

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE 2019 TENNIS ANTI-DOPING PROGRAMME**

**Before:**

*Clifford J. Hendel*  
*Jan Kleiner*  
*Prof. Peter Sever*

**BETWEEN:**

**International Tennis Federation ("ITF")**

**Anti-Doping Organisation**

**and**

**Arklon Huertas del Pino (the "Player")**

**Respondent**

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**FINAL DECISION OF THE INDEPENDENT TRIBUNAL**

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**A. INTRODUCTION**

1. This is the final decision of the Independent Tribunal appointed pursuant to Article 8.1.2 of the 2019 Tennis Anti-Doping Programme ("TADP") to determine a charge brought by the ITF against Arklon Huertas del Pino on 27 December 2019.

2. Mr Huertas del Pino has been charged with an Anti-Doping Rule Violation ("ADRV") in breach of Article 2.1 of the TADP<sup>1</sup> as a result of the presence of an above-threshold amount of THC, a metabolite of Cannabis, a Prohibited Substance, in a urine sample collected during his participation in the ATP Lima Challenger held in Lima, Peru from 21-27 October 2019 (the "Event").
3. Mr Huertas del Pino does not dispute that he committed the ADRV and no issue of jurisdiction arises. However, he argues that the period of Ineligibility to be imposed on him as a consequence of the ADRV should be reduced (from two years to one) on the basis that there was no intent to commit the ADRV (essentially because his use of the Prohibited Substance was recreational in nature and not reflective of any intention to cheat or enhance his sporting performance) and that the violation involved No Significant Fault or Negligence (essentially because personal use of Cannabis is legal in Peru, he had limited anti-doping education and he was under the mistaken belief that his use was not In-Competition for purposes of the ADRV and that Cannabis only lasted in the body for a few hours).
4. In accordance with directions issued by the Chair of the Independent Tribunal on 20 March 2020 in lieu of a preliminary meeting under Article 8.4 of the TADP, and pursuant to an agreement of the Parties, reached after efforts to resolve the matter without the involvement of the Independent Tribunal had failed and contemplating that the Independent Tribunal would decide the matter on the basis of the written submissions without a hearing, Mr Huertas del Pino submitted his Defence Brief on 2 April 2020, in response to which the ITF served an Answer Brief on 24 April 2020. Mr Huertas del Pino did not avail himself of the right afforded to him by the directions to submit a Reply Brief on or before 1 May 2020.
5. On 8 April 2020 Mr Huertas del Pino accepted a voluntary provisional suspension pursuant to Article 8.3.5(a), permitting the period from that date through the date of decision to be credited against the period of Ineligibility eventually established in this decision.

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<sup>1</sup> The 2019 edition of the TADP applies as the Sample was collected on 24 October 2019.

6. The Independent Tribunal is grateful to both parties for their helpful written submissions, and for their collaboration in seeking an amicable solution and subsequently in agreeing that this proceeding could be decided on the basis of the written submissions.

## **B. LEGAL FRAMEWORK**

7. As Mr Huertas del Pino has admitted the charge, the only issue for determination involves the consequences to be imposed upon him. These fall into two types.

8. Firstly, TADP Article 9.1 provides that an ADRV committed by a Player in connection with or arising out of an In-Competition test automatically leads to disqualification of the results obtained by the Player in the competition in question. Where the results are obtained in a doubles Competition the results of the Player's doubles partner are also disqualified (TADP Article 9.2).

9. Secondly, the TADP provides for a period of Ineligibility.

10. Where the ADRV involves a Specified Substance (as in this case), the starting point is that the period of Ineligibility is to be two years unless (i) the ITF establishes that the ADRV was Intentional, in which case the applicable period of Ineligibility would be four years, or (ii) the Player establishes that he bore either (a) No Fault or Negligence for the presence of the Cannabis in his system, in which case the period of Ineligibility would be eliminated, or (b) No Significant Fault or Negligence for the presence of the Cannabis in his system, in which case the period of Ineligibility may be reduced from two years to a lesser period down to, at a minimum, no ban and only a reprimand.

