

DECISION of the FEI TRIBUNAL

17 April 2025

In the matter of

Ms Victoria Heurtematte (PR; Ref. C24-0047)

(FEI Case number: FEI 2024/BS02, 2023/ATF19 – SCARLETT DU SART Z)

FEI Tribunal Hearing Panel: Ms Harveen Thauli (CAN)

FEI Tribunal Reference: C24-0047 [FEI 2024/BS02, 2023/ATF19 – SCARLETT DU SART Z]

Person Responsible/ID/NF: Victoria Heurtematte / 10003039 / PAN

Horse/Passport/NF: SCARLETT DU SART Z / 105II26 / PAN

Event/ID: Pan-Am Games-S - Santiago (CHI), 30.10-03.11.2023, 2023_G-Pan-Am_0001_S_S_01

Date of Event: 29.10.2023

Prohibited Substance(s): Ractopamine

Bar Code No.: 5638075

I. Introduction

1. The Fédération Équestre Internationale (the **FEI**) alleges that Victoria Heurtematte committed a violation of Article 2.1 of the Equine Anti-Doping Rules – *The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*. The FEI notified Ms Heurtematte of the alleged charge in her capacity as the Person Responsible.
2. **Applicable Rules Provisions:**
 - Statutes 24th edition, effective 17 November 2021 (**Statutes**).
 - General Regulations, 24th edition, updates effective 4 April 2023 (**GRs**).
 - Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (**IRs**).
 - FEI's Equine Anti-Doping and Controlled Medication Rules, 3rd Edition, updates effective 1 January 2023 (**EADCMRs**).
 - FEI's 2023 Equine Prohibited Substances List (**Equine Prohibited List**)
3. All the words used in this Decision beginning with a capital letter and not previously defined have the meaning set forth in the specific definitions of the Statutes, GRs, IRs, the Equine Prohibited List and the EADCMRs. The Equine Anti-Doping Rules (the **EAD Rules**) and the Equine Controlled Medication Rules (the **ECM Rules**) are set out in the EADCMRs.

II. Factual background

4. Victoria Heurtematte (FEI ID 10003039), is a Panamanian horse rider (the **Person Responsible** or the **PR**), who competed in the Continental/Regional Games Pan-Am Games-S in Santiago, Chile, from 31 October to 3 November 2023 (the **Event**), with her horse, Scarlett du Sart Z (**Scarlett**).
5. The FEI (together with the PR, the **Parties**), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines of dressage, jumping, eventing, driving, endurance, vaulting, and para-equestrian.
6. Blood and urine samples were collected from Scarlett on 29 October 2023. Scarlett's A Sample returned a positive finding for Ractopamine in her urine.

7. Ractopamine is a beta adrenoceptor agonist used as a feed additive to improve leanness and feed conversion efficiency in certain food-producing animals. It is a Prohibited Substance under the Equine Prohibited List and is therefore classified as a Banned Substance under the EADCMRs.
8. The analysis of the A Sample revealed that Scarlett had a concentration of approximately 3.4 ng/mL of Ractopamine.
9. On 24 November 2023, the FEI notified the Person Responsible of the Atypical Finding (the **ATF**). The PR was also informed that the ATF was subject to further investigation to determine whether it gave rise to a violation of the EADCMRs, and she was asked to provide the FEI with additional information to assist its investigation.
10. On 28 November 2023, the PR responded to the FEI. The PR stated that she had launched her own investigation to find out the source, confirmed that the Prohibited Substance was not administered to Scarlett, listed the feed and supplements given to Scarlett and answered questions that the FEI had asked.
11. On 19 February 2024, the ATF Panel decided that the ATF in the A Sample was an Adverse Analytical Finding (the **AAF**), which gave rise to a violation of the EADCMRs.

III. Procedural background

12. On 26 February 2024, the FEI informed the PR of a possible violation of Article 2.1 and Article 2.2 of the EAD Rules (the **Notification Letter**).
13. In accordance with Art. 7.4.1 of the EAD Rules, the FEI provisionally suspended the PR as of the date of the Notification Letter. Scarlett was also provisionally suspended for two months, ending on 25 April 2024.
14. On 28 February 2024, the PR requested the analysis of the B Sample.
15. On 18 April 2024, the FEI informed the PR that the analysis of the B Sample confirmed the presence of Ractopamine.
16. On 2 May 2024, the FEI sent a Notice of Charge to the PR for the alleged violation of Article 2.1 of the EADCMRs. The PR was given a deadline of 20 days either to admit the alleged violation and accept the proposed consequences or to challenge the alleged violation in writing.
17. The FEI granted the PR additional time to investigate the matter until 21 October 2024.

