



**DECISION of the FEI TRIBUNAL  
dated 15 February 2019**

**Positive Anti-Doping Case No.:** 2018/CM12

**Horse:** LE VIO                      **FEI Passport No:** 104XU60/USA

**Person Responsible/NF/ID:** Pablo Barrios/VEN/10002446

**Event/ID:** C.Am+Caraib Games-S - Bogotá (COL)/  
2018\_G-C.Am+Caraib\_0001\_S\_S\_01

**Date:** 25 – 29 July 2018

**Prohibited Substance(s):** Caffeine, Theophylline

**I. COMPOSITION OF PANEL**

Mr. Henrik Arle, one member panel

**II. SUMMARY OF THE FACTS**

**1. Memorandum of case: By Legal Department.**

**2. Summary information provided by Person Responsible (PR):** The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file and during the hearing, as also made available by and to the PR.

**3. Hearing:** 4 February 2019, FEI Headquarters, Lausanne, Switzerland.

Present:

- The FEI Tribunal Panel
- Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

- Mr. Pablo Barrios, Person Responsible
- Dr. Monika Gattiker, counsel
- Ms. Beatriz Atencio, interpreter
- Dr. Carlos Larrazabal, witness (via telephone)
- Mr. Cesar Hirsch, witness (via telephone)
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For the FEI:

- Ms. Anna Thorstenson, Legal Counsel
- Ms. Ana Kricej, Junior Legal Counsel
- Ms. Müskat Hotin, Legal Litigation Administrator

### **III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

#### **1. Articles of the Statutes/Regulations which are applicable:**

Statutes 23<sup>rd</sup> edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018 ("**IRs**").

Rules for Jumping Championships and Games, 26<sup>th</sup> edition, 1 January 2018, Annex II – Rules for the Central American and Caribbean Games ("**CAC JRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, effective 1 January 2018.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2<sup>nd</sup> edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14<sup>th</sup> edition 2018, effective 1 January 2018, Art. 1068 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Mr. Pablo Barrios, represented by Dr. Monika Gattiker, of Lanter, Zurich, Switzerland.

### **3. Justification for Tribunal finding:**

**GRs Art. 143.1:** "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

**ECM Rules Art. 2.1.1:** "It is each *Person Responsible's* personal duty to ensure that no *Controlled Medication Substance* is present in the *Horse's* body during an Event without a valid Veterinary Form. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.5 EMC Rules where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish a *Rule* violation under Article 2.1."

## **IV. DECISION**

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced during the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

### **1. Factual Background**

- 1.1 LE VIO (the "**Horse**") participated at the Central America and Caribbean Games (also known as the CAC Games), in Bogotá, from 25 to 29 July 2018 (the "**Event**"), in the discipline of Jumping. The Horse was ridden by Mr. Pablo Barrios who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling during the Event on 26 July and on 29 July 2018.
- 1.3 Analysis of urine and blood sample no. 5572113 taken from the Horse at the Event on 26 July 2018 was performed at the FEI approved laboratory, LGC, Fordham, United Kingdom (the "**Laboratory**"). The

analysis revealed the presence of Caffeine and Theophylline in the urine sample. Analysis of blood sample no. 5572099 taken from the Horse at the Event on 29 July 2018 was also performed at the Laboratory. The analysis revealed the presence of Caffeine and Theophylline in the blood sample.

- 1.4 The Prohibited Substances detected are Caffeine and Theophylline. Caffeine is a stimulant which stimulates the central nervous system. Theophylline is a bronchodilator used in the treatment of respiratory disease. Caffeine and Theophylline can be direct metabolites of each other. Both substances are designated as "Specified Substances", and are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List (the "**FEI List**"). Therefore, the positive finding for Caffeine and Theophylline in the Horse's sample – without a valid Veterinary Form - gives rise to an Controlled Medication Rule Violation under the ECM Rules.

## **2. The Further Proceedings**

- 2.1 On 11 September 2018, the FEI Legal Department officially notified the PR, through the National Federation of Venezuela ("**VEN-NF**"), of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated.
- 2.2 The Notification Letter included notice that the PR was not provisionally suspended since both Controlled Medication Substances found in the Horse's sample are designated as "Specified Substances".

## **3. The B-Sample analysis**

- 3.1 Together with the Notification Letter of 11 September 2018, the PR and the Owner of the Horse were also informed that they were entitled (i) to the performance of a B-Sample(s) confirmatory analysis on the positive sample(s); (ii) to attend or be represented at the B-Sample(s) analysis; and/or (iii) to request that the B-Sample(s) be analysed in a different laboratory than the A-Sample(s).
- 3.2 On 23 October 2018, the FEI notified the PR and the Owner of the Horse of the results of the B-Samples analysis, which was conducted in a different FEI approved laboratory, the Laboratoire des Courses Hippiques (LCH), France. The B-Samples analysis confirmed the presence of Caffeine and Theophylline in both samples, *i.e.*, the ones taken from the Horse on 26 July 2018 and on 29 July 2018.

#### **4. Previous Decisions by Tribunal and CAS proceedings**

- 4.1 On 30 October 2018, the FEI requested the Automatic Disqualification of Results in accordance with Article 9.2 of the ECM Rules.
- 4.2 On 1 November 2018, the FEI Tribunal Chair appointed a Panel for the case at hand. The FEI expressly declared not having any objection with regard to the constitution of the Panel, and the PR made an application to the FEI Tribunal Chair to have the case decided by a three member Hearing Panel.
- 4.3 On 9 November 2018, together with a Partial Decision, the FEI Tribunal Chair decided not to grant the PR's application to have the case decided by a three member Hearing Panel.
- 4.4 With regard to Disqualification of Results the Tribunal found as follows:

*"10.11 The Tribunal finds that since the Horse tested positive after the Competition on 26 July 2018, the results of the PR and Horse combination of that Competition shall be disqualified.*

*10.12 In addition, the Tribunal finds that the results of 29 July 2018 should be disqualified, as the Horse tested positive on that day also. Pursuant to Article 9.1 of the ECM Rules and Articles 9.1 and 12.6 of the CAC JRs, the (entire) Competition has to be disqualified, i.e., all results of 29 July 2018.*

*10.13 The Tribunal is therefore disqualifying the PR and Horse combination from the Competitions of 26 July 2018 and 29 July 2018, and all medals, points and prize money won in those Competitions must be forfeited, in accordance with Article 9 of the ECM Rules.*

*10.14 In addition, the Tribunal finds that, pursuant to Article 11.1.2 of the ECM Rules, the results of the PR and Horse combination from the Team Competition on 26 July 2018 shall be subtracted from the team result, and consequences to the VEN team, such as elimination from the CAC Games Team Competition, following from the disqualification of the PR and Horse combination included in this Decision, have to be calculated in accordance with the CAC JRs.*