11. Guidance on the meaning of the word "*intentional*" in this context is provided at TADP Article 10.2.3:

"As used in Articles 10.2 and 10.3, the term "*intentional*" is meant to identify those Participants who cheat. The term, therefore, requires that the Participant engaged in the conduct which he or she knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded

that risk. An ADRV resulting from an Adverse Analytical Finding for a substance that is not only prohibited In-Competition (a) shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Player can establish that it was Used Out of Competition; and (b) shall not be considered "intentional" if the substance is not a Specified Substance and the Player can establish that it was Used Out-of-Competition in a context unrelated to sport performance."

12. If the ITF does not establish that the ADRV was intentional then the period of Ineligibility is two years, subject to potential reduction or suspension pursuant to TADP Article 10.4, 10.5 or (albeit not at issue in this case) 10.6.

13. TADP Article 10.4 provides for the elimination of the period of Ineligibility on the grounds of No Fault or Negligence, such term being defined as follows:

"No Fault or Negligence. The Player or other Person establishing that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/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 Player must also establish how the Prohibited Substance entered his/her system."

14. TADP Article 10.5 provides for the reduction of the period of Ineligibility on the grounds of No Significant Fault or Negligence, such term being defined as follows:

"No Significant Fault or Negligence. The Player or other Person establishing that his/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 Player must also establish how the Prohibited Substance entered his/her system."

15. TADP Article 10.5 defines the term "Fault" as follows:

"Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player or other Person's degree of Fault include, for example, the Player or other Person's experience, whether the Player or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk.

In assessing the Player or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2."

16. TADP Article 4.3.2 establishes when a test is considered "In-Competition" as follows:

"[A] Player may be notified that he/she has been selected for In-Competition Testing in conjunction with an Event in which he/she is participating at any time from 00:01 local time on the day of the first match of the main draw (or of the qualifying draw, if he/she is participating in the qualifying draw) of the Competition in question (a) until 60 minutes after the completion of the Player's last match in the Event (120 minutes if the Player's last match in the Event is the final match in the Competition in question) (or, where he/she is participating in the Event as a nominated member of the team, 60 minutes after the completion of his/her team's last match in the Event) (120 minutes if the team's last match in the Event is the final match in the Competition in question); or (b) further to Article 4.3.3, until his/her withdrawal, no-show, retirement or default from the Competition. Such periods (and only such periods) shall be deemed "**In-Competition**" periods for purposes of this Programme and the Code, and Samples collected pursuant to notifications made in such periods shall be deemed to have been collected In-Competition."

17. The period of Ineligibility starts on the date that the decision is issued, provided that any period of Provisional Suspension served by the Participant must be credited against the total period of Ineligibility to be served (TADP Article 10.10.3(a)). The Period may also be backdated so as to commence as early as the date of Sample collection where the Player admits the ADRV after being confronted with it by the ITF, subject to the proviso that the Player must actually serve at least half of the Period of Ineligibility (TADP Article 10.10.3(b)).

**C. THE EVIDENCE, THE NOTICE OF CHARGE AND THE PLAYER'S INITIAL RESPONSE TO THE SAME**

18. Mr Huertas del Pino is a 25-year-old Peruvian professional tennis player. The ITF indicates in its Answer Brief that he had reached career-high ITF rankings of 202 in singles and 8 in doubles. In his Defence Brief, Mr. Huertas del Pino indicates that his current ratings are 586 in singles and 337 in doubles.
19. In his short, undated written statement submitted with his Defence Brief on 2 April 2020, Mr Huertas del Pino stated that in the evening of 22 October 2019, after having been eliminated in the first round of the singles competition, he and his girlfriend went to the home of a friend for a "jam session". A second friend attended, and offered two large marijuana joints which were shared among the four. On departure, Mr Huertas del Pino's girlfriend took the remaining marijuana with her. On the morning of 23 October 2019, Huertas del Pino played (and won) in the first round of the doubles competition. In the afternoon, he and his girlfriend shared two small joints. On 24 October 2020, he played (and lost) in the quarter finals of the doubles competition; he provided a urine sample for testing after the match.
20. Mr Huertas del Pino added in his written statement that: he was regularly subject to anti-doping tests and had never tested positive; he had no anti-doping education and neither the Peruvian tennis federation nor the ITF had offered him a course or training in this area; marijuana use for personal purposes is lawful in Peru; he understood that its use was not prohibited Out-of-Competition; he understood that the term "In-Competition" referred to the match day only and only through the end of the match (not the entirety of a competition), and thus having consumed the marijuana on the day of, but after, his elimination from the singles competition and on the day that the doubles competition started but after his first round victory, neither use was "In-Competition"; and, finally, he understood that marijuana only remains in the body for a few hours after consumption.
21. His girlfriend and two friends submitted short witness statements to similar effect as to the underlying facts as set out in Mr Huertas del Pino's statement and as summarized in paragraph 19 above.

