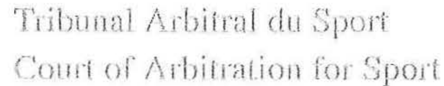

CAS 2018/A/5518 Mr Nicola Ruffoni v. Union Cycliste Internationale

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr Ken E. Lalo, Attorney-at-law, Gan-Yoshiyya, Israel

Arbitrators: Prof Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy
His Honour James Reid QC, Retired Judge in West Liss, United Kingdom

between

Mr NICOLA RUFFONI

Represented by Mr Giuseppe Napoleone, attorney-at-law in Latina, Italy and Mr Marino Colosio, attorney-at-law in Brescia, Italy

Appellant

and

UNION CYCLISTE INTERNATIONALE

Represented by Mr Antonio Rigozzi, attorney-at-law at Levy Kaufmann-Kohler, Geneva, Switzerland

Respondent

I. THE PARTIES

1. Mr Nicola Ruffoni (the "Appellant" or the "Rider") is an Italian professional cyclist, born on 14 December 1990, affiliated to the Federazione Ciclista Italiana and is a UCI licence holder. The Rider started his professional career on 1 August 2013 with the UCI Professional Continental Team Bardiani (the "Team"). He was contracted to the Team until 19 May 2017, when his contract was terminated.

2. The Union Cycliste Internationale (the "Respondent" or the "UCI") is the international federation for cycling and is a non-governmental international association with a non-profit-making purpose, having legal personality pursuant to Articles 60 ff. of the Swiss Civil Code. The UCI's purpose is to direct, develop, regulate, control and discipline cycling in all forms worldwide. In furtherance of its commitment to cycling, the UCI has enacted various regulations to organise cycling internationally, including the UCI Anti-Doping Rules (the "UCI ADR") to implement the provisions of the World Anti-Doping Code (the "WADC") established by the World Anti-Doping Agency ("WADA").

3. The Appellant and the Respondent are hereinafter referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

5. The Rider provided in-competition urine samples during the Tour of Croatia on 20 and 21 April 2017, days in which the Rider won such stages. These controls were negative.

6. Following the Tour of Croatia, the Rider was preparing to ride the 2017 Giro d'Italia at the beginning of May 2017, to which his Team had received a wildcard entry.

7. On 25 April 2017, the Rider provided a urine sample during an out-of-competition doping control in Castenedolo, Italy. This control was requested by the Cycling Anti-Doping Foundation ("CADF") on behalf of the UCI and was carried out by Mr Italo Braito, a Doping Control Officer ("DCO"), certified by International Doping Control Tests and Management ("IDTM"), an anti-doping service provider.

8. The DCO was accompanied during the doping control test by a lady, later identified as Ms Sonia Dagostin.

9. The sample was delivered to the WADA-accredited Laboratory for Doping Analyses in Lausanne, Switzerland (the "Laboratory") on 27 April 2017.

10. On 3 and 4 May 2017, the Rider provided blood samples for the purposes of his Athlete Biological Passport. Both of these blood samples were taken immediately prior the Giro d'Italia and in connection with this race.

11. On 4 May 2017, the Laboratory reported that the Sample A-3094049 provided by the Rider on 25 April 2017 returned an adverse analytical finding ("AAF") for GHRP-2 and its metabolite GHRP-2 M2 and the Rider was notified of the AAF pursuant to Article 7.3 of the UCI ADR. GHRP-2 and its metabolites are Prohibited Substances listed under Class S.2.5 "Growth Hormone-Releasing Peptides" on the 2017 WADA Prohibited List (the "Prohibited List"). GHRP-2 and GHRP-2 M2 are prohibited both in- and out-of-competition. Article 4.1 UCI ADR incorporates the Prohibited List into the UCI ADR. Considering that the Prohibited Substance identified in the Rider's sample is not a Specified Substance as per the Prohibited List, the Rider was also informed of the mandatory provisional suspension imposed on him by virtue of Article 7.9.1 of the UCI ADR.

12. The Rider's teammate, Mr Stefano Pirazzi, was simultaneously notified of an AAF for the very same substance and a mandatory provisional suspension was also imposed on him.

13. As a result of these multiple AAFs, the Team was suspended from participating in international cycling events for a period of 30 days.

14. On 8 May 2017, the Rider requested the B Sample analysis and the A and B Sample Laboratory Documentation Package.

15. On 10 May 2017, the Rider and the UCI agreed on the date of the opening and analysis of the B Sample (specifically, 18 May 2017). The Rider confirmed that the opening and analysis of his B Sample would be attended by his legal counsel, Mr Colosio, and the Rider's scientific consultant, Dr Pieraccini.

16. On 18 May 2017, the analysis of the B Sample took place at the Laboratory in the presence of the above mentioned witnesses. The Laboratory analysis on the B Sample confirmed the presence of GHRP-2 and its M2 metabolite in the Rider's urine.

17. On 19 May 2017, the UCI informed the Rider of the assertion of an Anti-Doping Rule Violation ("ADRV"). In the same communication, the UCI asked the Rider to confirm whether he requested the B Sample Laboratory Documentation Package.

18. On the same day, the Rider maintained his request for the B Sample Documentation Package.

19. On 30 May 2017, the A Sample and the B Sample Laboratory Documentation Package (dated 29 May 2017) was sent to the Rider. The Rider was also informed of the negative findings of the two samples collected from him during the Tour of Croatia. Finally, the Rider was afforded a 2-week period of time to provide his explanation of the AAF and/or to provide substantial assistance.

20. On 22 June 2017, the Rider filed a submission with the UCI in which: (i) he questioned the reliability of the Laboratory's analytical results; (ii) he suggested that it would be nonsensical to use an isolated dose of GHRP (relying on the fact that he tested negative in the other tests in April and May); (iii) alleged that he had been the victim of sabotage or a contaminated product; and (iv) questioned whether the high risk of "*cancerous mastocytosis*" in his family could have caused his AAF.

21. On 4 July 2017, the Rider was offered an Acceptance of Consequences, pursuant to Article 8.4 of the UCI ADR. The Rider was also advised that if he did not agree with the proposed Acceptance of Consequences, the UCI would instigate disciplinary proceedings before the UCI Anti- Doping Tribunal (the "UCI ADT").

22. On 20 July 2017, the Rider informed the UCI that he did not accept the Acceptance of Consequences. Thus, the UCI referred the Rider's case to the UCI ADT.

23. On 28 August 2017, the UCI filed its petition with the UCI ADT.

24. On 23 November 2017, a hearing took place via videoconference. During the course of the hearing, the Rider, his lawyer and his expert, Dr Pieraccini, were heard by the single judge of the UCI ADT.

25. On 14 December 2017, the UCI ADT rendered a decision (the "Challenged Decision"), finding that the Rider had committed an ADRV and imposing a four year period of ineligibility and a fine of € on the Rider. The Challenged Decision rendered the following operative part:

   1. *Mr. Nicola Ruffoni has committed an Anti-Doping Rule Violation (Article 2.1 ADR).*
   2. *Mr. Nicola Ruffoni is suspended for a period of ineligibility of 4 (four) years. The period of ineligibility shall commence on the date of this decision, i.e. 14 December 2017.*
   3. *The provisional suspension already served by Mr. Nicola Ruffoni, starting from 4 May 2017, shall be credited against the four year period of ineligibility.*
   4. *Mr. Nicola Ruffoni is ordered to pay to the UCI the amount of EURO as monetary fine.*
   5. *Mr. Nicola Ruffoni is ordered to pay to the UCI:*
      a. *the amount of CHF 2'500 for costs of the results management;*
      b. *the amount of CHF 510 for costs of the 8-Sample analysis;*
      c. *the amount of EUR 1'500 for costs of the Out-of-Competition Testing; and*
      d. *the amount of EUR 900 for costs of the A and B Sample Laboratory Documentation Packages.*
   6. *All other and/or further reaching requests are dismissed. [. ..]*

26. The UCI ADT's reasoning was, essentially, as follows:

   i. The ADRV was validly established by the presence of GRHP-2 and its metabolite in the Rider's A Sample and B Sample.
   ii. The Rider had not alleged nor established a specific departure from the WADA ISL that could invalidate the results of the analysis.
   iii. The Rider had not established that the violation was not intentional.
   iv. The Rider had not established the source of the substance and his

sanction could therefore not be reduced on the basis of No Fault or Negligence or No Significant Fault or Negligence.

v. The Rider had not contested the calculation of the fine submitted by the UCI, nor put forward any arguments for reduction of the fine.

III. PROCEEDINGS BEFORE THE CAS

27. On 8 January 2018, the Rider filed a Statement of Appeal dated 4 January 2018 with the Court of Arbitration for Sport ("CAS") against the Challenged Decision, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").

28. The Statement of Appeal contained, *inter alia*, the nomination of Professor Luigi Fumagalli as an arbitrator.

29. On 19 January 2018, the Rider filed additional documents, which may be considered along with the Statement of Appeal, also as his Appeal Brief pursuant to Article R51 of the Code. The same documents included also requests for certain evidentiary matters.