*10.15 Lastly, the Tribunal finds that any other sanctions as defined in Articles 10 and 11 of the ECM Rules shall only be determined in*

*a Final Decision following a hearing, as requested by the PR and to be held at a time to be determined later. The foregoing also includes disqualification with regards to results of 27 July 2018.”*

- 4.5 On 4 December 2018, together with his submission, the PR reiterated his request to have the case decided by a three-member panel. Further, the PR contested the concentrations of the Prohibited Substances detected in the samples, and requested further information by the FEI or the laboratories respectively.
- 4.6 On 17 December 2018, the Tribunal issued a Preliminary Decision regarding those matters.
- 4.7 The FEI Tribunal Chair, finding no circumstances warranting a diversion from the principle laid down in Article 19.1 of the IRs, decided not to grant the PR’s application to have the merits of the case decided by a three-member panel.
- 4.8 Regarding the additional laboratory documentation request by the PR, the Tribunal decided as follows:

*"3.4 As a second preliminary issue the FEI Tribunal Chair, also being the already appointed one member panel for this case, has considered the request made on behalf of the PR for additional testing laboratory data regarding the concentrations of the Prohibited Substances in the Samples taken from the Horse at the Event. In accordance with the FEI Standards for Laboratories, and the ILAC Standards, testing laboratories are not obliged to provide such requested data.*

*3.5 The FEI Tribunal Chair has also taken note that the PR has received the laboratory documentation packages for the A and B-Samples, as required by FEI Rules and Regulations, i.e., all required information according to the FEI Rules and Regulations. In addition, and even though not required by the FEI Rules and Regulations, the FEI provided the PR with the estimated concentrations of the A-Samples.*

*3.6 The PR as a registered international Athlete and his National Federation as a member of the FEI have accepted to be bound by the FEI Rules and Regulations, including the FEI Standards for Laboratories.*

*3.7 Given that FEI Rules and Regulations do not require that the PR is provided with any additional information, other than the one*

*already provided, the PR's request for additional testing laboratory data is therefore not granted."*

- 4.9 The PR appealed the Partial Decision to CAS, and proceedings in this regard are still on-going. Furthermore, the PR – at the same time - requested Provisional Measures. On 21 December 2018, CAS rendered an Order of Provisional Measures, in which it dismissed the application for provisional and conservatory measures requested by the PR.

### **PARTIES' SUBMISSIONS:**

In the following, only those arguments by the Parties' will be outlined which are relevant for a decision on the merits, and to the extent not already decided by the Tribunal in the Partial Decision or Preliminary Decision respectively.

### **5. Written submission by and on behalf of the PR**

- 5.1 On 5 December 2018, the PR provided his explanations for the positive findings. Together with his submission, the PR provided – among others – an expert statement by Mr. Thomas Tobin, MVB, MSc, PhD, MRCVS, DABT, AMAORC, Veterinary Surgeon from Lexington, Kentucky. Mr. Tobin confirmed that in his view the claimed concentrations in the Horse's sample were conclusive and/or consistent with feed contamination. He stated in this respect as follows:

*"(...) The incidence and extent of the innocent environmental and or feed related transfers will depend on the extent of cultivation and or use of Caffeine in the culture and or the environment in which the horse in question is located. In this regard, the environment in Colombia is an unusually high Caffeine related environment and it is not unusual for horses in Colombia to show environmental Caffeine concentrations that would be regarded as unusual elsewhere in the world, as I am professionally quite aware of and familiar with".*

- 5.2 Further, and referring to a previous letter dated 17 August 2017 to Fedequinas (a copy of which he provided), he stated as follows:

*"In this letter I indicated that I had not seen all of the relevant data referenced at the Fedequinas meeting I had attended so in the interim I suggested a Caffeine screening limit of 500 ng/ml in plasma, equivalent to 1,500 ng/ml in urine, or at least the estimated Canadian Caffeine threshold of 1,000 ng/ml in urine. Additionally, with respect to*

*the concentrations of Caffeine producing pharmacological effect, I identified 2,000 ng/ml in plasma and 5,000 ng/ml in urine in my letter to Dr. Stapper, in good agreement with what I have identified in my submission in this current matter."*

5.3 In addition, he stated that the performance of the Horse was not affected by the presence of these substances. In this respect, he referred to a published research paper on pharmacological responses to Caffeine and Caffeine concentrations in post-administration samples (of which he is a co-author.

5.4 Regarding the source of the Prohibited Substances, the PR submitted in essence as follows:

*"PR had brought his own concentrated feed for his Horse. However, hay, alfalfa and shavings were supposed to be provided by the OC.<sup>4</sup> Alfalfa is Lucerne and in the US it is part of the bales of hay, whereas in Colombia alfalfa can come dehydrated in cubes and pellets. It provides the protein needed, especially also by performance horses.*

*As the concentrated feed was stuck at the customs, PR had to ask the Organizing Committee of the Event for concentrated feed, in addition to the hay, alfalfa and shavings that they provided and that he required anyhow. As from Tuesday, 24 July 2018, PR fed his own concentrated feed. The Alfalfa provided by the OC was dehydrated, so it was hydrated and given to the horse together with the OC provided hay during his complete stay in Colombia.*

*PR had no other choice but feed his horse with the concentrated feed made available from the OC, at least until 23 July. In any case, the PR (and probably many other competitors) had to rely on the hay and the alfalfa provided by the OC.*

*(...)*

*Upon the positive finding PR started to make research on feed contaminations in Colombia. As PR revealed, positive findings of caffeine and theophylline in horses are very common in Colombia.*

*Apparently, in Colombia, the problem is that the food given to horses is contaminated by caffeine and theophylline. A study carried out by the Colombian Agricultural Institute (ICA) and Fedequinas last October 2015 indicated that in Colombia, in the commercial food products for horses (alfalfa, hay and concentrates) there is caffeine and teobromine, which, for greater understanding, is an alkaloid of the family of*

*methylxanthines, a family that also includes theophylline and caffeine.*

*As PR found out (evidence to be provided by PR with the submission on 13 November, as it could not be made available on such short notice). The situation in Colombia is even more difficult because food regulations do not allow concentrated feed to be imported. There are only 3 to 4 horse feed brands that exist in Colombia, and that all brands produce their feed in the same production plant. In addition, that the production plant also produces food for other animals. That as a result food contamination is very likely to occur in the plant. Moreover, that when feed producers would lack one ingredient, this ingredient was replaced with another ingredient, such as cacao or calf flower etc., without the ingredient replacement being mentioned on the feed label. That therefore consumers never knew which exact ingredients the feed contained."*