22. On 27 December 2019 the ITF sent a Notice of Charge to the Player, informing him that he was being charged with an ADRV under TADP Article 2.1 on the basis of the above-threshold presence of metabolites of Cannabis in his urine Sample taken on 24 October 2019.

23. The Player provided his initial response to the charge on 6 January 2020 in an "Answer to the 27<sup>th</sup> December Notification" submitted by counsel and in a "Player Response to Letter" dated 7 January 2020. In the latter, he admitted the charge, but stated that he wished to dispute the consequences. In the former, he requested a reduction in the period of Ineligibility to one to three months, and requested a hearing, indicating in pertinent part as follows:

**"Request to The Charge.** Subject to a further and more complete defense, I hereby submit my response to the charge. 1. Denying any intention to cheat but accepting the results of the test....2. Requesting a hearing to make further submission as to the consequences that should be imposed. In this regard we request a suspension of 1 to 3 months.

#### **Position of the Athlete**

- 1. No intention to "cheat".** The starting point of the answer is that the player did not intend to cheat and never used the prohibited substance found in the analysis to enhance his performance. On a preliminary basis the athlete considers that the AAF shall be the result of his use of marijuana on a recreational basis and outside the context of sport.
- 2. The source of the Cannabis and metabolites.** The source of the substance found in the AAF is an intake by Mr. Huertas in a context totally unrelated to sport.....
- 3. The player's degree of fault. Proposed sanction.** Having established the source of the substance present in the AAF we also sustain that the players degree of fault was low, based on the following criteria:
  1. The cigarettes were smoked 1 and 2 days before the AAP, in a context evidently unrelated to sport.
  2. The substance is legal in Peru for personal use, and there is no restriction for its consumption at personal level.

3. The player has limited anti-doping education. No course was ever offered to him by the ITF nor the Peruvian Federation (contrary as – for example – a course against match manipulation).
4. Due to his ranking and financial means he has no permanent coach and/or doctor who can give him proper advice.
5. The player was under the believe [sic] that the substance only lasts in the body for a few hours as maximum.

**4. Other relevant factors:** Other aspects than [sic] shall be considering [when] assessing the player's conduct are the following:

1. Mr Huertas was subject to past antidoping tests and all resulted negative.....
2. The current version of the WADA code admits that consumption unrelated to sport for cannabinoids constitutes a case of non significant fault. In a comment in definitions the code states: Comment to No Significant Fault or Negligence: For Cannabinoids, an Athlete may establish No Significant Fault or Negligence by clearly demonstrating that the context of the Use was unrelated to sport performance.
3. In the recently approved 2021 version of the Code, marijuana alongside with other substance of abuse are subject to a new legal regime [providing for a period of Ineligibility of three months for ingestion or use established to have occurred out-of-competition and unrelated to sport performance, with possible reduction to one month upon satisfactory completion of an approved substance abuse treatment program, which Mr Huertas del Pino states to be prepared to complete].....

**Based on all the above-mentioned facts and circumstances, the athlete established that he acted with no significant fault or negligence by consuming the substance unrelated to sport.**

Therefore, and additionally in application of the lex mitior principle, we consider that a 1 month suspension shall be the appropriate sanction in the present case if the player completes a treatment program indicated by the ITF, or in the alternative a suspension of three months.....”

## D. DEFENCE BRIEF AND ANSWER BRIEF

24. The Defence Brief develops Mr Huertas del Pino's initial response, concluding as follows:

**Conclusion.** On the basis of all the aforementioned facts and circumstances, a proper balance of the objective and subjective issues in the present case shall consider:

1. The cigarettes were smoked in a context evidently and admittedly unrelated to sport.
2. The substance is legal in Peru [sic] for personal use, and there is no restriction for its consumption at personal level.
3. The player has limited anti-doping education. No course was given to him by the ITF nor the Peruvian Federation (contrary as – for example – courses against match manipulation).
4. Due to his ranking and financial means, he has no permanent specialist or doctor who can give him proper advice.
5. The player was under the belief that the substance only lasts in the body for a few hours as maximum.
6. The player was under the belief that in competition period was equal to match-day and consequently he consumed only on non-match days.
7. The amounts consumed were low. However, due to the continued intake, two days in a row, the antidoping [sic] sample exceeded the 180ng/ml limit.
8. Arklon was honest, collaborative and open, making the whole process easier.
9. In Tennis and in other sports under the WADA code, sanctions related to marihuana are mostly low and, when a suspension is applied, it is for the minimum possible time.
10. The 2021 WADA code has a more lenient approach to the substance that shall be considered according to the lex-mitior principle.
11. It would go against the principle of fairness to sanction Arklon with 24 months instead of 2 months only because he consumed "in competition".

12. Such a sanction would be even more sever [sic] than sanctions imposed in the past by the ITF to other players who consumed performance-enhancing drugs.

Based on all the above-mentioned facts and circumstances, the athlete established that he acted with no significant fault or negligence by consuming the substance in a context unrelated to sport.”

25. The Defence Brief reformulated the request for relief included in the initial response (which had requested, as indicated above, a hearing and a reduction in the period of Ineligibility to one month, in the event Mr Huertas del Pino completed an approved treatment program, or three months if not), now requesting a twelve month (one year) period of Ineligibility:

“Therefore, we consider that a 1 year suspension shall be the appropriate sanction in the present case. In any event, being this or any other suspension imposed such sanction shall be backdated to the date of the sample collection due to the player’s prompt admission and collaboration and due to the fact that he did not compete since he was notified of the AAF.”

26. The Answer Brief counters, with ample documentary and jurisprudential support, the arguments of Mr Huertas del Pino set out in his Defence Brief and summarized immediately above.

27. With respect to the question of whether the violation can and should be considered intentional for purposes of Article 10.2 TADP, triggering a four-year ban rather than the presumptive two year ban applied to violations involving Specified Substances, ITF points out in its Answer Brief that the term “intentional” in this context does not bear its ordinary meaning, but is rather “a term of art that encompasses not only engaging in conduct knowing that it constitutes a violation, but also engaging in conduct knowing that there is a significant risk that it might constitute or result in an anti-doping rule violation,” i.e., including recklessness or manifest disregard in addition to actual, direct “intent” as customarily conceived. The ITF points to Mr Huertas del Pino’s affirmations as to what he understood to be the meaning of “In-Competition” and as to his asserted beliefs as to the length of time during which marijuana remained in one’s organism as “blindingly obvious” evidence that he must be understood to have taken the risk that the Cannabis consumed on the evening of 22 October and mid-day on 23 October would still be in his body on 24 October.

28.The Answer Brief then addresses, in the event that the Independent Tribunal were not satisfied by ITF's argument as to intentionality, the question of whether Mr Huertas del Pino has established No Significant Fault or Negligence such that the period of Ineligibility can be reduced from the two-year benchmark.

29.ITF first argues that Mr Huertas del Pino's "objective fault," i.e., the extent to which his conduct in consuming marijuana in the evening between his singles match and first doubles match on the following day, and the next afternoon between his first doubles match and his second doubles match on the following day was far from consistent with the standard of care that could have been expected from a reasonable person in his situation, i.e., that his "objective fault" was "extremely high." Specifically, the Answer Brief states:

"The Player himself admits that he didn't 'take any particular precautions' or 'observe a "cooling-off" period' and that [i]n terms of the "objective" level of fault [...] it is higher.' That is an understatement. **It is instead difficult to see what less the Player could have done, i.e., it is difficult to see how his Fault could have been higher.**" (emphasis supplied)

30.ITF similarly asserts that there are no "subjective" matters, unique to Mr Huertas del Pino, that warrant a reduction.

31.In this regard, the Answer Brief dismisses the suggestion that his relative youth, inexperience and absence of anti-doping education is relevant, or even true, noting that at 25 years of age and having played tennis at high levels for several years (in American colleges and subsequently as a professional), he is not in a position to plea lack of experience and education (and noting further that, in any event, ignorance of the rules is not a defense for international athletes competing internationally).

32.The Answer Brief similarly dismisses the assertion that Mr Huertas del Pino was not provided with adequate anti-doping education, or that such would be relevant even if true given his years of high-level international experience.