30. On 30 January 2018, the UCI nominated His Honour James Reid QC as an arbitrator.

31. On 19 February 2018, the UCI filed its Answer to the appeal, pursuant to Article R55 of the Code.

32. On 14 March 2018, pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel appointed to hear the dispute between the Parties was constituted as follows: Mr Ken Lalo, President; Professor Luigi Fumagalli and His Honour James Reid QC, Arbitrators.

33. Following a review of the Rider's various evidentiary requests, including in his Statement of Appeal and in his letter dated 19 April 2018 (submitted on 23 April 2018), to which the UCI objected in its letter of 26 April 2018, the Panel provided in the CAS Court Office letter of 3 May 2018 certain evidentiary instructions to the Parties. In essence, the Panel permitted the Rider to examine the witness he was seeking to call and to introduce certain evidence relating to proceedings before an Italian prosecutor as well as declarations of the Rider's parents and brother, subject to the UCIs right to question the relevance of such filings and to provide arguments and evidence in rebuttal.

34. In these filings the Rider also requested the "acquisition" of his athlete biological passport ("ABP") and to conduct a DNA test on his sample. However, the Rider provided no explanation whatsoever why his ABP data would be relevant in these proceedings and did not evidence any serious doubts regarding the chain of custody over his sample or any tampering with that sample.

35. The Panel found that the Rider's ABP data was not relevant to these proceedings as they concern an AAF issued in relation to the Rider's positive urine sample and are not an ABP case. The Panel thus rejected the Rider's request to present his ABP data. The Panel did not to permit the Rider to introduce a DNA test as will be further detailed below.

36. The Rider filed the additional permitted evidence, partly within his request for production

of documents of 19 January 2018 filed along with the Statement of Appeal and partly together with his letter of 8 May 2018 which included an English translation of the interrogation report "*concerning the interview of Ms Sonia Dagostin*" held on 11 April 2018.

37. On 3 May 2018, the Parties were advised by the CAS Court Office on behalf of the Panel that a hearing would be held in this matter, and, on 30 May 2018, the Parties were advised by the CAS Court Office that the hearing would be held on 21 June 2018.

38. On 23 May 2018, the UCI filed its "*Response to Appellant's new evidence*" providing comments to the "*interrogation report*" of the interview with Ms Dagostin attached to the Rider's letter of 8 May 2018 and the matters raised by the Rider in his letter filed with the CAS on 23 April 2018.

39. On 7 June 2018, the CAS Court Office issued on behalf of the President of the Panel an order of procedure (the "Order of Procedure"), which was accepted and signed by the Parties. The Order of Procedure, signed on behalf of the Rider by one of his counsel, was attached to CAS correspondence of 11 June 2018 and was signed on behalf of the Rider by his other counsel on 12 June 2018. The Order of Procedure was signed on behalf of the UCI on 14 June 2018.

40. On 21 June 2018, a hearing was held in Lausanne. The Panel was assisted by Ms Andrea Zimmermann, Counsel to CAS. The following persons attended the hearing for the Parties:

i. for the Appellant: Mr Nicolas Ruffoni, the Appellant;
Mr Marino Colosio, counsel;
Mr Guiseppe Napoleone, counsel;
Ms Bianca Scaglia, counsel;
Ms Sara Nocera, interpreter.

ii. for the Respondent: Mr Antonio Rigozzi, counsel.

41. At the opening of the hearing, both Parties confirmed that they had no objection to the appointment and constitution of the Panel. The Panel, thereafter, heard opening statements by counsel as well as declarations from Mr Ivan Ruffoni, Ms Claudia Gozza, Mr Marco Ruffoni, Dr Giuseppe Pieraccini and the Rider. Any witness, who had submitted a witness statement before the CAS, confirmed such statement.

42. The contents of the respective statements and testimonies can be summarised as follows:

- According to the joint witness statement of Mr Ivan Ruffoni, the Rider's father, Ms Claudia Gozza, the Rider's mother, and Mr Marco Ruffoni, the Rider's brother, on 25 April 2017 at 7:10 pm a man and a woman visited their home looking for the Rider. The Rider was not at home and the visitors asked that he be notified by phone to report for a doping control. The mother asked the people to stay outside but they ignored her and entered the property. The visitors carried no name tags and were asked why no IDs were presented and why they were both Italian while in other controls there was an Italian and a foreigner. The visitors were rude and responded that the anti-doping system may not be questioned. The joint statement mentioned that the identity of the visitors was still unknown to the family members. The Rider's parents

and brother recalled that the Rider explicitly asked why the DCO did not ask to see the Rider's ID in accordance with what he considered "standard procedure" and that the DCO answered "*with an ironic smile*" that he already knew him. They also recalled that the Rider also asked why the DCO and the person accompanying him did not indicate their names in section 4 of the Doping Control Form (the "DCF"), but did not indicate what the DCO's answer to this question was.

- Dr Giuseppe Pieraccini confirmed his statement dated 14 September 2017. During his testimony he confirmed his conclusion that "*the molecule is present*" in the sample and that there was no doubt regarding the presence of GHRP-2 and M2 in the A and B Samples. He agreed that the Laboratory "*called correctly*" the results of the analysis. However, he indicated that this could have been the result of contamination, for example contaminated water. It was mentioned that this was the only positive of 5 tests. The drug has a very short effect and the detection window is short at about 10 – 24 hours and possibly somewhat longer with modern equipment. He was mentioning a possible tampering but had no proof. He indicated that based on what he heard the sampling process was not credible.

- Mr Ivan Ruffoni, the Rider's father, testified that he was not at home when the DCO and another person arrived. His son asked him to return and his wife was nervous indicating that the two visitors pushed the gate to the house / garden and made their way in in a rude manner. They visitors had no accreditation and no IDs were shown. When asked about it they replied rudely and wondered if the anti-doping system was questioned. He understood that the visitors were testing officers but they had no name tags and showed no IDs. The male accompanied the Rider to the bathroom when the sample was provided. He could not remember who poured the urine into the A and B bottles. The woman participated actively in the control. He did not see who put the box with bottles on the table. He confirmed that he did not suggest that someone manipulated the sample.

- Ms Claudia Gozza, the Rider's mother, testified that two people came to the house gate. They said that they came for anti-doping control but no tags or IDs were shown. They entered even when asked not to. The son Nicola arrived some 10 minutes later. It was Nicola who poured the urine into the A and B bottles. Only the man accompanied the son to the bathroom where the urine sample was provided. The son asked again for IDs, but received a rude response. The visitors did not see the Rider's ID. The DCO was not professional. However, there was "*no difference in actual sample collection*" from a number of other controls that she had witnessed before.

- Mr Marco Ruffoni, the Rider's young brother, testified but did not remember too many details. He recalled that both visitors touched the sampling bottles. He did not remember whether these were bottles or tubes, but remembered that both touched the bag and bottles. The bottles papered to have seals. Only the man accompanied his brother to the bathroom where the urine sample was provided.

- The Rider testified that Ms Dagostin had no position with the UCI, was not authorised by the UCI and did not sign the DCF. No IDs were presented during testing process. He conducted a Facebook search and found out that Ms Dagostin is the DCO's wife, which she did not admit in her interrogation and which information was not disclosed to him. Ms Dagostin did not just observe but participated in the anti-doping control. The process was not managed professionally.

43. At the conclusion of the hearing, after concluding pleadings by counsel, the Parties expressly stated that their rights to be heard and to be treated equally in the proceedings had been fully respected.

IV. THE POSITION OF THE PARTIES

44. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Appellant and by the Respondent. The Panel has nonetheless carefully considered all the submissions made by the Parties, whether or not there are specific references to them in the following summary.

A. The Position of the Appellant

45. In his Statement of Appeal the Appellant requested this Panel:

> "*In view of all this, the undersigned defense attorneys, as well as the athlete specifically request that the Honorable TAS/CAS, reverse the judgment in appeal, and pursuant to and to the effect of art. 3.2.2 of the ADR,*
>
> 1. *Declare the test of April 25th, 2017 invalid, for the violation of art 3.2.2 of the ADR, adopting each consequential measure;*
> 2. *Pursuant to and to the effects of art. 10.4 of the ADR, order the annulment of the disqualification for no fault or gross negligence;*
>
> *Secondarily,*
>
> 3. *Pursuant to and to the effects of art. 10.5 of the ADR, reduce the disqualification period, since the conduct of the athlete was not intentional, to one year of disqualification, with the consequent reduction of the penalties. In this regard, it is pointed out that for the similar case of the athlete Stafano Pirazzi, holder of a sports contract with an amount quite higher than RUFFONI's, the pecuniary sanction that was imposed on him by the same Court was €* [redacted] "

46. The Appellant's contentions regarding the mistakes contained in the Challenged Decision which require the Panel to set it aside may be summarized as follows:

- The Rider contests that the sampling process and hence the test results are not valid since there were two main "irregularities" that occurred in relation to the Rider's sampling process.
- The first irregularity is that the Rider's doping control on 25 April 2017 occurred outside of the "*time window provided by the regulations*". The sampling process started at about 7:10 pm and ended at about 7:35 pm, before the time designated for testing on the Rider's whereabouts notification.
- The second irregularity is that an unknown person (now identified as Ms Dagostin), apparently the DCO's wife, participated in the taking of the Rider's sample. The

entire chain of custody of the sample is put in question and the presence of the Prohibited Substance may be the result of this irregularity. The implicit argument is that the DCO or Ms Dagostin may have tampered with the Rider's sample.