- 5.5 Moreover, as confirmed by Mr. Tobin, the alleged concentrations of Caffeine and Theophylline found in both samples in the current matter were perfectly consistent with a feed contamination caused by the concentrated feed the Horse ate in the first forty-eight (48) hours after arrival in COL, and then the hay and alfalfa that was fed during the entire Event. Mr. Tobin further confirmed that the concentrations (allegedly) found in both samples were well below any concentration that would have had a pharmacological effect. Furthermore, the PR argued (and provided some witness statements in this respect) that this had not been the first event of this type on South America, where horses and/or feed had been stuck in customs, and was basically implying that measures should have been put in place to prevent this from happening, which had not been the case.
- 5.6 In addition, the PR – by among others referring to a previous Tribunal decision concerning a Caffeine and Theophylline case in COL – argued that both, the COL-NF and the FEI was fully aware of feed contamination issues in Colombia, and that Colombia had not been suitable for an international event. Furthermore, the COL-NF had warned all their riders about it in a communication on 28 February 2018, which the PR provided. The communication reads – among others - as follows:

*"Some recommendations to avoid cross contaminations of horses' food with substances prohibited or controlled by the FEI regulations.*

*1. Buy food only from a certified and recognized company that works under the strictest quality controls.*

*(...)*

3. *Take note of the lots that are purchased and the dates in which they are consumed.*
4. *Keep a sample of each meal and/or supplements (duly identified) used in each competition for at least six months in case it is necessary for research."*

- 5.7 In this respect, the PR also submitted several witness statements confirming that a bag sealer for feed sampling had been available in the Stewards Office, brought by a member of the Veterinary Commission "to be available to all in case there is a need to have sampling of the feed given during the Games". While the General Chief Steward of the Event had not been aware of such sampling equipment, one witness mentioned that she was told that the Veterinary Commission did mention the existence to all Team Veterinarians during the Veterinary meeting. On the other hand, Dr. Carlos Larrazabal, Head Veterinarian of the PR's team, who claims having attended the eventing and dressage Veterinary Technical meetings, denied that such information was shared to him.
- 5.8 However, neither the PR, his team or any other teams (other than the Colombian team or COL Officials), had been informed, neither about the risk, nor about any potential precautions either to avoid a contamination or at least to collect the evidence about the most probable source of positive finding, *i.e.*, Caffeine or its metabolites, including Theophylline.
- 5.9 Based on the foregoing, the PR submitted that it was most likely that the substance entered the Horse *"with the feed the horse got on the first day at the airport (while the spent time at the airport, with no access to feed or hay) and then with the feed provided by the OC on Sunday and Monday (concentrated feed, alfalfa and hay). And then for the rest of the week, the alfalfa was a well-known source for the contamination to keep a lower level of caffeine and theophylline in the samples."*
- 5.10 The PR argued that Persons Responsible had to be able to rely on and trust in the integrity of the feed (hay, alfalfa etc.) provided by the OC at an FEI event. In the present case, he bore No Fault and Negligence. In fact, he was a victim of the circumstances, *i.e.*, the environmental contamination in Colombia in combination with the fact that the Horse got feed (concentrated feed, alfalfa and hay) from unknown sources while stuck at the airport in Bogota on 22 July 2018, and concentrated feed, alfalfa and hay provided by the OC on 23 July 2018 (because the concentrated feed the PR brought with him was blocked at the customs). Thereafter, the PR still had to rely on hay and alfalfa from

the OC during the entire Event. The one being negligent was the FEI in the case at hand, when awarding the Event to Colombia while being aware of feed contaminations with Caffeine (and Theophylline) in Colombia and the high risk of positive findings with these substances. The FEI failed to warn the PR and the other competitors about this "critical situation" in Colombia. Under these circumstances, the PR should not be suspended at all, and neither fined or contribute to the legal costs of the FEI.

5.11 Regarding the Disqualification of individual and team results obtained on 27 July 2018, and in accordance with Article 10.1.3 of the ECM Rules, the PR may demonstrate that such results were not likely to have been affected by the ECM Rule violation. The standard of proof for this was, in accordance with Article 32.2 of the IRs, "the comfortable satisfaction of the hearing panel".

5.12 The PR established that the concentrations allegedly found in the sample taken from the Horse on 26 July 2018, were well below the performance threshold, *i.e.*, did not have any pharmacological effects, and, thus, did not affect the performance of the Horse. Hence, the results obtained on 27 July 2018 were not affected by the positive results of 26 July 2018, and the FEI's argument of "level playing field" did not hold. In this respect, the PR further argued as follows:

*"Further the concentrations on 26 July 2018 were low enough that it could very well be that the Horse would have tested negative if tested on this day. According to Exhibit 10 (Attachment 1) the urinary peak of 21,000 ng/ml of caffeine declines to 1000 ng/ml within 96 hours post administration. It seems very likely, that even if the concentration on 26 July 2018 was at 500 ng/ml (which remains a contested allegation of the Respondent) it was below limit of detection 24 hours later, on 27 July. Therefore, it seems very likely that the horse would have tested negative, had it been tested for caffeine or theophylline on that day, at least if the feed was not significantly contaminated. Also for this reason it is assumed that the results obtained on 27 July 2018 were not affected by the allegedly and still contested positive result of 26 July. Finally, the concentration in the sample of 26 July 2018 is still a simple allegation of Respondent which remains contest."*

5.13 Furthermore, the PR argued that it seems an abuse of law to apply the Automatic Disqualification of single results pursuant to Article 9 of the ECM Rules, if the circumstances which lead to the positive result were caused by the FEI which was grossly negligent for the following reasons: "(1) chose COL as venue for the Event, despite knowing about the problem with feed contaminations, and (2) failed to inform the competitors from other countries than COL about this problem, (3) failed to organize the import in a way that the horses would not need

*to be fed with local feed from unknown sources, as the horses and the feed got stuck at the customs (problem was known by the Respondent from 2017), and (4) failed to warn the riders from other countries than COL to feed hay and alfalfa provided by the OC, and (5) was aware and tolerated that in the Stewards office equipment to collect feed samples was provided (which was known to the COL team and the COL FEI officials, but was not disclosed to FEI officials from other countries and to the teams from other countries)."* Applying the Automatic Disqualification was even more abusive where the positive result did not affect the Horse's performance, as in the present case.

- 5.14 Regarding team results the PR argued that Article 11 of the ECM Rules provided the Tribunal with discretion whether those results should be disqualified, and furthermore exceptional circumstances can be taken into account. The discretion granted by the rule had to be exercised in a fair and reasonable way, and the Tribunal had to take into account that (i) the concentrations were well below any level that would have affected the Horse's performance, even if the Horse would still have tested positive on 27 July 2018; (ii) the PR bore No Fault or Negligence; (iii) the PR was already punished by the fact that he will lose his individual medal if the results of the two competitions were disqualified, *i.e.*, the competitions of 26 and 29 July 2018; and (iv) exceptional circumstances existed in the present case, as the PR was a victim of the circumstances which were a result of the FEI's gross negligent actions and omissions.