18. On 21 October 2024, the PR submitted a reply indicating, among other things, that she was unable to identify the source of the Prohibited Substance (the **Reply**), despite her considerable efforts to determine source (discussed further below).
19. On 4 December 2024, the FEI submitted its response and the case file (the **FEI's Response**) to the Tribunal for adjudication.
20. On 12 December 2024, the Tribunal Chair appointed a one-person Hearing Panel to decide this case. The Parties were asked to provide any objections to the constitution of the Hearing Panel by 17 December 2024. In addition, the PR was invited to respond to the FEI's allegations by submitting a statement of defence and any supporting evidence by 6 January 2025. Finally, the Tribunal Chair informed the Parties of their right to request a hearing by 9 January 2025, at the latest.
21. On 16 December 2024, the FEI informed the Tribunal that it did not have any objections to the constitution of the Hearing Panel.
22. On 17 December 2024, the PR informed the Tribunal that she did not have any objections to the Constitution of the Hearing Panel.
23. On 6 January 2025, the PR submitted her final reply (the **Final Reply**) and requested a hearing.
24. On 9 January 2025, the FEI informed the Tribunal that although it did not think a hearing was necessary, the FEI did not oppose the PR's request for one.
25. On 13 January 2025, the Tribunal granted the request for a hearing and asked the Parties to propose by 16 January 2025, four possible hearing dates. In addition, the Tribunal asked the Parties to disclose whether they intended to call any of the witnesses or experts identified in their written submissions.
26. On 16 January 2025, the FEI proposed four hearing dates in February and confirmed that it did not intend to call any witnesses or experts.
27. On 16 January 2025, the PR informed the Tribunal that her legal counsel would be unavailable in February due to a jury trial in the United States. The PR proposed holding a hearing in March 2025, and confirmed her intention to present lay and expert witnesses at the hearing.

28. On 17 January 2025, the Tribunal asked the FEI to confirm by 21 January 2025, its availability for a hearing on specific days in March, and requested the PR to submit the list of witnesses and experts whom she intended to call.
29. On 20 January 2025, the FEI confirmed its availability for a hearing on three different days in March 2025.
30. On 21 January 2025, the PR submitted a list of witnesses who would possibly testify on her behalf at the hearing, including: Dr. Carlos Larrazabal, Luis Fernando Larrazabal, Irving Mambru, Dr. Sarah Allendorf and her expert, Ihar Nekrashevich.
31. On 23 January 2025, the Tribunal acknowledged receipt of the Parties' correspondence and requested that the PR confirm by 24 January 2025, the specific witnesses who would be testifying on her behalf. The Tribunal further noted that Dr. Carlos Larrazabal was not discussed in any documents on file and invited the FEI to confirm, by the same deadline, whether it accepted or objected to this witness testifying at the hearing.
32. On 23 January 2025, the FEI did not object to Dr. Carlos Larrazabal's attendance at the hearing.
33. On 24 January 2025, the PR confirmed the attendance of the following witnesses: Dr. Carlos Larrazabal, Luis Fernando Larrazabal, Dr. Sarah Allendorf and Ihar Nekrashevich.
34. On 30 January 2025, the Tribunal confirmed that the virtual hearing would be held on 24 March 2025, and requested the Parties to submit a proposed hearing schedule by 17 March 2025. In addition, the Tribunal instructed the PR to provide written witness statements for Dr. Carlos Larrazabal, Luis Fernando Larrazabal and Dr. Sarah Allendorf, none of which were on file, by 24 February 2025.
35. On 28 February 2025, following a request for an extension, the PR submitted the three requested witness statements.
36. On 4 March 2025, the Tribunal acknowledged receipt of the PR's correspondence.
37. On 20 March 2025, following a request for an extension, the Parties submitted a joint hearing schedule. The PR also informed the Tribunal that the Parties had agreed that the witness statements of Dr. Carlos Larrazabal, Luis Fernando Larrazabal and Dr. Sarah Allendorf would constitute their testimony, and they would not participate in the hearing.
38. On 21 March 2025, the PR informed the Tribunal that the Parties had agreed that Mr. Nekrashevich's testimony was not required at the hearing.

39. On 24 March 2025, the hearing took place by videoconference. The following persons appeared:

- 39.1 For the Tribunal: Harveen Thauli as the Hearing Panel and Jaime Cambreleng Contreras as the Tribunal clerk.
- 39.2 For the PR: Victoria Heurtematte, Samuel W. Silver (legal counsel) and Abigail T. Burton (legal counsel).
- 39.3 For the FEI: Ana Kričej (in-house legal counsel) and Anna Thorstenson (in-house legal counsel).