- These constitute a departure from WADA's International Standard for Testing and Investigations ("ISTI"), which "*could have caused the adverse analytical conclusion*" and thus the burden shifts to the UCI to prove that the Rider tested positive for the Prohibited Substance.
- The Rider underwent five tests during a period of some 15 days (on 20, 21 and 25 April 2017 and on 3 and 4 May 2017) and in addition conducted a voluntary test on 6 May 2017. Out of these five were negative and only the one conducted on 25 April 2017 was positive.
- Only the test performed out of the time window provided by the regulations and in the presence of an individual who participated in the process but was not identified at the time and did not sign the official report, was positive. This must lead to a serious suspicion regarding the chain of custody of the sample and whether it actually belonged to the Rider.
- Given that the offending molecule is a "persistent" molecule and that the five tests that were all performed at WADA accredited laboratories and had negative results represent an objective data, it is likely "more probable than not'' that the results of the 25 April 2017 test were affected by an error that generated the adverse result.
- Only "*the smallest quantity*" of the prohibited substance was detected ("*2 ng/ml of active principle and 5 ng/ml of the GHRP-2 hormone*"). While the mere presence of the active ingredient is sufficient to prove the responsibility of an athlete, even at a very small concentration of the metabolite, this very low concentration may be useful in evaluating the intent or lack of intent of the Rider to use the Prohibited Substance.
- As reflected in Dr Pieraccini's report, the hormone in question can improve sports performance only when consumed in substantial quantities in a cyclical manner over three to six months. This is not a possible scenario given the five negative tests between 20 April 2017 and 6 May 2017.
- These circumstances inevitably point to the lack of intent of the Rider to ingest the Prohibited Substance.
- The offending molecule could have been diluted in a liquid and the Rider may have consumed it unknowingly. Such a probability or eventuality is consistent with the modest concentration of the metabolite. On the other hand, had the intake been intentional, the quantity of the active principle would have had a different and higher magnitude.
- These are objective elements supporting the Rider's denial of responsibility.
- The presence of another individual who was not identified in the official reports, together with the DCO, is a circumstance which had already been "*highlighted as well in the course of the questioning dated 29/06/2017 before the Public Prosecutor's Office*".
- Such questioning, which sets out the Rider's answers in a criminal proceeding for

use of prohibited substances, shows that the Rider stated that a man and a woman were present during the doping control but that they did not introduce themselves and did not show their IDs. He underwent the doping control as they were carrying the anti-doping kit.

- On 5 January 2018, the Rider submitted to the Public Prosecutor's Office in Brescia, Italy a complaint, relating to his testing on 25 April 2017. As part of these proceedings, on 11 April 2018, Ms Sonia Dagostin, who is now identified as the unknown woman that accompanied the DCO during the control, was interviewed. It appears that Ms Dagostin is the DCO's wife and not part of the UCI structure and was not authorized to be involved or to take part in the testing procedure. Her attendance before, during and after the test process violates the UCI ADR including Article 6.1 of the UCI Testing & Investigations Regulations.
- The present case cannot proceed based on the ground of lack of "*legality*" as the urine was not "*pure*", is not necessarily that on the Rider and criminal proceedings have started in Italy in connection with the same matters, including the arrest of various persons.
- Even if the ADRV is confirmed, the period of ineligibility must be reduced as the Rider showed that any use, if any, was not intentional. The sanction should further be reduce as the quantity in the sample was very small and could not have improved performance. The Rider loves the sport of cycling and is an athlete with a clean record.
- For the similar case of the rider from the same Team, Mr Stafano Pirazzi, involving the same substance, and despite the fact that Mr Pirazzi's contract with the Team is for a higher amount than the Rider's, the pecuniary sanction that was imposed by the same court was only € [redacted].

B. The Position of the Respondent

47. In its Answer to the appeal, the Respondent requested the Panel to issue an award:

"*(i) Dismissing Mr. Ruffoni's Appeal and all prayers for relief.*

(ii) Upholding the Decision of the Single Judge of 14 December 2017.

(iii) Condemning Mr. Ruffoni to pay a significant contribution towards the UCI's legal fees and other expenses."

48. The Respondent's answers to the "*legal arguments*" of the Player may be summarized as follows:

- GHRPs are used to stimulate the release of Growth Hormones (GH) by the pituitary gland. GHRP-2 is on the Prohibited List.
- The Rider does not appear to dispute that the Laboratory analysis reliably detected the presence of GHRP-2 in both his A and B Samples. The Rider's expert confirmed that he has no issue with the analysis conducted by the Laboratory.
- The UCI ADR provides that "sufficient proof" of an ADRV under Article 2.1 is established by the presence of a Prohibited Substance in the Rider's A Sample, as confirmed by the Rider's B Sample. The ADRV of Presence is therefore established.

- Such a finding also confirms an ADRV of Use under Article 2.2 of the UCI ADR.
- The Rider has - for the first time - raised in this CAS appeal alleged irregularities with the doping control process.
- The burden is on the Rider to establish that the alleged departures he relies on: (i) occurred; and (ii) could reasonably have caused the AAF. Only if the Rider succeeds in meeting both elements of this burden is the UCI required to establish that the departures did not cause the AAF.
- CAS jurisprudence has made it clear that a hypothetical suggestion that a sample has been affected is insufficient to meet the burden of proof.
- The Rider has referred to his testing occurring outside the "*time window provided by the regulations*". The Rider does not dispute that his test occurred during the hours of 5 am to 11 pm (having taken place at approximately 7:20 pm), thus the UCI understands the Rider to be referring in his submissions to testing outside of the specific 60-minute time slot that he specified in his whereabouts.
- Under the ISTI, each Rider in the UCI Registered Testing Pool is required to provide one specific 60 minute time slot where he or she will be available for testing at a specific location each day.
- While it is undisputed that the Rider had nominated 8 pm as his daily 60-minute time slot on the day in question, and that the DCO came outside this time period, it is clear from the relevant regulations that this is not a departure from any relevant UCI rule or WADA standard.
- To the contrary, it is very clearly specified in the relevant regulations that the primary principle under the WADC is that an athlete can be tested at any time and place upon request by an Anti-Doping Organisation with testing authority over the athlete.
- Therefore, the Rider's assertion of an "irregularity" concerning the timing of the test should be rejected.
- The other "irregularity" alleged by the Rider is a "lack of formal compliance" resulting from the presence, with the DCO, of "*another individual who was not identified in the official reports*". The DCO and the woman accompanying him did not introduce themselves and did not show their IDs.
- However, under the ISTI there is no obligation on the part of the DCO to spontaneously produce an ID. In the present case, it is not even alleged that the Rider asked the DCO to show an ID and that the latter refused. The Rider understood who the DCO was and did not express any doubt or complaint concerning the DCO's right to collect a sample from the Rider.
- The "[unidentified] individual" who attended the Doping Control Test, was Ms Dagostin, a Doping Control Assistant in training.
- There is no prohibition on a DCO to be accompanied by another person - let alone a trainee - during a test. The trainee did not qualify as an Assistant DCO or a DCO, hence there was no requirement to add her name under section 4 of the DCF.

- The involvement of the trainee was limited to opening the box containing the doping control kit and she did not actively participate in the collection of the sample. This could not possibly be a departure from the relevant regulations.
- The Rider signed the DCF with no comments.
- Even assuming that being accompanied by a DCA trainee and not spontaneously showing an ID could qualify as a departure from the regulations, the Rider has not explained in any way how these alleged departures could have caused the presence of GHRP-2 in his urine sample.
- If the Rider suggests that the DCO or Ms Dagostin tampered with his sample, such an allegation is not supported by any of the objective evidence in this case. To the contrary:
    - The Rider checked the numbers on the A and B bottles, broke the seals, poured the urine into them and resealed them.
    - The Rider signed the DCF indicating that the sample was properly sealed and labelled in his presence. The Rider made no comments on such DCF. The Rider underwent quite a number of controls and was experienced enough to state any departures from the standard testing procedures, had such been identified by him;
    - The Rider does not take issue with the chain of custody documentation included in the Documentation Package, which clearly states that the samples were in the possession of the DCO at all times between collection and delivery to the courier company;
    - The sample was transported to the Laboratory by a well-known and trusted courier company;
    - Not only did the Laboratory not record any conditions which could call into question the integrity of the sample (as it is required to do under Article 5.2.2.3), the Laboratory specifically noted that the state of the packaging was "ok";
    - The Laboratory has expressly stated in the Documentation Package that its staff broke the seal of the relevant sample; and
    - The Rider has not even alleged that there is some sort of inconsistency in the numbering of the relevant sample or any element relating to the chain of custody which could call into question the integrity of the sample.
- In an unrelated doping control test, with unrelated doping control personnel, the Rider's teammate tested positive for exactly the same substance.
- There were no departures that occurred in the collection of the Rider's sample, and most certainly none that could have caused the presence of GHRP-2 in the sample.
- Therefore, the Rider committed an ADRV of both the Presence and the Use of GHRP-2 and its metabolite GHRP M-2 under the UCI ADR.
- The ADRV is decided under the UCI ADR (both the violation and the sanction) and not the Italian Criminal Code and the fact that any criminal proceedings may have been commenced in Italy does not require the termination of the current proceedings

before CAS. There is no breach of Swiss public policy.