## **6. Written Response by the FEI**

- 6.1 On 14 January 2019, the FEI provided its Response in the case at hand.
- 6.2 Together with its Response the FEI provided an expert report by Prof. Stuart Paine. However, since the expert report has not been provided in the form required in the IRs, the Tribunal has decided to disregard this expert report, as outlined further below.
- 6.3 Regarding science, the FEI submitted that the present case was a case where it was essential for the PR to show how the substance entered the body of the Horse, since if he could prove that Caffeine and Theophylline was the direct metabolite of each other, the Administrative Sanction would be applicable for the PR.
- 6.4 The FEI had consulted several experts in relation to the samples in this case. According to the FEI experts such concentration was highly

unlikely to be feed contamination. Prof. Paine confirmed that >500 ng/ml was a very high concentration.

- 6.5 Dr Stephen Schumacher from the USEF Laboratory was saying that this was one of the highest levels for Caffeine that he has seen. Caffeine was ubiquitous in society; coffee, soft drinks, etc. Many equine supplements contained green tea extract as an antioxidant, and many supplements may have caffeine in them but do not list them on the label. However, it was for this reason that there was a reporting threshold for this substance. The USEF Lab analysed ~14,000 plus samples a year, which resulted in only one or two positive findings at a maximum for this substance.
- 6.6 Further, the PR alleged that there was zero tolerance for Caffeine and Theophylline, which was incorrect. The FEI approved laboratories had already adapted their reporting limits, so that it was ten (10) times higher than a normal feed contamination case, in order to avoid reporting such feed contaminations as positive cases. The concentration found in the present case was many times higher than such reporting limits. In addition, it was also about five (5) times higher than any other Caffeine case the FEI has had from Colombia.
- 6.7 With regard to the PR's claim that the Horse was contaminated by the feed provided by the Organiser, the FEI argued that several other horses were also provided feed from the Organiser. The FEI took about thirty (30) samples from the other horses at the CAC Games and none of them tested positive for Caffeine and/or its metabolites. The FEI provided a list of horses tested in this respect.
- 6.8 With regard to the PR's claim that Lucerne (Alfalfa) given to the Horse was the reason for the contamination, the FEI argued that in the FEI's knowledge Alfalfa does not naturally contain any Caffeine/Theophylline, but saponins, coumarins, flavonoids, phytosterols, phytoestrogens and alkaloids. While the FEI had seen cases in relation to alkaloids such as Morphine and Oripavine, as well as a few cases in relation to phytosterols, the FEI had never seen any proven positive cases of methylxanthines, such as Caffeine and Theophylline. The FEI therefore believed that it was highly unlikely that Alfalfa naturally contained anything related to Caffeine and its metabolites.
- 6.9 In essence the FEI submitted that:
  - a) Article 3.1 of the ECM Rules made it the FEI's burden to establish all of the elements of the ECM Rule violation charged, to the

comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1"*. Instead it was a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's sample. The results of the analysis of the two A-Samples (as also confirmed through confirmatory analysis of the B-Samples) taken from the Horse at the Event confirmed the presence of Caffeine and Theophylline, and together constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. In any event, the PR did not dispute the presence (but the concentration) of the Prohibited Substances in the Horse's sample. Accordingly, the FEI discharged its burden of establishing that the PR had violated Article 2.1 of the ECM Rules.

- b) Where a Controlled Medication Substance was found in a horse's sample without a valid Veterinary Form, a clear and unequivocal presumption arose under the ECM Rules that it was administered to the horse deliberately in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the ECM Rules provided that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the ECM Rules was subject to a period of Ineligibility of six (6) months, unless he was able to rebut the presumption of fault. To do this, the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability): (i) how the Prohibited Substances entered the Horse's system; and (ii) that he bore No Fault or Negligence for that occurrence, *i.e.*, that he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse (or the Horse's system otherwise contained) a Controlled Medication Substance; or, alternatively (iii) that he bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumptive six-month ban under Article 10.2 of the ECM Rules applied.
- c) The ECM Rules stipulate and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR prove how the substance(s) entered into the Horse's system. The FEI submitted that the PR has an obligation to provide clear and convincing evidence that proved how the Caffeine and Theophylline entered the Horse's system. In the case at hand, the PR has only provided speculations rather than explanations for the positive finding. He claimed that the Horse prior to the Event ingested feed provided by the Organiser, that was contaminated and therefore

tested positive. However, if this was to be considered a plausible explanation, the PR needed to establish the casual link between the positive finding in the Horse and the alleged contaminated feed. The PR had not done any investigation of the circumstances of this incident, nor did he provide any evidence of such causal link. The FEI argued that there were many other riders which were in the same situation and fed their horses with feed provided by the Organiser, but there were no other positives for Caffeine and Theophylline despite the fact that the FEI collected thirty (30) samples at the CAC Games. Furthermore, as confirmed by the FEI experts, the concentrations were far too high for a case of normal feed contamination.

- d) In addition, the PR has not provided the medical/treatment and feed/supplement records for the Horse which showed what the Horse was ingesting on a daily basis over the period before the Event. It was a recommendation for all international riders to have such records. Moreover, it was also recommended to carefully note any changes in the Horses daily feed, supplement use. In cases of changes, it was important to save feed samples with name of feed, batch number and place of purchase, in order to be able to go back and track any contamination and also to be able to test such samples if necessary. As mentioned by the PR, the COL-NF was following the FEI's recommendation and recommended its athletes to keep samples each meal and/or supplements (duly identified) used in each competition for at least six (6) months in case it was necessary for research.
- e) The FEI was of the opinion that the PR has not established how the substance entered the Horse's system, and hence the threshold requirement was not fulfilled.
- f) In terms of the degree of Fault or Negligence by the PR for the rule violation, the starting point of any evaluation was the "*personal duty*" of the PR following from Article 2.1.1 of the ECM Rules, *i.e.*, his personal duty to ensure that "*no Controlled Medication Substance is present in the Horse's body*".
- g) The FEI argued that, through the FEI Clean Sport programme and in particular the "*Athletes Guide*"<sup>1</sup>, it had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. It had to be noted in this context that, in the *Glenmorgan decision*<sup>2</sup>, CAS had stated that the Athlete's Guide "*contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form*" and described the Athlete's Guide as "*required reading*".

