/A/3977 WADA v. BAF & Mr Vadim Devyatovskiy, paragraph 167) . The importance of an athlete's right to attend the opening of the B Sample is such "*that it needs to be enforced in situations where all of the other evidence available indicates that the Appellant committed an anti-doping rule violation*" (CAS 2008/A/1607, Kaisa Varis v. International Biathlon Union, Award of 13 March 2009, paragraph 123).

79. In the present case, the PASO did nothing to accommodate the Rider's request to postpone the date of the opening and analysis of the B Sample and thus enable him to attend or be represented accordingly. As noted above at Paragraphs 10 to 12 of this Judgment, the Rider made two requests (on 23 and 24 July 2015) to postpone the day of the opening and analysis of the B sample of his urine. On the evidence, the PASO did not take any reasonable step to accommodate the Rider's request, nor did it provide any real justification as to why such request could not be accommodated. The PASO simply turned down the request, although the ISL requires "*reasonable attempts*" (under Article 5.2.4.3.2.6 of the WADA ISL) to accommodate requests made by an athlete when he or his representative is not available on the scheduled date. The fact of the matter is that the PASO acted unreasonably having regard to the request of the Rider and made no offer of any alternative arrangement. For the same reason, the Tribunal cannot accept the argument to the effect that the Rider's request came at too late a stage.

80. Ultimately, the assumption that the Rider had already returned to his home country and lacked the financial means to attend the opening and analysis of the B Sample cannot justify that the PASO departed from the ISL.

81. The Tribunal views the breach of the Rider's rights with respect to the B-Sample as so fundamental that, in accordance with CAS jurisprudence, the results of the B Sample analysis cannot validly confirm the A Sample analytical results, with the consequence that a violation of Article 2.1 ADR cannot be established.

Other alleged departures

82. The Rider has alleged further procedural deficiencies in the anti-doping control, including that:

    (i) The PASO and Chilean NOC allegedly failed to inform the Rider of his essential procedural rights

    (ii) The PASO allegedly did not give proper training to the DCOs and BCOs acting during the Competition

    (iii) The notification of the AAF allegedly did not comply with the WADA IST and the WADA Code

    (iv) The PASO allegedly did not follow its own procedures in terms of a hearing for the Rider's case

    (v) The notification of the anti-doping control was allegedly not done in accordance with the regulations

83. The Tribunal takes note that the Rider has also suggested in an offhand manner that "*the only possible way for the hormone to have entered his body was through the cross-contamination of one of these substances or by departures of the Canada Laboratory from the International Standard of Laboratories*".

84. The Tribunal considers that these allegations are either not substantiated with reliable evidence and/or not sufficient to reasonably have caused the Adverse Analytical Finding. In particular, the Rider has not specified or substantiated in any way which departures the laboratory may have allegedly committed or that they could have resulted in FG-4592 in his system.

85. Furthermore, to the extent that the alleged departures are procedural, they have not compromised the Rider's right to defend himself before the ADT. The ADT proceedings have

offered the rider an additional opportunity to defend himself which means that any alleged procedural flaws before the PASO are effectively cured.

86. Having considered the Parties' submissions and the relevant aspects of the applicable rules and CAS jurisprudence referred to in support of those arguments, the Tribunal considers that it cannot conclude to the 'Presence' of FG-4592 within the meaning of Article 2.1 ADR. However, the analysis set out above is not to be borne in mind when addressing the alleged violation of Article 2.2 ADR.

b. Alleged violation of Article 2.2 ADR

87. In the Petition, the UCI submits that if the Tribunal was to dismiss the violation of Article 2.1 ADR, it should nonetheless be comfortably satisfied that the Rider has committed a violation of Article 2.2 ADR, which prevents the 'use or attempted use of a prohibited substance'. "Use" is defined as the "*utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method*" under Appendix 1 ADR.