- Pursuant to Article 10.2.1.1 of the UCI ADR, the Period of Ineligibility for an ADRV of Presence or Use for a non-Specified Prohibited Substance shall be four years, unless the Rider can establish that the ADRV was not intentional.
- The Rider did not establish that the ADRV was not intentional.
- The other four tests which occurred within a span of some 15 days and came out negative were conducted in-competition or in connection with competition, in circumstances where the Rider could expect to be tested. The control of 25 April 2017 was conducted out-of-competition, on the basis of no advance notice testing, and during a period in which he was preparing for a Grand Tour.
- Whilst the Rider and his expert rely on the small quantity of GRHP-2 detected in his sample, this cannot be accepted as evidence that the Rider did not intentionally use the substance; it simply goes to how much the Rider may have used or when he may have used it.
- The Rider and his expert also seem to suggest that, if not intentional, the presence of GHRP-2 may have stemmed from the use of contaminated supplements and/or sabotage. These are mere assertions without any supporting evidence or even attempts to obtain such evidence.
- The Rider has not proven the source of the substance in his sample, nor is this one of the "*extremely rare [cases] in which a Panel may be willing to accept than an ADRV was not intentional although the source of the substance had not been established*".
- As such, the Rider has failed to prove that his ADRV is not intentional, with the result that the "base" sanction to be imposed on him is a four year period of ineligibility.
- In order to benefit from a fault related reduction, the Rider must prove the source of the substance. Having failed to establish how GRHP-2 could have entered his system, the Rider cannot benefit from the application of these principles.
- In such circumstances, there is no alternative but to uphold the Challenged Decision and, in particular, the four year period of ineligibility imposed on the Rider.
- Regarding the fine, the Rider has failed to even address the factors which can be applied to reduce a financial penalty under the UCI ADR.
- The Rider refers to the Euro [redacted] fine imposed on his Team mate, Mr Pirazzi. However, that fine was not "imposed" by the UCI ADT but rather agreed to by Mr Pirazzi and the UCI following that rider's acknowledgment that he had committed an ADRV and the receipt of a substantiated request for reduction of the fine. Therefore, any comparison with the Rider's case would be misconceived.
- On the basis of the Rider's current position, there is no scope to reduce the fine that was imposed on him in the Challenged Decision.
- The Rider's consistent, and evolving, formalistic defences have caused the UCI considerable costs, none of which were reimbursed to the UCI in the context of the UCI ADT proceedings. Furthermore, the UCI has been required to obtain external

legal advice "*in order to deal with the baseless - and at many times unclear - legal arguments of the Rider*". The UCI should be awarded a significant contribution to its legal and expert costs.

V. JURISDICTION

49. CAS has jurisdiction to decide the present dispute.

50. The jurisdiction of CAS is accepted by the Respondent, is confirmed by the Order of Procedure, signed by the Parties without any reservation, and is contemplated by Article 13 of the UCI ADR and by Article 30 of the UCI the UCI Anti-Doping Tribunal Procedural Rules. No objections were lodged to the Panel's jurisdiction, despite the invitation by the Panel to the Parties to do so at the start of the hearing.

51. Article 13 of the UCI ADR states in its pertinent part that:

> *13.2.1 Appeals Involving International-Level Riders or International Events*
> *In cases arising from participation in an International Event or in cases involving International-Level Riders, the decision may be appealed exclusively to CAS.*
> *[Comment to Article 13.2.1: CAS decisions are final and binding except for any review required by law applicable to the annulment or enforcement of arbitral awards.]*

52. Article 30 of the UCI Anti-Doping Tribunal Procedural Rules states in its pertinent part that:

> *2. Judgments are subject to appeals lodged with the Court of Arbitration for Sport, in accordance with Article 13 ADR.*

53. CAS jurisdiction over the current proceedings is therefore confirmed.

VI. ADMISSIBILITY

54. The Statement of Appeal was filed on 8 January 2018, within one month of the date the Challenged Decision was issues; namely, 14 December 2017.

55. This conforms with the time limit for appeal pursuant to Article 13.2.5 of the UCI ADR which states in its pertinent part:

> *13.2.5.1 Appeals to CAS*
> *Unless otherwise specified in these rules, appeals under Article 13.2.1 and 13.2.2 from decisions made by the UCI Anti-Doping Tribunal or UCI Disciplinary Commission shall be filed before the CAS within 1 (one) month from the day the appealing party receives notice of the decision appealed.*

56. The Statement of Appeal was filed within the deadline set in Article 13.2.5 of the UCI

ADR and complies with the requirements of Articles R48 and R65 of the Code, including the payment of the CAS Court Office fee. The admissibility of the appeal is not challenged by the Respondent. Accordingly, the appeal is admissible.

VII. SCOPE OF THE PANEL'S REVIEW

57. According to Article R57 of the Code,

> "*the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. ...*".

VIII. APPLICABLE LAW

58. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

59. Article R58 of the Code provides the following:

> "*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*".

60. In the present case the "*applicable regulations*" for the purposes of Article R58 of the Code are, indisputably, those contained in the UCI ADR and associated regulations because the appeal is directed against the Challenged Decision, which was decided applying the UCI ADR.

61. As a result, UCI ADR shall apply primarily. Swiss law, being the law of the country in which the UCI is domiciled, applies subsidiarily.

62. The present submission also refers primarily to the following WADA and UCI rules and regulations which are relevant to these proceedings:

    i. The ISTI;

    ii. The Prohibited List; and

    iii. The UCI Testing and Investigations Regulations ("UCI TIR").

63. The provision of the UCI ADR which are relevant in this case include primarily the following:

Regarding the violations:

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

> 2.1.1 *It is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body. Riders are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Rider's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*
>
> *[...]*
>
> 2.1.2 *Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Rider's A Sample where the Rider waives analysis of the B Sample and the B Sample is not analyzed; or, where the Rider's B Sample is analyzed and the analysis of the Rider's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Rider's A Sample. [...]*
>
> 2.1.3 *Excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample shall constitute an anti-doping rule violation. [...]*
>
> 2.2 *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.*

Regarding the respective burdens and standards of proof:

> 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: *[…]*

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.

Regarding the sanction for an ADRV of Presence or Use:

> *10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method*
>
> *The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:*
>
> *10.2.1 The period of Ineligibility shall be four years where:*
>
> *10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional. [. ..]*
>
> *10.2.2 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.*

Regarding a reduction of the sanction on the basis of No Fault or Negligence or No Significant Fault or Negligence:

> *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.*
>
> *[Comment to Article 10.4: This Article and Article 10.5.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example where a Rider could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Riders are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility*

of supplement contamination); (b) the Administration of a Prohibited Substance by the Rider's personal physician or trainer without disclosure to the Rider (Riders are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Rider's food or drink by a spouse, coach or other Person within the Rider's circle of associates (Riders are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.5 based on No Significant Fault or Negligence.]

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

10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6. […]

10.5.1.2 Contaminated Products

In cases where the Rider or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Rider's or other Person's degree of Fault.

[Comment to Article 10.5.1.2: In assessing that Rider's degree of Fault, it would, for example, be favorable for the Rider if the Rider had declared the product which was subsequently determined to be contaminated on his or her Doping Control form.]

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.