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<sup>1</sup> Athlete's Guide to the Equine Anti-Doping and Controlled Medication Regulations, effective 5 April 2010

<sup>2</sup> CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI

- h) Furthermore, the Sole Arbitrator in the *Royal des Fontaines* case<sup>3</sup> had endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows (at para 57):

*"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument*

*"The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse"*

*The Sole Arbitrator respectfully agrees."*

- i) In the *Glenmorgan* case (in para 209) the Panel confirmed that the rider was best fit to control the Horse before a competition. *"... Among them (any support personnel), the rider is best able to function as the "last check" on the physical condition of the horse immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition."*
- j) In light of the stated CAS jurisprudence on this point, the FEI respectfully submitted that making the PR prima facie responsible for the condition of the Horse while competing, subject to his ability to prove he bore No (Significant) Fault or Negligence for the Horse's positive test results was a reasonable and justifiable stance. Furthermore, as the CAS jurisprudence confirmed, the rider was, no matter what, the Person Responsible for the horse he competed with, and could not delegate this duty to another person. The PR, therefore, has an obligation to ensure that no Prohibited Substance enters into the horse's system, and must act with the utmost caution to fulfil this duty.
- k) In the case at hand, the PR has only provided speculations rather

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<sup>3</sup> CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI

than explanation for the positive finding. Further, the PR has not provided any evidence in order to establish No (Significant) Fault or Negligence for the rule violation. Hence there was no possibility for any elimination or reduction of the period of Ineligibility under Articles 10.4 or 10.5 of the ECM Rules.

l) The FEI therefore respectfully submitted that the Tribunal should impose a six (6) months period of Ineligibility.

m) As fairness did not dictate that no fine be levied in the case at hand, the FEI requested that a fine be imposed on the PR, and that the PR be ordered to pay the legal costs that the FEI had incurred in pursuing this matter. The FEI requested that the Tribunal fine the PR in the amount of 3,000 CHF, and order the PR to pay the legal costs of 1,500 CHF.

6.10 Finally, with regard to Disqualification of Results the FEI argued that, pursuant to Article 9 of the ECM Rules, an ECM Rule violation "*in connection with a test in a given Competition automatically leads to the Disqualification of the result of the PR and Horse combination obtained in that Competition with all resulting Consequences, including forfeiture of any related medals, points and prizes*". This rule applied even if the period of Ineligibility is reduced or eliminated under Article 10 of the ECM Rules, *e.g.*, on the basis of No (or No Significant) Fault or Negligence.

6.11 This was the case for day one and three (26 and 29 July 2018) in the present case, as also confirmed in the Partial Decision of the FEI Tribunal.

6.12 Furthermore, since this was a case with a Controlled Medication Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, might be disqualified in accordance with Article 10.1.2 of the ECM Rules. In order to protect the level playing field and a fair sport, the FEI always sought the disqualification of the results of the PR and Horse for the whole Event in each and every positive case. Such practice had been consistently applied in all cases of an Adverse Analytical Finding, no matter the reason for the positive finding. In rare cases, exceptional circumstances as per Article 10.1.3 or Article 11.2 of the ECM Rules, *i.e.*, it may be considered if it can be demonstrated that such results were not likely to have been affected by the ECM Rule violation.

6.13 The results of the second day were not disqualified automatically, which was also confirmed in the Partial Decision of the Tribunal. For this day, Article 10.1.3 of the ECM Rules could be applicable if the PR showed that exceptional circumstances existed in his case. The rationale behind this approach was that the FEI presumed that the Prohibited Substance was present in the body of the Horse during the whole Event. In the present case the Horse tested positive not only once but twice (day 1 and 3). Therefore, it was highly likely that the Horse was positive also on the second day. Only if the PR can prove otherwise through exceptional circumstances (*i.e.*, a negative test result) could this presumption be rebutted. So far in the proceedings, the PR had not provided any evidence nor arguments of exceptional circumstances. For these reasons the FEI was of the opinion that the results of the PR and Horse combination from the whole Event had to be disqualified. As a consequence, all results both the Individual and Team Results of the PR and Horse at the CAC Games had to be disqualified.

## **7. Submissions schedule agreed by Parties & Decisions on admission of documentary evidence**

7.1 On 29 November 2018, the Parties provided the Tribunal with a submissions schedule agreed by the Parties, which reads as follows:

*"Considering the urgency of this case, the parties have agreed to a timeline for submissions as follows:*

*4 December – Submission by the PR  
14 January – (at the latest) FEI Response  
Thereafter submission to the Tribunal  
End of January - Hearing date*

*The parties have agreed to only one exchange of written submissions with any potential additional arguments to be provided during the hearing."*

7.2 Hours prior to the final hearing the PR submitted further documentary evidence, which the Tribunal rejected during the hearing. The Tribunal however allowed the PR to make any additional arguments orally during the hearing, which the PR did. The PR invoked that his right to be heard had not been respected. However, based on the foregoing, *i.e.*, the schedule expressly agreed by the Parties, which did not foresee for the PR to provide additional submissions and/or evidence in writing after 4 December (2018), and since the PR was granted the

right to make additional arguments orally during the hearing, the PR's argument has to be dismissed, and the Tribunal finds that his right to be heard has been respected.

- 7.3 During the hearing, the PR objected to the expert statement by Dr. Paine, since it was un-signed and not on letterhead paper. The FEI argued that Article 34.2 of the IRs regarding evidence only applied to "Claims" and not to proceedings in the case at hand. The Tribunal disagrees. Since it is the only rule regarding "evidence" concerning procedures in front of the Tribunal, it has to be regarded as "the" rule for evidence with regard to all procedure in front of the Tribunal. Article 34.2 of the IRs foresees that *"No evidence (testamentary or documentary) may be admitted unless it has been properly authenticated or a foundation has been provided by the party offering it."* While the Tribunal notes that the same provision also provides that *"facts may be established in such proceedings by any reliable means (...)"*, and generally finds that it could admit Dr. Paine's expert statement and give it the appropriate weight, the Tribunal has decided to disregard Dr. Paine's statement in these proceedings altogether. In any case, the Tribunal finds that the expert statement would not have been decisive for the decision in the case at hand, as outlined further below.

## **8. Final Hearing**

- 8.1 During the hearing the Parties had ample opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its Decision. The Tribunal heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.
- 8.2 At the end of the hearing, the FEI acknowledged that the Tribunal has respected their right to be heard and their procedural rights. The PR, as previously outlined invoked that his right to be heard had not been respected as the additional evidentiary documents were rejected by the Tribunal. As previously outlined this argument of the PR has to be dismissed.
- 8.3 During the hearing, and where not mentioned otherwise in the following, both Parties maintained their previous submissions.