88. According to Article 3.2 ADR, facts related to anti-doping rule violations may be established by any reliable means, such as *inter alia* "*reliable documentary evidence*" or "*other analytical information which does not otherwise satisfy all the requirements to establish "Presence" of a Prohibited Substance*" under Article 2.1 ADR.

89. The Tribunal observes that according to the APMU Expert, the Rider's blood values were "*suspicious and (…) fully consistent, on temporal, physiological and scientific bases, with the use of FG-4529*", as described in Paragraph 27 of this Judgment. This conclusion is strengthened by the fact that an identical finding could be observed between the blood sample of the Rider and the blood parameters of another athlete found to have committed an anti-doping violation where FG-4529 had been reported.

90. The Tribunal stresses that the Rider did not raise any doubt about the reliability of such finding or refute it in any way.

91. The evidence of the UCI is coherent with and further corroborated by the findings of the Laboratory which reported the presence of FG-4592 in the Rider's A and B urine samples. As described above at Paragraphs 67 to 70 of this Judgment, the A Sample was conclusive in evidencing a finding of 'Presence' under Article 2.1 ADR and the B Sample confirmed this finding.

92. Consistent with CAS jurisprudence, the Tribunal is aware that the results of the B Sample for "Presence" of the prohibited substance were obtained in breach of certain fundamental rights conferred to the Rider (as described in Paragraphs 71 to 82 of this Judgment). However, this does not mean that the B Sample result is irrelevant to establishing use, it merely means that it "*must be regarded with particular care and cannot themselves be sufficient to establish a Use Violation"* (CAS, 2015/A/3977 WADA v. Belarus Athletic Federation & Mr Vadim Devyatovskiy, Award of 31 March 2016, paragraph 173). In the present case, however, the Tribunal is satisfied that the results of the B Sample are not the only evidence on the basis of which a violation of Article 2.2 ADR can be established. This additional evidence fundamentally distinguishes the present situation from the aforementioned CAS case.

93. It follows that, taken together the urine and blood analytical results are sufficient to establish a violation of use under Article 2.2 ADR to the Tribunal's comfortable satisfaction. The Rider has failed to provide any evidence or substantiated explanation to provide an alternative explanation for blood and urine evidence all demonstrating that there was FG-4592 in his system. In these circumstances, and given the consistency and probative value of the evidence

presented by the UCI, the only plausible explanation for the Tribunal is that the Rider used FG-4592.

94. On this basis, the Tribunal determines to its comfortable satisfaction that the Rider committed a violation of Article 2.2 ADR.

B. What shall be the Consequences for the evidenced anti-doping rule violation

95. Having established that the Rider committed an anti-doping rule violation, the Tribunal has to determine the applicable sanction.

a. Period of ineligibility

96. Under Article 10.2.1 (a) ADR, the period of ineligibility to be imposed for a first-time violation of Article 2.2 of the ADR shall be 4 (four) years where "*[t]he anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional*".

97. As described in Paragraph 6 of this Judgment, the anti-doping rule violation committed by the Rider involves FG-4952, a non-specified substance pursuant to Article 4.2.2 ADR. Accordingly, a reduction of the 4 (four)-year period of ineligibility to a period of 2 years may be granted only if the Rider is able to establish that the violation was not intentional within the meaning of Article 10.2.3 ADR, i.e. that he did not either "*engage in conduct which he (…) 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*".

98. The Rider can also reduce the length of his ineligibility by demonstrating that he committed 'No Fault or Negligence' (Article 10.4 ADR) or 'No Significant or Negligence' (Article 10.5.2).

99. The standard of proof imposed on the Rider is a 'balance of probability', as provided by the Article 3.1 ADR. The 'balance of probability' standard means that the Rider bears the burden of persuading the Tribunal that the occurrence of the circumstances on which he relies is more probable that their non-occurrence or more probable than other possible explanations of the doping offence. This means also that the evidence considered must be specific and decisive to explain the Rider's departure from the expected standard of behaviour (see in this regard CAS 2009/A/2012, Doping Authority Netherlands v N., Award of 11 June 2010, paragraph 51).