Relating to the definitions of No Fault or Negligence and No Significant Fault or Negligence:

No Fault or Negligence: The Rider or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of

a *Minor, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered his or her system.*

No Significant Fault or Negligence: The Rider or other Person's establishing that his or her Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a *Minor, for any violation of Article 2.1, the Rider must also establish how the Prohibited Substance entered his or her system.*

Regarding the financial consequences to the Rider:

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

10.10.1.1 A fine shall be imposed in case a *Rider or other Person exercising* a *professional activity in cycling is found to have committed an intentional anti- doping rule violation within the meaning of Article 10.2.3.*

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

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

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

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

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

1. Nature of anti-doping rule violation and

circumstances giving rise to it;

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

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

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

IX. THE MERITS

64. The object of this arbitration is the Challenged Decision, which found the Rider responsible for the ADRV contemplated by Article 2.1 of the UCI ADR and imposed on him a suspension for four years pursuant to Article 10.2.1 of the UCI ADR. The Rider was not considered to have established that the violation was not "intentional" as this term is defined in Article 10.2.3 UCI ADR and the Rider was not found to be entitled to a fault-related reduction of the period of suspension pursuant to Articles 10.4 or 10.5 of the UCI ADR. The Rider was also sanctioned with a fine of Euro [redacted] pursuant to Article 10.10.1 of the UCI ADR and was required to reimburse certain costs of the UCI. The Rider disputes both the finding of an ADRV and the sanctions imposed and requests that the Challenged Decision be set aside, and that the period of ineligibility and the fine be cancelled or reduced. The UCI, on the other hand, requests this Panel to dismiss the appeal and to confirm the Challenged Decision.

65. As a result of the Parties' requests and submissions, there are five issues that need to be addressed by this Panel:

    i. Is there an apparent finding of an ADRV?
    ii. Should the alleged AAF be set aside due to irregularities in the sampling process?
    iii. The proper sanction: should the ADRV be considered non "intentional"?
    iv. Is the Rider entitled to a cancellation or a reduction of the period of ineligibility?
    v. Should the fine imposed on the Rider be cancelled or reduced?

66. The Panel will consider each of those issues separately.

i. Is there an apparent finding of an ADRV?

67. The first issue to be addressed concerns the commission by the Rider of an ADRV

contemplated by the UCI ADR for which he was found responsible by the Challenged Decision.

68. Article 2.1 of the UCI ADR establishes the obligation of the Rider to ensure that there is no presence of a Prohibited Substance in his bodily systems ("an ADRV of Presence"):

> *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.*

69. Under Article 2.1.2 of the UCI ADR "*sufficient proof*" of an ADRV is established by the presence of a Prohibited Substance in the Rider's A Sample, as confirmed by the Rider's B Sample.

70. Both the A Sample and the B Sample were found positive by the Laboratory for GHRP-2 and its metabolite GHRP-2 M2.

71. GHRPs are used to stimulate the release of Growth Hormones (GH) by the pituitary gland. GHRPs are used by athletes to aid in promoting bone mineral density, increased lean muscle mass, improved strength, rejuvenation and strengthening of joints and faster recovery from injuries.

72. GHRP-2 and GHRP-2 M2 are Prohibited Substances listed under Class S.2.5 "Growth Hormone-Releasing Peptides" on the Prohibited List and are prohibited both in- and out-of-competition. They are not Specified Substances.

73. While the Rider and his expert question the effects of GHRP-2, especially in the argued low quantities in which it was found and the fact that allegedly it can only have a sport enhancing effect if used for an extended period, this Panel may not review whether this substance: (i) has the potential to enhance performance; (ii) represents a health risk; or (iii) violates the spirit of sport, pursuant to Article 4.3.3 of the WADC.

74. Article 2.2 of the UCI ADR reads as follows:

> *Use or Attempted Use by a Rider of a Prohibited Substance or a Prohibited Method*
>
> *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.*

75. In principle, a finding of the Prohibited Substance in the Rider's systems might also confirm an ADRV of Use under Article 2.2 of the UCI ADR ("an ADRV of Use").

76. In the Challenged Decision the UCI ADT found that the Rider committed an ADRV of

Presence. The UCI ADT did not decide anything regarding an ADRV of Use. The UCI argues in its pleadings that an ADRV of Use was also established, but in its Answer seek only confirmation that the Challenged Decision should be upheld. Therefore, it is not necessary for the purposes of this Award to establish anything other than the commission of an ADRV of Presence.

77. The Rider has not raised issues regarding the analysis conducted by the Laboratory and does not appear to dispute that the Laboratory's analysis reliably detected the presence of the Prohibited Substance in both the A Sample and the B Sample. This argument which had been addressed by the Rider before the UCI ADT was not repeated before this Panel and no evidence questioning the analytical results was presented.

78. The Rider's own expert stated in his report that:

> *From an analytical point of view, there are not doubt that in [the Rider's urine sample] the molecules of GHRP-2 and of its M2 metabolite were present, at very low concentration (around 2 and 5ng/mL, respectively).*
> *[...]*
> *It is not a matter of discussion the presence of GHRP-2 and its M2 metabolite in the urine sample attributed to Mr. Ruffoni and analysed at the antidoping laboratory in Lausanne [. . .]*

79. While the presence of the Prohibited Substance is not disputed, the Rider does raise in these proceedings alleged irregularities of the doping control sampling process and questions whether the samples are those of the Rider and whether they substantiate an AAF.

80. The UCI highlights that such arguments have not been put forward prior to these proceedings before CAS, neither during the results management phase with the UCI nor during the adjudication phase by the UCI ADT.

81. The Panel clearly has jurisdiction to entertain such arguments, which account for the key arguments made by the Rider before this Panel, as the case is decided *de novo*. This is also accepted by the UCI. The Panel may of course consider in assessing the weight given to testimony relating to the sample collection process the fact that such arguments are being raised for the first time on appeal to CAS.

82. If the Panel does not accept the Rider's arguments relating to the sample collection process, then the only conclusion will be that the ADRV was established.

ii. Should the alleged AAF be set aside due to irregularities in the sampling process?

83. The Rider argues that there were two main "irregularities" that occurred in relation to the taking of his sample on 25 April 2017:

   i. That his doping control test occurred outside of the "*time window provided by the regulations*" which he had designated for testing in his whereabouts; and

   ii. That an unknown person (later identified as Ms Dagostin) participated in the taking of his sample and thus the chain of custody over the sample was interrupted. The

Rider requested a DNA analysis of his sample making the inference that the DCO or Ms Dagostin may have tampered with the doping control process and his sample.

A. Departures from the applicable standards

84. Under Article 3.2.3 of the UCI ADR:

> *Departures from any [rule other than the WADA ISL] 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 [rule other than the WADA ISL] 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.*

85. Therefore, it is the Rider's burden to establish by a balance of probability that the alleged departures he relies on: (i) occurred; and (ii) could reasonably have caused the AAF. Only if the Rider succeeds in meeting both elements of this burden is the UCI required to establish that the departures did not cause the AAF.

86. The Panel follows CAS jurisprudence which has made it clear that a hypothetical suggestion that a sample has been affected is insufficient to meet the burden of proof. For example, the panel in CAS 2013/A/3112 concluded that:

> *Therefore, the Panel deems a mere reference to a departure from the ISL insufficient, in the absence of a credible link of such departure to a resulting Adverse Analytical Finding. In other words, in order for an athlete to meet his/her burden and thus effectively shift the burden to an anti-doping organization, the athlete must establish, on the balance of probabilities, (i) that there is a specific (not hypothetical) departure from the ISL; and (ii) that such departure could have reasonably, and thus credibly, caused a misreading of the analysis.*

87. Thus, it is the Rider who must discharge his burden of proof under Article 3.2.2 of the UCI ADR as interpreted by CAS case law.

B. The time of the doping control test

88. The Rider argues that his testing occurred outside the "*time window provided by the regulations*".

89. Article 5.2 of the UCI ADR (which uses similar language to that used in the WADC) provides as follows:

> *Any Rider may be required to provide a Sample at any time and at any place by the UCI or any other Anti-Doping Organization with Testing authority over him or her.*

90. Article 4.5.5 of the UCI TIR (which uses identical language to the relevant provision of the ISTI) specifies that:

> *For the avoidance of doubt, notwithstanding the development of criteria for selection of Riders for Testing, and in particular for Target Testing of Riders, as well as the fact that as a general rule Testing should take place between 5 a.m. and 11 p.m. unless valid grounds exist for Testing overnight, the fundamental principle remains (as set out in UCI ADR Article 5.2) that a Rider may be required to provide a Sample at any time and at any place by any Anti-Doping Organization with Testing Authority over him/her, whether or not the selection of the Rider for Testing is in accordance with such criteria. Accordingly, a Rider may not refuse to submit to Sample collection on the basis that such Testing is not provided for in the UCI's Test Distribution Plan and/or is not being conducted between 5 a.m. and 11 p.m., and/or that the Rider does not meet the relevant selection criteria for Testing or otherwise should not have been selected for Testing.*

91. The Rider's testing which occurred at his home on 25 April 2017 took place at approximately 7:20 pm. Therefore, clearly during the hours of between 5 am and 11 pm. It appears that the Rider refers in his submissions to testing outside of the specific 60-minute time slot that he specified in his whereabouts filing.