- 8.4 Dr. Larrazabal confirmed that he had been Official for his country for at least to seven (7) or eight (8) championships, and that he had never seen any sealing bags to collect feed samples prior to the Event.
- 8.5 Mr. Hirsch stated that he had been FEI Official for twenty-two (22) years, including at the Event, and that he had not been informed that sealing bags were available at the Event for the riders.
- 8.6 The PR confirmed that he had brought his own concentrated feed to the Event, which had been stuck at customs for forty-eight (48) hours. However, hay and alfalfa was provided by the Organisers of the Event, and fed to the Horse during the entire Event. Further, that in the first forty-eight (48) hours the Horse had also been fed with concentrated feed, also provided by the Organiser of the Event. In addition, the PR confirmed that he administered various supplements to the Horse, including homeopathic products and vitamin B12.
- 8.7 The PR stated that he had represented his country for the past five (5) years, that his horses had been tested many times always with negative results, and that the positive finding had come as a surprise to him. According to the PR, who has lived in the United States for the past twenty (20) years, with the exception for big championships not many tests were conducted in South America. In his view this was the reason why only a few positive findings for Caffeine were reported from the region.
- 8.8 Finally, he could not accept the Administrative procedure in the case at hand, which for him would mean admitting guilt, and he could not admit something that he had not done, *i.e.*, administering the Horse with a Prohibited Substance. Further, if he were to be suspended, this would have big implications for him and his team, *i.e.*, missing out on competing at the Pan American Games in 2019, which was an Olympic Qualifying event. In the PR's opinion, cases like the present case, with the same level of contamination, when the Person Responsible was able to show that the Prohibited Substance did not enhance the Horse's performance, would be treated differently in the near future.
- 8.9 During the hearing the PR submitted that, further to Dr. Tobin's letter of 17 August 2017, Colombia had as of September 2017 indeed fixed a regulatory cut-off concerning plasma concentrations of 500 ng/mL of Caffeine and 300 ng/mL of Theophylline (blood concentrations were three (3) times lower than urine concentrations), and that this was the expected amount from environmental exposure, and thus the level that could be accepted as contamination for those substances in Colombia. The alleged concentrations found in the Horse's sample were

significantly lower, and that would prove contamination in the PR's view.

- 8.10 Regarding the FEI's request whether the PR had tested feed samples fed to the Horse, the PR submitted that he was not able to obtain any, and that it was extremely difficult to collect information from event sites which were military sites, such as the one in the case at hand. In addition, hay did not come with labels, and it was therefore difficult to track back hay, in contrast to other types of feed.
- 8.11 The PR maintained that he contested the concentrations of the Caffeine and Theophylline found in the Horse's samples, as there was no basis that he could verify these figures. Furthermore, since the FEI did not disclose the reporting thresholds to the PR for the Prohibited Substances, therefore the PR could not verify that the amounts found in the Horse's sample were ten (10) times higher than feed contamination – as alleged by the FEI, and therefore this remained also contested by the PR. Finally, also the amounts by Dr. Schuhmacher provided to the FEI were contested by the PR.
- 8.12 However, the PR during the hearing – and relying on a table provided in the expert statement by Dr. Paine, as well as on the contested concentrations found the Horse's sample – made calculations, which in his view perfectly explained contamination when the Horse would have been fed with 13 kg of hay and alfalfa and 5 kg of concentrated feed daily during the Event. Furthermore, the PR agreed that the pharmacological effects of medications were dose dependent.
- 8.13 Furthermore, the PR argued that the Horse was exposed to hay and alfalfa all the time during the Event. The PR agreed with the FEI that alfalfa did not naturally contain Caffeine. However, according to the studies provided by the PR, hay and alfalfa showed higher contaminations with Caffeine than concentrated feed. And that, when looking at these studies, the alleged amounts of the substances in the Horse's sample were perfectly explainable. Further, that the administration or intake of Caffeine could cause significant levels of Theophylline in urine samples, as submitted by the FEI.
- 8.14 In the PR's view whether the FEI tested other horses or not would not prove anything, as – again relying on a table provided by Dr. Paine – the concentrations found in the three (3) horses of the study varied greatly, even to the ten-fold from one horse to another. Ultimately, no horse showed the same level to another horse even if administered the same amount of a substance. Even worse was the case of contamination, where it was unclear which horse was exposed at what

time to which amount of Caffeine, it was impossible to determine whether and which horse would test positive.

- 8.15 Regarding the degree of fault, the PR further submitted that it would have been possible to import hay and alfalfa to Colombia for the Event, but only with a special permit. Therefore, the Organisers of the Event included costs of hay and alfalfa in the entry fee for the Event.
- 8.16 Regarding the results of the Competition of 27 July 2018, where the Horse was not tested, the PR argued that it was highly likely that the Horse would have tested negative on that day. Firstly, as the Competition took place twenty-five (25) hours after the Competition on 26 July 2018, and secondly that it could be concluded that the Caffeine found in the Horse's sample on 29 July 2018, entered the Horse after the Competition on 27 July 2018. This was according to the calculations from the table provided by Dr. Paine, which foresaw that the concentrations of Theophylline were higher than the concentrations of Caffeine sixteen (16) hours after Caffeine administration. Relying on the contested concentrations provided by the FEI and found in the Horse's sample after the Competition on 29 July 2018, the PR argued that the Horse had to have ingested Caffeine less than those sixteen (16) hours prior to the Competition on 29 July 2018. The PR further argued that it was impossible to say when the Horse ingested the allegedly contaminated feed, and it could also be that it did ingest the allegedly contaminated feed and nevertheless would not have tested positive on that day. A contamination concentration bore the problem that there was no control like in a controlled study, it was impossible to say how much alleged contaminated hay the Horse eat on a daily basis. Finally, the level of playing field was never at stake, as all amounts found in the Horse's samples were below the performance enhancement level.
- 8.17 Therefore, the results of 27 July 2018 should not be disqualified under Articles 11.1 and 11.2 of the ECM Rules. Furthermore, in accordance with Article 11.1.2 of the ECM Rules, the Tribunal had discretion not to disqualify the team results, and in accordance with Article 4 of the Swiss Civil Code, a decision had to be taken based on the just and fair principle. Here factors like that the FEI approved a completely unsuitable venue had to be taken into account. Further, there was a high likelihood that the Horse would have tested negative on 27 July 2018, and the level of playing field was never at stake. Article 11.2.1 of the ECM Rules did not require exceptional circumstances, but the PR had no doubt that the present case would have qualified for exceptional circumstances.