33.While the ITF recognizes that Mr Huertas del Pino has been honest, collaborative and open during the proceedings, it asserts that this fact – like the other matters pleaded in mitigation such as the legality in Peru of the personal use of Cannabis – is irrelevant and ineffectual, and does not, individually or in the aggregate with the

other matters he pleads in mitigation, explain or excuse his failure to use utmost caution.

34. Turning to Mr Huertas del Pino's proportionality argument, the Answer Brief cites CAS authority to the effect that proportionality of sanctions is built into the WADA Code and accordingly into the Code-compliant TADP. Further, ITF distinguishes this case from those cited in the Defence Brief where reduced sanctions were imposed in cases involving Out-of-Competition use of Cannabis, since here the use was In-Competition, hours after completing one match and less than a day before another. Finally, the Answer Brief distinguishes the one case of which the ITF says itself to be aware involving In-Competition use of Cannabis, in which despite a "clear and high level of culpability" in a basketball player's smoking Cannabis in the morning before an evening game, the tribunal reduced the ban to fifteen months due to "unique and exceptional" facts involving "extreme mental stress" and a family situation of "extreme economic and social hardships," matters not present or alleged to be present in the instant case.

35. Finally, the Answer Brief rejects the *lex mitior* argument, asserting as a general matter that the 2021 WADA Code shall not take effect until 1 January 2021 and *lex mitior* cannot be anticipated, and more specifically affirming that the relaxation on which Mr Huertas del Pino relies is actually for Out-of-Competition violations, the effect of the 2021 Code on In-Competition violations involving Substances of Abuse actually to reduce (not increase) the range for reduction from the two-year standard.

36. The Answer Brief concludes by ITF recognizing the Independent Tribunal's discretion to back-date the period of Ineligibility either to the date on which Mr Huertas del Pino accepted a voluntary provisional suspension (8 April 2020) or the date of the sample collection (24 October 2019) with the ensuing consequence as provided in the TADP.

37. The request for relief set out in the Answer Brief is as follows:

"Based on the foregoing, the ITF respectfully asks the Independent Tribunal:

- to find that the Player has committed an anti-doping rule violation under TADP Article 2.1, in that THC, a metabolite of cannabis, was present in his urine sample collected in competition on 24 October 2019;

- the Player's results in the singles competition at the Event are automatically disqualified pursuant to TADP Article 10.1; and

- if the Independent Tribunal back-dates the Player's period of ineligibility to the date of sample collection (24 October 2019) pursuant to TADP Article 10.10.3(b), the Player's results achieved during what would retrospectively be considered part of his period of ineligibility must be disqualified, pursuant to TADA Art 10.110.3(c) ("All competition results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified"); or

- if the Independent Tribunal back-dates the Player's period of ineligibility to 8 April 2020), the date that the Player accepted a voluntary provisional suspension, the Player's results achieved after the Event but before that date must be disqualified 'unless the Independent Tribunal determines that fairness requires otherwise' pursuant to TADA Art 10.8;

in each case with all resulting consequences, including forfeiture of all medals, titles, ranking points and prize money."

## **E. FINDINGS**

### **WHETHER OR NOT THE ADRV WAS INTENTIONAL**

38. It is common ground that Mr Huertas del Pino did not have any intention to enhance his performance by smoking marijuana in recreational settings during the Lima Challenger competition, and thus had no direct intention to cheat, i.e., to gain unfair competitive advantage.

39. The Independent Tribunal takes note of ITF's argument that indirect intention, in the sense of recklessness or mindful disregard, can also be captured by the TADP's (and the WADA Code's) use of the term "intentional". However, the Independent Tribunal is not persuaded to the requisite level of comfortable satisfaction, even assuming the soundness of the argument as a legal, interpretative and jurisprudential matter, that it should appropriately be applied in the circumstances of this case. Given the overall circumstances of this case, the Independent Tribunal is not comfortably satisfied that

the behaviour of Mr Huertas del Pino reaches the threshold of being "intentional" in the meaning of the WADA Code and TADP.

40. The Independent Tribunal accordingly concludes that the violation was not intentional.

#### **WHETHER OR NOT THERE WAS NO SIGNIFICANT FAULT OR NEGLIGENCE**

41. The situation in which Mr Huertas del Pino finds himself is not without some sympathy. It is common ground, as set out above, that his ARDV was entirely recreational in nature, not performance-enhancing and thus not intentional in any customary meaning of the term.