92. Indeed, under Article 5.3.2 of the UCI TIR (which again uses similar language to that contained in the ISTI), each Rider in the UCI Registered Testing Pool is required to provide one specific 60 minute time slot where he or she will be available for testing at a specific location each day. This provision reads as follows:

> *In furtherance of Article 5.3.1.i), the Whereabouts Filing must also include, for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. where the Rider will be available and accessible for Testing at a specific location. This does not limit in any way the Rider's UCI ADR Article 5.2 obligation to submit to Testing at any time and place upon request by an Anti- Doping Organization with Testing Authority over him/her. Nor does it limit his/her obligation to provide the information specified in Articles 5.3.1, 5.3.3 and 5.3.4 as to his/her whereabouts outside that 60-minute time slot. However, if the Rider is not available for Testing at such location during the 60-minute time slot specified for that day in his/her Whereabouts Filing, that failure may be declared a Missed Test.*

93. It is undisputed that the Rider had nominated 8 pm as his daily 60-minute time slot on 25 April 2017 and that the DCO came somewhat earlier and outside this time period. However, it is clear from the above provisions that this is not a departure from any relevant UCI rule or WADA standard and that specifying a daily 60-minute slot "*does not limit in any way the Rider's UCI ADR Article 5.2 obligation to submit to Testing at*

any time and place". The purpose of the designation of the 60-minute slot is only to accommodate athletes by not requiring them to stay at the same location for an extended period and to allow a declaration of a Missed Test on any given day.

94. The Panel does not accept that having tested the Rider approximately one-hour before the time designated in his whereabouts as a time in which he would be at home constitutes any "irregularity" of the testing process or a departure from the testing procedures. As specifically mentioned by Article 5.3.2 of the UCI TIR, in fact, the specification of a time slot for availability "*does not limit in any way the Rider's UCI ADR Article 5.2 obligation to submit to Testing at any time and place upon request by an Anti- Doping Organization with Testing Authority over him/her*". The Panel, therefore, need not even examine whether this could have had any improper impact on the positive test result (which it clearly could not have had).

C. The "irregularity" of the control

95. The other "irregularity" alleged by the Rider is a "lack of formal compliance" resulting from the fact that the DCO was accompanied by "*another individual who was not identified in the official reports*".

96. The Rider as well as his parents and brother, in their respective witness statements as well as in their testimonies at the hearing, highlighted that the DCO ignored their requests to leave the house until the arrival of the Rider and that he did not immediately show his ID. The Rider's parents and brother also recalled that the Rider explicitly asked why the DCO did not ask to see his ID in accordance with the "standard procedure" and that the DCO answered that he already knew the Rider. They further stated that the Rider also asked why the DCO and the person accompanying him did not indicate their names in section 4 of the DCF.

97. The UCI questions why these claims were not voiced at the relevant time, on the DCF or during the interrogation by the Italian criminal authority. The UCI also requests the Panel to assess the credibility of such statements taking into account the family relationship between the witnesses and the Rider.

98. The relevant provisions of the ISTI state, *inter alia*, as follows:

> *5.3.3 Sample Collection Personnel shall have official documentation, provided by the Sample Collection Authority, evidencing their authority to collect a Sample from the Athlete, such as an authorisation letter from the Testing Authority. DCOs shall also carry complementary identification which includes their name and photograph (i.e., identification card from the Sample Collection Authority, driver's licence, health card, passport or similar valid identification) and the expiry date of the identification.*
>
> *[...]*
>
> *In conducting the Sample Collection Session, the following information shall be recorded as a minimum: [. . .] x) The name and signature of the DCO;*
>
> *[. . .]*

> *At the conclusion of the Sample Collection Session the Athlete and DCO shall sign appropriate documentation to indicate their satisfaction that the documentation accurately reflects the details of the Athlete's Sample Collection Session, including any concerns expressed by the Athlete. The Athlete's representative (if any) and the Athlete shall both sign the documentation if the Athlete is a Minor. Other persons present who had a formal role during the Athlete's Sample Collection Session may sign the documentation as a witness of the proceedings.*

99. It appears that there is no obligation on the part of the DCO to spontaneously produce any ID. In the present case, there was no clear evidence that the Rider asked the DCO to show an ID and that the latter refused. It is clear from the testimony that the Rider's parents and brother and that the Rider himself understood who the DCO was and that he was there in order to conduct an out-of-competition test, and that they did not voice, at the time, any complaint concerning the DCO's right to collect a sample from the Rider.

100. The UCI confirmed that the "individual" who attended the Doping Control Test was Ms Dagostin, and identified her as a Doping Control Assistant in training.

101. The UCI argues that there is no prohibition on a DCO to be accompanied by another person, let alone a trainee, during a test, and that this had not even been alleged by the Rider. The UCI argues that the trainee did not qualify as an Assistant DCO or a DCO, and thus that there was no requirement to add her name under section 4 of the DCF.

102. The Rider refers to questionings and interviews dated 29 June 2017 before a Public Prosecutor's Office in Italy in the context of criminal proceedings for use of prohibited substances by the Rider. The Rider stated at that time that a man and a woman were present during the doping control but that they did not introduce themselves and did not show their IDs. He also stated in such interviews that he underwent the doping control as they were carrying the anti-doping kit. According to the same transcripts the involvement of the additional person was limited to opening the box containing the doping control kit. It also appears that the Rider believed that both persons had a "*hasty behaviour and little professionalism*".

103. On 5 January 2018, one day after the signing of the Statement of Appeal in these proceedings, the Rider filed criminal proceedings before a Public Prosecutor's Office in Italy. In the context of these, the woman attending the testing on 25 April 2017 was interviewed on 11 April 2018. This woman/ second person has now been identified as Ms Dagostin.

104. The Rider refers to a Facebook search which he has conducted from which it appears that Ms Dagostin is the wife of the DCO. The UCI has not mentioned that fact and argues that the UCI was a trainee who at the time did not yet qualify as an Assistant DCO.

105. The Panel is unclear and need not decide whether Ms Dagostin is the wife of the DCO and was also a trainee to a DCO Assistant position or not.

106. The Rider did not specify with any particularity any facts regarding Ms Dagostin's identity and role which could possibly be a departure from the relevant regulations.

107. The DCF, which is the only contemporaneous document relating to the doping control, was signed by the Rider with no comments. The Rider, an experienced sportsman who was tested on numerous occasions and knew the testing procedure, did not make any remark on the DCF concerning a process which he now describes as completely flawed and not in conformity with the regulations.

D. The alleged departures could not reasonably have caused the AAF

108. Even assuming that the DCO being accompanied by his wife, whether a trainee to become a DCO Assistant or not, and not spontaneously showing an ID could qualify as departures from the relevant regulations, the Rider has not explained in any way how these alleged departures could have caused the presence of GHRP-2 in his urine sample.

109. While the Rider requested a DNA analysis to be conducted on his sample, thus implicitly suggesting that the DCO or Ms Dagostin tampered with his sample which may not be his, there is no specific claim that the sample was switched and no evidence to support either an opportunity or any motive to do so.

110. Neither the Rider nor his parents nor brother have identified any departure from the regular sampling process in regard to the handling of the sampling vessel and bottles. There was testimony that Ms Dagostin opened the sampling box. However, the bulk of the testimony evidenced that the urine sample was provided by the Rider in the bathroom, in the presence of the DCO only, and that it was the Rider who poured the urine from the sampling vessel to the sampling bottles after breaking their seals. The Rider re-sealed the sampling bottles and confirmed their numbers. The Rider specifically confirmed that he did not know Ms Dagostin and it appears that there was no motive to even attempt to tamper with his sample.

111. The Rider signed the DCF indicating that the sample was properly sealed and labelled in his presence; the Rider did not question the chain of custody documentation included in the Documentation Package, which clearly states that the samples were in the possession of the DCO at all times between collection and delivery to the courier company. The samples were transported to the Laboratory by a well-known courier company.

112. The Documentation Package confirms that the Laboratory checked the packaging of the samples for any signs of tampering, as required under Article 5.2.1.2 of the ISTI. The Laboratory specifically noted that the state of the packaging was "ok" and did not record any conditions which could call into question the integrity of the samples, as it is required to do under Article 5.2.2.3 of the ISTI. The Laboratory has also expressly stated that its staff broke the seal of the samples.

113. There is also no indication of any inconsistency in the numbering of the sample which could have called into question the integrity of the sample.

114. Therefore, even if it is accepted that the DCO and Ms Dagostin failed to properly identify themselves and the Rider and to record their names on the DCF and even if it is accepted that the presence of Ms Dagostin did not comply with the letter of the applicable regulations, it is clear that none of these could have reasonably caused the AAF. The evidence is clear that it was known to the Rider and his family that the DCO was carrying out a doping control. It was also established that the urine in the samples was that of the

Rider and it was not established that the samples were or could have been tampered with in any way.

E. Denying a DNA test

115. The Rider requested that a DNA test be conducted on his sample on the basis that it may have been tampered with during the doping control process.