- 8.18 Finally the PR alleged that the FEI had closed a case with a rider before on agreement, where the rider had not been allowed to bring his or her own feed to an event, and the feed of that organiser had been contaminated. The PR however did not provide any evidence with regard to this case.
- 8.19 Finally, if he accepted the Administrative procedure in the case at hand all team results would be disqualified, as well as the Results obtained on 27 July 2018.
- 8.20 In summary, the PR requested that no period of Ineligibility and no fine be imposed on him, that the Results of 27 July 2018 not be disqualified, and that the FEI contributed 15,000 CHF to the legal costs of the PR.
- 8.21 The FEI further argued that the PR had still not proven how the Prohibited Substances entered the Horse's system, *i.e.*, where the substances came from, and how they entered the Horse's system. The PR had to show a link between the positive finding in the Horse and the alleged contamination.
- 8.22 Regarding the concentrations of the Prohibited Substances found, the FEI argued that the Tribunal has issued a Preliminary Decision in this respect, which the PR did not appeal. For the FEI, the concentration issue had become irrelevant, since thirty (30) more samples at the Event were taken, which all tested negative, and since most horses also eat the hay and alfalfa provided by the Organiser of the Event. Furthermore, all scientific facts were irrelevant, as it was not revealing how the substances entered the Horse's system.
- 8.23 Regarding the Competition of 27 July 2018, the FEI argued that the PR had not proven that the Horse was clean on that day, and since the Horse tested positive on day one (1) and on day three (3) of the competition, it was highly likely that the Horse also contained the Prohibited Substances on the second day. Therefore, the results of all days, both individual and team, had to be disqualified in the FEI's view.
- 8.24 Finally, the FEI clarified that the CAC Games were ruled under CASCO Rules and Regulations, and the FEI had no say regarding the allocation of the Games. The FEI was merely checking the arena and stabling area. Therefore, the arguments by the PR in this regard had to be disregarded.

## **9. Jurisdiction**

- 9.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

## **10. The Person Responsible**

- 10.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event.

## **11. The Decision**

- 11.1 As stated in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of (a) Controlled Medication Substance(s) in the Horse's A Samples and confirmed in the B Samples. The Tribunal is satisfied that the laboratory reports relating to the A and B Samples reflect that the analytical tests were performed in an acceptable manner and that the findings of both laboratories are accurate. The Tribunal is satisfied that the test results evidence the presence of Caffeine and Theophylline in the samples taken from the Horse at the Event on both days, *i.e.*, on 26 July 2018 and on 29 July 2018. The PR did not contest the accuracy of the test results or the positive findings. However, the PR did contest the estimated concentrations of the Caffeine and Theophylline as provided by the FEI. The presence of Caffeine and Theophylline during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 11.2 The FEI has, therefore, established an Adverse Analytical Finding and has sufficiently proven the objective elements of an offence by the PR, in accordance with Articles 3.1 of the ECM Rules.
- 11.3 Regarding the estimated concentrations of the Caffeine and Theophylline in the Horse's samples, the Tribunal has taken note that the concentrations remain contested by the PR. As already previously decided by the Tribunal in a Preliminary Decision, the FEI has no obligation to communicate the estimated concentrations to the PR. In fact, the concentration levels are not decisive, as the mere presence of the Prohibited Substances is sufficient, and the presence has been established by the FEI. Nonetheless, since the PR is still contesting the concentrations of the Caffeine and Theophylline in the Horse's samples, the Tribunal therefore decides to disregard the concentrations of the Prohibited Substances in the case at hand. The Tribunal finds

that it does not have to know the concentrations of the Prohibited Substances in the case at hand in order to take a decision; neither would knowing and accepting the concentrations of the Prohibited Substances be relevant, or in any way decisive for the decision in the case at hand.

- 11.4 The PR on the other hand can neither base his calculations on the estimated concentrations which he disputes, nor base his calculations and arguments on a witness statement which he does not accept, *i.e.*, Dr. Paine's expert statement, and which the Tribunal has decided to reject. The Tribunal finds that one cannot have it both ways, where the PR does not accept certain documents or information, he cannot base his arguments on the very same documents or information. However, also here the Tribunal finds that, even if the PR had accepted the concentrations and Dr. Paine's expert statement, the Tribunal would not have come to a different decision than the one outlined in the following.
- 11.5 In cases brought under Article 2.1 of the ECM Rules, a strict liability principle applies as described in Articles 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR has the burden of proving that he bore "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the ECM Rules.
- 11.6 However, to benefit from any elimination or reduction of the applicable sanction under Article 10.4 or 10.5 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse's system.
- 11.7 The Tribunal takes note of the PR's explanations regarding how the Prohibited Substances entered the Horse's system, namely by contaminated feed fed to the Horse and provided by the Organiser of the Event. The Tribunal has also taken note of the PR's submission that feed, and mostly hay and alfalfa, seem to be widely contaminated with Caffeine in Colombia.
- 11.8 However, in the case at hand, the PR does not establish which feed fed to the Horse has allegedly been contaminated. According to the information provided by the PR, the feed fed to the Horse during the Event has been as follows: 1. Concentrated feed provided by the Organiser in the first forty-eight (48) hours (as his own concentrated feed was stuck in customs); 2. Hay and alfalfa provided by the Organiser, as well as his own concentrated feed throughout the rest of the Event; 3. In addition, supplements, including homeopathic products

and vitamin B12 on unspecified days during the Event.

- 11.9 The Tribunal notes that the PR at first (in his written submission) argued that either the concentrated feed or the hay and/or alfalfa provided by the Organiser had been contaminated, and later in the proceedings (during the final hearing) the PR argued that it was either the hay or the alfalfa provided by the Organiser and fed to the Horse during the Event.
- 11.10 The PR further contented that he was not able to test the hay (or alfalfa the Tribunal presumes) provided by the Organiser. However, the Tribunal also takes note that firstly the Organiser had provided the same hay and alfalfa to other riders also (and according to the PR hay and alfalfa had been included in the entry fee of the Event), and that a bag sealer had been available for riders to seal feed samples (albeit only to Colombian riders as the PR claims). The Tribunal therefore believes that the PR could have obtained feed samples also from different sources than from the Organiser. And even if not, the PR could have at least shown that anything else fed and/or administered to the Horse did not contain any Caffeine and/or Theophylline. The PR did not provide any prove either that his concentrated feed or the supplements which might have been fed to the Horse during the Event were free of Caffeine and/or Theophylline. In addition, the PR did not provide the Medication Log Book of the Horse. Hence, it is unknown whether the Horse had been administered with any medication either prior or during the Event, which could have also contained (listed or unlisted) the Prohibited Substances.
- 11.11 In addition, the Tribunal takes note that none of the other horses tested by the FEI, and who also have been fed with the hay and alfalfa provided by the Organiser tested positive during the Event. In this respect, the Tribunal further finds that even if it accepted the PR's explanations that with contaminated feed, not every horse would get the same amount of contamination, or contaminated feed, let alone test positive, the Tribunal finds it highly unlikely that the Horse tested positive twice throughout the Event, whereas none of the other thirty (30) samples collected by the FEI tested positive.
- 11.12 Therefore, in the Tribunal's view – other than the studies that hay and alfalfa seem to be contaminated at a higher level than other feed in Colombia – nothing points in the direction which type of feed fed to the Horse was actually contaminated, or whether any of the feed or supplements were contaminated at all. The Tribunal can therefore not be satisfied that either of the feed was more likely than not

contaminated. Further, and in line with its previous decisions<sup>4</sup> the Tribunal underlines that in cases of positive findings allegedly caused by contaminated feed, it is not sufficient to prove contamination of the feed only. In addition, a link between the contaminated feed and the positive test result needs to be established. In the case at hand the Tribunal however finds that the PR has not even adduced any evidence in regard to the first step, *i.e.*, that the feed had indeed been contaminated.