Failure to convince the Tribunal that the violation was not intentional

100. In evaluating the evidence before it, the Tribunal concludes that the Rider failed to discharge his burden of proof to convince this Tribunal, on a balance of probability, that the violation was not intentional.

101. In his Answer, the Rider asserts that "*the alleged anti-doping rule violation was not intentional*", that he "*did not knowingly or deliberately ingest FG-4592*" and that he had "*no intention to use the Prohibited Substance and cheat on his colleagues*".

102. The Rider asserts that "*either there has been a failure in the testing or analytical process giving rise to the adverse finding or he has unknowingly ingested FG-4592*". The Rider then argues that "*after conducting a thoroughly [sic] investigation along with his chemist and considering that none of the [medications and vitamins used by the Rider] contain FG-4592 hormone in their composition, they concluded that the only possible way for the hormone to have entered his body was through the cross-contamination of one of these substances or by departures of the Canada Laboratory from the International Standard of Laboratories".*

103. Thus the Rider argues that FG-4592 entered his system "*out of competition and in a context unrelated to sport, since these medications and vitamins were used with the sole purpose of protecting the Rider's immune system and health, which was the Rider's objective*". The Rider contends that he gave "*evidence that he did not deliberately or knowingly ingest FG-4592*". This latter statement is purportedly based on witness statements which are very general and, on that basis, the Rider concludes that his ingestion of the substance was unknowing and not deliberate. Finally, the Rider submits that, as he knew he could be tested, it "*would make no sense for him to make use of any prohibited substance and risk being caught*".

104. The Tribunal is not satisfied with the Rider's explanations.

105. The Tribunal has already noted that the Rider did not specify or substantiate in any way which departures the laboratory may have allegedly committed or that they could have resulted in FG-4592 in his system.

106. As to the witness statements, which are the only evidence presented by the Rider, these failed to supply any actual evidence on the specific circumstances in which the unintentional ingestion of FG-4592 would or could have occurred. Furthermore, mere (unconvincing) assertions of absence of intent cannot be enough to prove absence of intent because there is no evidence as to what actually happened.

107. Finally, it is not enough to simply assert that "*cross-contamination of food supplements and vitamins can sometimes occur, as a discrepancy between the information available at the labels of the products and its actual composition".*

108. As per CAS jurisprudence, a rider "*must not only (…) show the route of administration (…) but (…) he must be able to prove the factual circumstance in which the administration occurred*" (CAS 2012/A/2760, UCI v. Jana Horakova & Czech Cycling Federation, Award of 2 November 2012, paragraph 5.26). The Rider has produced no concrete indications that any of his vitamins or medications could have been contaminated, let alone that they could have been contaminated with the relevant substance in question. To the contrary, the Rider indicated numerous times that he was very careful regarding which supplements he used, and in particular "*bought the medications and vitamins, all of which from well-known laboratories in order to prevent contamination or other risks*".

109. It follows that apart from unsubstantiated speculations the Rider does not provide any corroborating evidence. He is therefore not able to establish that the violation was not intentional within the meaning of Article 10.2.3 ADR. Accordingly, the Tribunal determines that the mandatory period of Ineligibility of 4 (four) years under Article 10.2.1.1 shall be imposed on the Rider.

No (Significant) Fault or Negligence

110. In his Answer, the Rider seeks to benefit from the application of Article 10.4 ('No Fault or Negligence') or 10.5.2 ADR ('No Significant or Negligence') in order to have his period of ineligibility eliminated or at the very least reduced.

111. In order to benefit from the provisions of Article 10.4 and Article 10.5.2 ADR, it is inherent that the Rider must prove the source of the FG-4592. Where the Rider fails to do so, it is impossible for the Tribunal to determine the degree of fault committed by the Rider.