116. However, where the chain of custody of a sample was intact, there is no evidence that the doping control process was not performed in accordance with the applicable standards in a manner which could put in question the integrity of the sample, and the Laboratory Documentation Package is in order, there is no reasonable basis for questioning the laboratory results and there is no justification for a DNA testing. See CAS 2012/A/2696 at paras. 7.3 and 7.4.

117. The panel in CAS 2012/A/2696 at para. 7.4 stated that:

> *DNA testing is complex and expensive, and it cannot be ordered whenever an athlete requests. Rather, the athlete should first be able to present some reasonable basis for questioning the Jab results to justify any DNA testing.*

118. There may be situations where an athlete can establish a genuine doubt regarding the identity of a sample and a DNA test may be permitted.

119. However, in these proceedings there was not even a sliver of evidence regarding tampering, or a motive or opportunity to do so. Under the circumstances, the Panel concluded that the Rider did not establish a reasonable basis for DNA testing of the sample and there was no basis to allow such a process which would have amounted to nothing more than an ex post fishing expedition.

F. Conclusions regarding the alleged departures from the testing process

120. The Panel, therefore, concludes that the Rider has not met the standard required by CAS jurisprudence to demonstrate that any relevant departure from the ISTI occurred in the collection of his sample which could have caused a false positive result.

121. The Panel thus finds that the Rider committed an ADRV of the Presence of GHRP-2 and its metabolite GHRP M-2 under the UCI ADR.

iii. The proper sanction: should the ADRV be considered no "intentional"?

122. In light of the foregoing, the next issue to be examined in this arbitration relates to the measure of the sanction to be imposed on the Rider for such ADRV.

123. According to Article 10.2.1.1 of the UCI ADR, the sanction provided for the violation committed by the Rider is a period of ineligibility of four years; such sanction, however, can be replaced with a suspension of 2 years if it is established by the Rider that the violation was not intentional.

124. It is the Rider who must provide convincing and substantiated explanations in order to

establish lack of intent by the balance of probabilities.

125. The panel in CAS 2016/A/4828, a recent cycling case, described the items which a rider should prove in this regard (paras. 135-138):

> *The Appellant bears the burden of establishing that the ADRV was not intentional within the meaning of Article 10.2.3 of the UCI-ADT. The standard of proof imposed on the Appellant is a "balance of probability", as provided by the Article 3.1 of the UCIADR.*
>
> *In this regard, the Panel notes that, as the UCI acknowledged, there could be cases, although extremely rare ones, in which a Panel may be willing to accept that an ADRV was not intentional although the source of the substance had not been established. But, as a general matter, proof of source must be considered an important and even critical first step in any exculpation of intent (CAS 2016/A/4534, Mauricio Fiol Villanueva v. Federation Internationale de Natation, para. 37). Alongside the example cited in CAS 2016/A/4534, one could imagine, for example, the case of an athlete affected by a pathological condition for whom the use of a prohibited substance would not, because of his or her medical condition, be recommended for doping purposes or could even be life-threatening. This being said, the Panel is well aware of the fact that other CAS Panels have considered that in order to establish that the ADRV was not intentional, an athlete must establish how the substance entered his body (CAS 2016/A/4377, WADA v. IWF and Yenny Fernanda Alvarez Caicedo, para. 50), and it fully adheres to this jurisprudence as a general benchmark.*
>
> *In any event, in the present case, the Appellant, in the opinion of the Panel, clearly failed to rebut the legal presumption of having committed the ADRV intentionally.*
>
> *In the Panel's view, the mere assertions of the Appellant that he did not deliberately or knowingly take FG-4592, that he has always been very careful to ensure that he did not inadvertently take FG-4592 and that he always submitted himself to all In- and Out-of-Competition doping controls is not sufficient to demonstrate that he ingested the substance unintentionally. The same conclusion has to be drawn with regards the alleged cross-contamination through the Appellant's medications or vitamins. First, the Appellant did not give any explanation on how such cross-contamination could have occurred. Second, he did not submit any analysis of the said medications and vitamins showing that such cross-contamination had ever occurred.*

126. The Rider essentially suggests that the five negative controls that occurred in close proximity to the one positive test suffice to rule out intention on the ground that it would not make any sense for him to use a single or sporadic dose of GHRP-2, as such sporadic use would not have any positive impact on sport performance.

127. The Rider's expert, Dr Pieraccini, stated that:

In my opinion, the studies on GHRP-2 administration to humans showed that only a frequent use of this molecule has the ability to substantially influence the circulating level of GH, while a single and sporadic use of GHRP-2 seems to produce only a transient increase of GH, probably not enough to produce a significative influence on physical performance.

128. The UCI highlights that each of those negative controls was conducted in- competition or in connection with competition, in circumstances where the Rider could expect to be tested. This, while the control of 25 April 2017 was conducted out-of-competition, on the basis of no advance notice testing, and during a period in which the Rider was preparing for a Grand Tour. This hints (while not specifically asserted) to the possibility of planning and preparation in an effort to use a prohibited substance without being detected.

129. The Panel agrees with the UCI that the small quantity of GRHP-2 detected in the sample cannot be accepted as evidence that the Rider did not intentionally use the substance. The quantity of the prohibited substance is not necessarily evidence to a single use and may also be connected to the timings and quantities of usage.

130. The UCI also highlights that athletes these days are more aware of detection limits and may resort to using much lower doses of prohibited substances in more complex "cocktails", which are specifically designed to enhance performance whilst remaining under such detection limits and that athletes are far more likely to use micro doses of substances in order not to be caught, especially in a sport where the smallest advantage can have considerable influence on results.

131. The Panel notes that from an anti-doping perspective one should not second-guess what an athlete might use as a doping agent nor in what quantity and that this by itself is not a sufficient proof for a lack of intent as it is not connected to whether the athlete knowingly consumed the substance or not.

132. The Rider and his expert also suggest that the presence of GHRP-2 may have stemmed from the use of contaminated supplements and/or sabotage.

133. It is clear from abundant CAS case law that it is not sufficient for an athlete merely to make protestations of innocence and suggest that the prohibited substance must have entered his/her body inadvertently from some supplement, medicine or other product which the athlete was taking at the relevant time. An athlete must adduce concrete evidence to demonstrate that a particular supplement, medication or other product that the athlete took contained the substance in question.

134. In CAS 2010/A/2230, the Sole Arbitrator indicated that "*[t]o permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination - two prevalent explanations volunteered by athletes for such presence - do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature of the athlete's basic personal duty to ensure that no prohibited substances enter his body.*"

135. In CAS 2014/A/3820, **the Panel held that:** ***"[i]n order to establish the origin of a Prohibited Substance by the required balance of probability, an athlete must provide***

actual evidence as opposed to mere speculation."

136. In CAS 2006/A/1067, the Panel held that: "[t]*he Respondent has a stringent requirement to offer persuasive evidence of how such contamination occurred. Unfortunately, apart from his own words, the Respondent did not supply any actual evidence of the specific circumstances in which the unintentional ingestion of cocaine occurred*" (see also CAS 2014/A/3615; CAS 2006/A/1032; CAS 2010/A/2277).

137. In the present case there are mere assertions by the Rider and his expert regarding contamination or sabotage without even a sliver of evidence of any kind.

138. The Rider did not even suggest that he was using any supplements which could possibly have been contaminated, let alone identify such supplements. Needless to say that none were sent for any lab examination. Nor was there any evidence of a contamination in any similar products or any identification of any contaminated food products consumes by the Rider. The Rider did not list any supplements or other products on the DCF.

139. The Rider has not provided any evidence to demonstrate how the prohibited substance entered his body and his explanations are nothing more than mere speculations.

140. The Rider's expert, Dr Pieraccini, suggested that:

> *[...] the possibility of its fraudulent use to damage an athlete and/or his team must not be neglected. [. ..] Unfortunately, many economic interests rest on high-level sports and could suggest the use of some shortcuts, including to dope an athlete to increase his performance, on one side, or obtain an adverse analytical finding, on the contrary side.*

141. However, this is merely a general statement with no factual basis relating to the case at hand. The Rider did not establish that he was subjected to any sabotage. No motive for such alleged sabotage nor any opportunity to conduct it was as much as hinted by the Rider.

142. The Rider failed to address any of the myriad of factors which must be considered when establishing sabotage, in particular and at the very least, who would have had both motive and opportunity to sabotage him during an out-of-competition period.