42. The Independent Tribunal thus was particularly interested in receiving, understanding and evaluating Mr Huertas del Pino's arguments in favour of a reduction of the ban on the basis of a finding of No Significant Fault or Negligence. Having carefully considered his arguments, the Independent Tribunal is not persuaded to the requisite standard of proof that any of his arguments individually, or all of them together, are sufficient to establish an entitlement to a finding of No Significant Fault or Negligence so as to permit a reduction of the period of Ineligibility below the two-year starting point.

43. As an objective matter, Mr Huertas del Pino bases a large part of his defense on his understanding that "In-Competition" means "match day", or actually, the part of match day before a match. On this basis, he argues that his understanding was (i) that his first use, on the evening of the day in which he was eliminated from the singles competition and the eve of (before) his first doubles match and (ii) his second use, in the afternoon of the day of his morning victory in the first doubles match and thus the day before his loss in the next round of doubles on the following day, were both somehow Out-Of-Competition. This belief, if genuinely held which the Independent Tribunal has no basis to doubt, and does not doubt, is nothing short of preposterous. Objectively speaking, it cannot be characterized other than as faulty and negligent, indeed, very faulty and negligent. The same can be said for another pillar of Mr Huertas del Pino's defense, the assertion that he understood that all traces of the Cannabis that he ingested would very quickly leave his system.

44. From the objective perspective, Mr Huertas del Pino's conduct appears to the Independent Tribunal to be far from sufficient to be able to be qualified as establishing No Significant Fault or Negligence. To the contrary, it could be characterized as showing indifference (and a significant faulty or negligent indifference at that) to the anti-doping norms to which, as a professional tennis player, he is subject. For the avoidance of doubt, the Independent Tribunal wishes to underline that this is not to be misunderstood as to be reaching the threshold of being intentional, as described above. However, it underlines the difficulty for Mr Huertas del Pino to plead No Significant Fault or Negligence.

45. The same can be said in respect of the subjective factors asserted to merit a reduction. Mr Huertas del Pino was and is an experienced, internationally-educated, international player; none of the subjective factors that he mentions merits a reduction from the two-year ban.

46. In the Independent Tribunal's considered view, the TADP and the Rules as in effect and to which Mr Huertas del Pino is subject and was subject on the date of the ADRV preclude any reduction of the ban from the two-year starting point.

#### **START OF THE PERIOD OF INELIGIBILITY**

47. Mr Huertas del Pino has requested that the period of Ineligibility should run from the date of Sample collection, pursuant to TADP Article 10.10.3(b). The ITF has not objected to this, although it reminds the Independent Tribunal that it is also free to back-date the period from the date of acceptance of the voluntary provisional suspension.

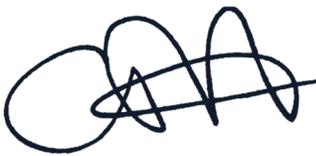
48. In the exercise of the discretion afforded by Article 10.10.3(b) TADP, the Independent Tribunal accedes to Mr Huertas del Pino's request that the period of Ineligibility be back-dated to the date of Sample collection, that is, 24 October 2019.

## **F. CONCLUSION**

49. For the reasons set out above, we find that:

- 49.1. Mr Huertas del Pino has committed an ADRV under TADP Article 2.1 as a result of the presence of the metabolites in his urine Sample collected on 24 October 2019;
- 49.2. Mr Huertas del Pino's results, and that of his doubles partner, from the Lima Challenger Open event held in Lima, Peru on 21-27 October 2019 and at subsequent events up to 8 April 2020, when he accepted a voluntary suspension (pursuant to TADP Article 10.8) are Disqualified pursuant to TADP Articles 9.1 and 9.2.
- 49.3. Mr Huertas del Pino is subject to a period of Ineligibility of two years, with a commencement date of 24 October 2019, to expire on 23 October 2021, pursuant to TADP Articles 10.2.1 and 10.10.3(b).

In accordance with TADP Article 12, the parties may appeal against this decision to the Court of Arbitration for Sport within the applicable time limits at TADP Article 12.5.



**Clifford J. Hendel, Chair**  
On behalf of the Independent Tribunal  
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15 May 2020



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