112. CAS has held that "... *the requirement of showing how the prohibited substance got into one's system must be enforced quite strictly since, if the manner in which a substance entered an athlete's system is unknown or unclear, it is logically difficult to determine whether the athlete*

has taken precautions in attempting to prevent such occurrence (CAS 2007/A/1399, 17 July 2008). Consequently, the Tribunal made it clear in CAS 2006/A/1140 that the "threshold" requirement of showing how the substance entered the player's system was to enable the Tribunal to determine the issue of fault on the basis of fact and not mere speculation. In other words, the threshold requirement of proof of how the substance got into the system ''means not only that the player must show the route of administration - in this case probably oral ingestion - but that he must be able to prove the factual circumstances in which administration occurred" (CAS 2006/A/1140, 4 January 2007). In the present case, the First Respondent's explanations only amount to a speculative guess or explanations uncorroborated in any manner. One hypothetical source of a positive test does not prove to the level of satisfaction required that such explanations are factually or scientifically probable. The First Respondent has a stringent requirement to offer persuasive evidence of how such contamination occurred. In line with the CAS jurisprudence (see for instance CAS 2006/A/1067, 13 October 2006). the Panel is of the opinion that, unfortunately, apart from her own words, and unlike others cases where the athlete has managed such burden of proof (see, for instance: CAS 2006/A/1025, 12 July 2006; CAS 2009/N1296, 17 December 2009), the First Respondent did not supply any actual evidence of the specific circumstances in which the unintentional ingestion of the Prohibited Substance would have occurred" (CAS 2012/A/2760, UCI v. Jana Horakova & Czech Cycling Federation, Award of 2 November 2012, paragraph 5.26-5.27).

113. As set out above, the Rider has failed to demonstrate – on the balance of probabilities – that the source of the substance was, as suggested, due to either a cross-contamination of his vitamins or medications or a departure of the Laboratory.

114. One hypothetical source of positive test does not prove to the required level of satisfaction of the Tribunal that such explanation is, on the balance of probability, factually or scientifically probable. Riders have a stringent requirement to offer persuasive evidence of how such "*cross-contamination*" occurred when they so argue. Absent any corroborating evidence, the Tribunal is not persuaded that the occurrence of the alleged ingestion of the prohibited substance through cross-contamination is more probable than its non-occurrence.

115. In these circumstances, it is impossible to determine the degree of fault of the Rider was "non-significant" and therefore impossible to reduce the relevant period of ineligibility on the basis of Article 10.4 or 10.5.2.

116. The Tribunal briefly notes that the other explanations offered by the Rider to justify a reduction or the elimination of the period of ineligibility are irrelevant and cannot be accepted.

117. For example, the fact that the Rider had "*never tested positive*" in the past has no bearing in the present case. Article 10.2 ADR sanctions first-time anti-doping violations under Article 2.2 ADR with a period of ineligibility of 4 (four) years and its reduction or elimination is possible under specific circumstances which have been denied to the Rider. Lack of prior doping violations is not contemplated by the applicable rules as a mitigating factor.

118. Similarly, the Rider's "*premature retirement*" as a consequence of the application of a period of ineligibility or the fact that he will "*not be able to recover the money he has lost due to the loss of his sponsorships*" has no bearing in the present case. The Tribunal refers to the definition of "Fault" set out in the ADR which provides that "*the fact that a Rider would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Rider only has a short time left in his or her career (…) would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2*" of the ADR.

119. In conclusion, the Tribunal has no difficulty in ruling out the application of Article 10.4 and 10.5.2 ADR to the present case.

b. Commencement of the period of Ineligibility

120. A period of ineligibility of 4 (four) years having been imposed on the Rider, the Tribunal has to determine its point of departure.