143. The panel in CAS 2017/A/5112 (at paras. 92-94) highlighted that unsubstantiated sabotage theories cannot be accepted:

> *Furthermore, the Player has not provided any evidence of who may have committed such an act. Before the Tribunal, the Player suggested that "the tournament organizers are interested in the victory of their Players, so it is reasonable to presume that the beverages provided by the organizer of the tournament may contain prohibited substances unscrupulously."*
>
> *CAS Panels must reject such unsubstantiated theories of sabotage. As was noted in CAS 2010/A/230 (albeit in the context of the question of Fault): "Spiking and contamination two prevalent explanations*

> *volunteered by athletes for such presence do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature of the athlete's basic personal duty to ensure that no prohibited substances enter his body. The Sole Arbitrator has sympathy with athletes who are as, he accepts they can be - victims of spiking without evidence to prove its occurrence; but the possible unfairness to such athletes is outweighed by unfairness to all athletes if proferred, but maybe untruthful, explanations of spiking are too readily accepted." Similarly, in CAS 99/A/234 and 235, the Panel held that "[t]he raising of an unverified hypothesis is not the same as clearly establishing the facts."*
>
> *The basis for the Player's allegation regarding the tournament organisers is unclear. Without more than te simple assertion, the Panel cannot accept it - for example, who are "their players?"; how would only the Player have been affected by this act of sabotage?; or, alternatively, if the Player was specifically targeted, who would have had the motive to do this? Such suppositions clearly do not meet the evidential threshold.*

144. Recent CAS jurisprudence has diverged in terms of whether, in order to establish a lack of intention, an athlete must also establish how the relevant prohibited substance entered his or her body.

145. A line of CAS cases have held that in order to meet the athlete's burden that the violation was not intentional the athlete must necessarily establish how the substance entered his/her body (CAS 2016/A/4377, at para. 51; CAS 2016/A/4662, at para. 36; CAS 2016/A/4563, at. para. 50; and CAS 2016/A/4845).

146. However, a number of other CAS awards held differently, relying in particular on the wording of the new version of the WADA Code of 2015 the language of which should be strictly construed without reference to case law which considered earlier versions where the versions are inconsistent (2016/A/4534; CAS 2016/A/4676).

147. However, even cases which held that proving the source of the substance is not an absolute requisite to proving a lack of intent, held that an athlete, in order to meet such burden of proving lack of intent without establishing source, cannot merely rely on protestations of innocence, lack of a demonstrable sporting incentive to dope, diligent attempts to discover the origin of the prohibited substance or the athlete's clean record. Supporting lack of intent without establishing the origin of the prohibited substance requires truly exceptional circumstances (CAS 2016/A/4676 and CAS 2016/A/4534).

148. The Panel agrees that establishing that a violation is not intentional in the absence of the establishment of the source of the substance requires truly exceptional circumstances, and that protestations of innocence, the lack of a sporting incentive to dope, attempts by the athlete to discover the origin of the prohibited substance and the athlete's clean record are not sufficient.

149. The Rider has not proved the source of the substance in his sample, nor is this one of the

"*extremely rare [cases] in which a Panel may be willing to accept than an ADRV was not intentional although the source of the substance had not been established*" (See CAS 2016/A/4828 at paras. 135-138).

150. In this case, there are no exceptional circumstances to establish that the violation was not intentional. We are left only with protestations of innocence, the Rider's clean record and an alleged lack of incentive to dope. The totality of the evidence presented is not sufficient to establish, on the balance of probability that the Rider had no intention to cheat whatsoever. The Athlete's arguments are not indicative of exceptional circumstances that might negate the presumed intentionality of the violation.

151. The Panel does not rely on the virtually simultaneous finding of an AAF for the very same Prohibited Substance in the systems of the Rider's teammate, Mr Stefano Pirazzi. However, such a finding certainly does not assist the Rider's case.

152. The Panel finds that since the Rider has failed to meet his burden to prove that his ADRV was not intentional, the "base" sanction to be imposed on him is a four year period of ineligibility.

153. The Panel also confirms the Challenged Decision's finding that the period of ineligibility shall commence on the date such decision (i.e., 14 December 2017), with credit provided for the provisional suspension already served by the Rider starting from 4 May 2017 against the four year period of ineligibility.

iv. Is the Rider entitled to a cancellation or a reduction of the period of ineligibility?

154. The sole remaining question concerning the Rider's sanction is whether, as he suggests, UCI ADT failed to give "*proper consideration*" to a possible reduction of the sanction for No Fault or Negligence or No Significant Fault or Negligence.

155. In this respect, the UCI notes that there is no question that in order to benefit from a fault related reduction, the Rider must prove the source of the substance. Indeed this is explicitly stated in the definitions of both terms in the UCI ADR:

> *No Fault or Negligence: The Rider or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1. the Rider must also establish how the Prohibited Substance entered his or her system.*
>
> *No Significant Fault or Negligence: The Rider or other Person's establishing that his or her Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1. the Rider must also establish how the Prohibited Substance entered his or her system.*

156. The Panel confirms that the Challenged Decision was correct in not applying Articles 10.4 or 10.5 of the UCI ADR and not reducing the "base" sanction, since the Rider failed to establish how the Prohibited Substance had entered his systems.

157. The Panel concludes that the Challenged Decision should be upheld not only in regard to the finding of an ADRV for the Presence of a Prohibited Substance, but also in regard to the sanction of a four-year period of ineligibility imposed on the Rider.

v. Should the fine imposed on the Rider be cancelled or reduced?

158. Regarding the fine of EUR [redacted] imposed on the Rider in the Challenged Decision, the Rider requested in his request for relief:

> *In this regard, it is pointed out that for the similar case of the athlete Stefano Pirazzi, holder of a sports contract with an amount quite higher than Ruffoni's, the pecuniary sanction that was imposed on him by the same Court was € [redacted]*

159. The UCI argues that there is no scope to reduce the applicable fine imposed on the Rider, particularly in circumstances where the Rider has failed to even address the factors which can be applied to reduce a financial penalty under the UCI ADR.

160. The UCI also highlights that in the case of Mr Pirazzi the fine was not "imposed" by the UCI ADT but rather agreed to by Mr Pirazzi and the UCI following the rider's acknowledgment that he had committed an ADRV and the receipt of a substantiated request for reduction of the fine.

161. Article 10.10.1 of the UCI ADR sets out the basis on which a fine can be reduced 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.*
>
> *[....]*
>
> *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.*

162. The Panel agrees that merely referring to a much lower fine imposed on a Team rider that admitted the violation and entered into a "plea bargain" with the UCI cannot establish a legitimate claim that the fine ought to be reduced. The Rider has not cooperated with the UCI and has not established that his financial situation and cost of living are such that the fine ought to be reduced. The Rider has failed to raise these or any other factors which may be relevant to the level of the fine and the possibility of its reduction. Therefore, there is no basis for the reduction of the fine that was imposed on the Rider in the Challenged Decision.

X. COSTS

163. Article R65.1 of the Code reads as follows:

> *This Article applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. In case of objection by any party concerning the application of the present provision, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the panel on the issue.*

164. Article R65.2 of the CAS Code provides as follows:

> *Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.*
>
> *Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.-- without which CAS shall not proceed and the appeal shall be deemed withdrawn. [...]*

165. Article R65.3 of the CAS Code provides:

> *Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties.*

166. The present arbitration procedure is therefore free, except for the CAS Court Office fee of CHF 1,000 paid by the Appellant, which is retained by the CAS.

167. The UCI argues that the Rider's evolving formalistic defences in this matter as well as "*the baseless - and at many times unclear - legal arguments of the Rider*" have caused the UCI considerable costs, none of which were reimbursed to the UCI in the context of the UCI ADT proceedings.

168. The UCI has been required to obtain external legal advice both during the initial proceedings and in the current CAS proceedings. Such costs were not reimbursed in the context of the UCI ADT proceedings.

169. The UCI requested the Panel to award it a significant contribution to its legal and expert costs.

170. The Panel notes that only UCI outside counsel attended the hearing and that no testimony of witnesses, experts or otherwise, was required, thus limiting the UCI's costs. Additionally, the Panel must assess the respective financial positions of the Parties. On the other hand, the Panel notes that the UCI fully prevailed in this case.

171. The Panel also clarifies that in upholding the Challenged Decision the Panel also upholds the elements of the decision relating to costs and fees which the Rider is required to advance to the UCI. This any decision on costs in the Award is on top of any decision on costs and fees in the Challenged Decision.

172. The Panel decides that, while each party shall pay its own costs, the Rider shall contribute towards the legal fees and other expenses of the UCI, which has fully prevailed in this case, the amount of CHF 5,000 (five thousand Swiss Francs). In deciding the amount of this contribution the Panel took "*into account the complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties*".

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Nicola Ruffoni on 8 January 2018 against the decision rendered on 14 December 2017 by the Anti-Doping Tribunal of the Union Cycliste Internationale is dismissed.

2. The decision rendered by the Anti-Doping Tribunal of the Union Cycliste Internationale on 14 December 2017 in the case relating to Mr Nicola Ruffoni is confirmed.

3. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by Mr Nicola Ruffoni, which is retained by the CAS.

4. Each party shall bear his/its own legal costs and expenses incurred in connection with the present proceedings.

5. Mr Nicola Ruffoni is ordered to pay the Union Cycliste Internationale the amount of CHF 5,000 (five thousand Swiss Francs) as contribution for the UCI fees and expenses sustained in relation with the present appeal.

6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 15 November 2018

THE COURT OF ARBITRATION FOR SPORT

Ken E. Lalo
President