11.13 As a result, the Tribunal finds that the PR has not – on a balance of probability as required – established the source of the Prohibited Substances.

11.14 In the absence of establishing on the balance of the probability how the Prohibited Substances entered the Horse's system, the Tribunal cannot and does not have to evaluate the degree of fault of the PR for the rule violation, as no reduction under Articles 10.4 or 10.5 of the ECM Rules is warranted.

11.15 However, the Tribunal would like to once more clarify that it is each rider's "personal responsibility" to ensure that no Controlled Medication Substances, voluntarily or involuntarily (as is the case of contamination), are found to be in the Horse's system during an event, unless the Veterinary Form for its use has been received. It would therefore have been the rider's duty to ensure that the feed fed during the Event to the Horse was not contaminated. From past cases, the Tribunal understands that there are many regions in the world where hay might be contaminated with certain Prohibited Substances. The Tribunal understands that this is also one of the reasons the "Specified Substances" list has been created by the FEI and introduced to the FEI List. However, the mere fact that those substances might have a contamination explanation, does not free riders from showing how the Prohibited Substances entered the horses systems, *i.e.*, ultimately prove the contamination and that such contaminated feed has been eaten by the Horse. It is a rider's duty to investigate hay and other feed prior to feeding it to his horses, even more so prior to important competitions, such as the Event in the case at hand, or when a feed is fed to a horse for the first time. Riders cannot merely rely on the FEI and/or organisers to inform them of potential contamination issues in certain countries. Once again it is the rider's personal responsibility that the Horse does not ingest any of such contaminated feed. In the case at hand, it seems, that the rider could have easily found out that feed in Colombia might be contaminated with Caffeine. He could have

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<sup>4</sup> See for example Case 2013/FT02 HONKY TONK WHIZ, Final Tribunal Decision 20 February 2014.

analysed the feed provided by the Organiser in those cases where he had to use that feed, or at least kept feed samples for analysis thereafter where required, such as recommended by the FEI, and which also seem to have been the case for the Colombian team. However, none of this seems to have been the case in the case at hand.

11.16 Furthermore, the Tribunal has taken note of the PR's argument that the FEI had closed a case with a rider before on agreement, where the rider had not been allowed to bring his or her own feed to an event, and the feed of that organiser had been contaminated. The PR however did not provide any evidence with regard to this case; therefore, this argument has to be dismissed.

11.17 The Tribunal furthermore also finds that, since the PR has not established the source of the Prohibited Substances, the PR can therefore neither establish that the Horse would have tested negative on 27 July 2018. Hypothetically speaking, even if the Tribunal would accept that the source was contaminated feed, and more specifically hay and/or alfalfa, the Tribunal would then also have to assume that the entire feed and/or alfalfa provided by the Organiser to the PR and thus fed to the Horse throughout the Event was contaminated, unless proven otherwise, which is also not the case in the case at hand. Thus, the Horse would have eaten contaminated feed throughout the Event, including on 27 July 2018. The PR himself agrees that the Horse might have eaten contaminated feed on that day, and might or might not have tested positive as a result. The Tribunal finds that these arguments are entirely based on speculations, and thus not sufficient to prove anything. Therefore, in the absence of prove that the Horse would was free of Caffeine and Theophylline on 27 July 2018, and given that the Horse's system contained Caffeine and Theophylline on 26 July 2018, and on 29 July 2018 (when tested), and since the PR neither argued or established that the Horse had been fed differently on 27 July 2018, the Tribunal has to presume that the Horse's system also contained Caffeine and Theophylline on that day.

11.18 The Tribunal further wishes to clarify that the PR is wrong in believing that, where a Prohibited Substance has no performance enhancing effect, as alleged by the PR in the case at hand, this changes anything with regard to the rule violation and disqualification of results. In fact, the presence of any Prohibited Substance is sufficient for a rule violation and in consequence also with regard to the disqualification of results. It does therefore simple not matter whether the Prohibited Substance had any performance enhancing effects or not.

11.19 Therefore, the Tribunal also disqualifies the PR and Horse combination from the Competition of 27 July 2018, and all medals, points and prize money won in this Competition must be forfeited.

## **12. Disqualification**

12.1 The Tribunal has already previously decided concerning the Disqualification of Results of 26 and 29 July 2018, and issued a Partial Decision in this respect.

12.2 In addition, the Tribunal also disqualifies the PR and Horse combination from the Competition of 27 July 2018, and all medals, points and prize money won in those Competitions must be forfeited.

12.3 In accordance with Article 10.1.2 of the ECM Rules, and taking into account the Disqualification of Results already decided in the Partial Decision, all of the PR's individual results obtained at the Event with the Horse, shall be disqualified. The Tribunal does not find any exceptional circumstances pursuant to Article 10.1.3 of the ECM Rules, nor is Article 10.1.4 of the ECM Rules applicable in the present case, since in the absence of the source of the Prohibited Substances, the PR's fault could not be evaluated.

12.4 In addition, the Tribunal finds that, pursuant to Article 11.1.2 of the ECM Rules, the results of the PR and Horse combination from the Team Competition on 27 July 2018 (next to the results from 26 and 29 July 2018, as found in the Partial Decision) shall be subtracted from the team result, and the result of his team shall be recalculated based on the results of remaining team Athlete and horse combinations.

## **13. Sanctions**

13.1 As a result of the foregoing, and pursuant to Articles 10.2 of the ECM Rules, the period of Ineligibility imposed on the PR shall be six (6) months.

13.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:

- 1) The PR shall be suspended for a period of **six (6) months** from the date of notification of this decision. Therefore, the PR will be ineligible **until 14 August 2019**.

2) The PR is fined **three thousand Swiss Francs** (CHF 3,000).

3) The PR shall contribute **one thousand five hundred Swiss Francs** (CHF 1,500) towards the costs of this procedure.

13.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the ECM Rules).

13.4 Where a Person Responsible who has been declared Ineligible violates the rule against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.2 of the ECM Rules).

13.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

13.6 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

**V. DECISION TO BE FORWARDED TO:**

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

**FOR THE PANEL**

A handwritten signature in black ink, appearing to read 'Henrik Arle', is centered on the page. The signature is fluid and cursive, with a large initial 'H' and 'A'.

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**Mr. Henrik Arle, one member panel**