121. Article 10.11 ADR provides as a general rule that the period of ineligibility shall start on the date of the final decision providing for ineligibility. However, Article 10.11.3.1 ADR also provides that the Rider receives credit for any provisional suspension that was imposed on him, provided that he respected the terms of the provisional suspension.

122. In the present case, the commencement date of the Rider's period of Ineligibility shall correspond to the date where the Operative Part of this Judgment was rendered, i.e. 26 August 2016. The Rider has been provisionally suspended since 18 July 2015. It is not contested that the Rider respected this provisional suspension. Accordingly, the Tribunal determines that the Rider shall receive a credit for the period of the provisional suspension, i.e. from 18 July 2015 until the date of the Operative Part of this Judgment, i.e. 26 August 2016.

c. Disqualification

123. According to Article 10.8 ADR, all competitive results obtained from the date an 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.

124. In the present case, the Tribunal is not persuaded that fairness would justify a derogation from the principle set forth in Article 10.9 ADR.

125. As a result, the Tribunal determines that all competitive results obtained by the Rider between the date of the Sample collection (i.e. 15 July 2015) and the date of the commencement of the provisional suspension (18 July 2015), if any, shall be disqualified.

d. Mandatory fine and costs

126. Pursuant to Article 10.10.1.1 ADR, a fine shall be imposed in case a Rider is found to have committed an intentional anti-doping rule violation within the meaning of Article 10.2.3.

127. Given the circumstances of the present case, however, the UCI does not request the Tribunal to impose on the Rider a mandatory fine because the Rider was not entitled to any income from cycling in 2015.

128. Accordingly, the Tribunal holds that the Rider is not subject to any fine.

129. The Tribunal decides on the other hand that the Rider shall bear the costs of results management set to CHF 2'500 (two thousand and five hundred Swiss francs), in accordance with Article 10.10.2.2 ADR.

V. COST OF THE PROCEEDINGS

130. Pursuant to the provisions of Article 28.1 ADTPR, the Tribunal has to determine the cost of the proceedings as provided under Article 10.10.2.1 ADR.

131. While Article 28.2 ADTPR, provides that Judgments are rendered without costs "*as a matter of principle*", the UCI submits that the Rider, as the unsuccessful party, should pay a contribution towards its costs and expenses incurred in connection with the present proceedings and, in particular, the costs of expert opinions on the blood parameters of the Rider (in accordance with Article 28.4 ADTPR) as well as other legal costs.

132. The Tribunal notes however that no invoices or other proof of expenses has been filed. In addition, the Rider waived his right to a hearing, hereby limiting the Tribunal's costs.

133. Accordingly, the Tribunal finds no reason to depart from the principle set-forth in Article 28.2 of the ADTPR. The present Judgment is rendered without costs.

VI. OPERATIVE PART

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

1. The Rider has committed a violation of Article 2.2 ADR.

2. The Rider is suspended for a period of Ineligibility of 4 (four) years. The period of Ineligibility shall commence on the date of the notification of the operative part of this Judgment, i.e. 26 August 2016.

3. The provisional suspension already served by the Rider, starting from 18 July 2015 shall be credited against the four-year period of Ineligibility.

4. The results obtained by the Rider between 15 and 18 July 2015, if any, are disqualified.

5. The Rider is condemned to pay CHF 2'500 (two thousand and five hundred Swiss Francs) for the costs of the results management by the UCI.

6. All other and/or further reaching requests are dismissed.

7. This Judgment is final and will be notified to:

    a) Mr. Carlos Oyarzun;

    b) Comision Nacional de Control de Dopaje Chile;

    c) World Anti-Doping Agency; and

    d) UCI.

8. This Judgment may be appealed before the CAS pursuant to Article 30.2 ADTPR and Article 74 of the *UCI Constitution*. The time limit to file the appeal is governed by the provisions set forth in Article 13.2.5 ADR and Article 27.4 ADTPR.

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Julien ZYLBERSTEIN
Single Judge

The Operative Part of this Judgment was notified on 26 August 2016.