IV. The Parties' Submissions:¹

A. Submissions by the PR

40. The PR submitted the Reply to the Notice of Charge on 21 October 2024, and she submitted the Final Reply in answer to the FEI's Response on 6 January 2025. The PR also testified at the hearing. The PR's position is summarised as follows:

- 40.1 The PR is an amateur rider who has been riding for over 30 years. She has been a member of the FEI for more than 25 years. During this time, she has maintained an exemplary record.
- 40.2 Before the Event, Scarlett had been tested in May, June and August 2023, and all test results were negative. She tested positive for the first time at the Event.
- 40.3 Despite spending considerable time and effort to determine the source of the positive test result, she was unable to identify it. She submitted, however, that the evidence supported a conclusion that the Ractopamine found in Scarlett's system is a case of unintentional contamination beyond her control. The PR argued that several key factors demonstrate the inadvertent nature of the violation, justifying a reduction or elimination of the sanction.
- 40.4 The low concentration of Ractopamine detected in the A Sample strongly suggested contamination rather than intentional doping. Mr. Nekrashevich

¹ The following section is a summary of the relevant facts and evidence of the Parties' written and oral submissions and the written statements of the PR's witnesses and expert.

opined in his expert report that a concentration of 3.4 ng/mL is consistent with the ingestion of a contamination amount of Ractopamine.

- 40.5 On 28 November 2023, four days after the Notification Letter, the PR's veterinarian collected a sample of Scarlett's hair and sent it to the laboratory at Texas A&M (the **Laboratory**) for analysis. On 12 December 2023, the results came back negative for Ractopamine, which the PR believed provides compelling circumstantial evidence that Scarlett had not ingested a substantial or consistent amount of Ractopamine to support a theory of intentional doping.
- 40.6 At the same competition where Scarlett tested positive, the FEI also tested another horse owned by the PR, Condara. Scarlett and Condara are stabled in a secure facility in Wellington, Florida where they are cared for by Luis Larrazabal, the PR's trainer. The two horses travelled to the Event together. The PR hired one of the most reputable professionals to transport her horses to competitions. Condara was tested on or about 2 November 2023; her test results were negative.
- 40.7 The key distinction is that Scarlett had been given certain feed, leading up to the Event. In particular, oats were introduced into Scarlett's diet shortly before and during the Event. This was not the case for Condara. Scarlett was also given "Purina Ultium Competition" as feed.
- 40.8 Scarlett was fed "Central States Show Time" oats manufactured by Furst-McNess and "Producer's Pride Oats" distributed by Purina and manufactured by Viterra Limited. In the months after receiving the Notification Letter, the PR made extensive efforts to obtain information from Furst-McNess, Purina and Viterra Limited. The PR testified that the manufacturers keep samples of all the lots of feed that are made. Despite this, the PR stated that, likely due to their concerns about legal liability, they provided her with very little assistance beyond assuring her that, given their own practices and testing, their products could not possibly be tainted with Ractopamine.
- 40.9 The PR faced considerable challenges in identifying the exact source because she did not retain samples of the feed and supplements that Scarlett had ingested at the time of testing. Opened bags of feed and supplements are not permitted to be transported back into the United States. Therefore, she had her trainer purchase new bags of the Central States Show Time oats and Producer's Pride Oats and sent them to the Laboratory for testing. The PR's trainer also sent samples of Purina Ultium Competition to the Laboratory. All test results were negative.

- 40.10 According to the PR, Scarlett and Condara receive the following supplements in the same quantities: electrolytes (Stress Dex); CoMega Supreme Oil (Animed); Super Sport Pellet (Purina); Muscle Power Plus (Natural Equine Essentials); Joint Power Plus (Natural Equine Essentials); Digest Plus (Natural Equine Essentials); Lactanase (Vita Flex); Traumeel (pills); and Arnica (pills). Although the PR stated in her letter of 28 November 2023 to the FEI that she would have the supplements tested, she confirmed at the hearing that none of them were sent to the Laboratory for testing. The PR testified that Condara had received the same supplements in the same quantity for four extra days, as she was tested four days after Scarlett at the Event. Since Condara's test results were negative, she believed that it was logical to conclude that the supplements were not the source of Scarlett's positive test result.
- 40.11 The PR continued in her efforts to identify the source. In about September 2024, she sent another brand of oats called "Triple Crown Oats" and a supplement called "Elevate Vitamin E", which were fed to Scarlett, to the Laboratory. Although the results were negative, the testing was again carried out on different bags than what Scarlett had consumed before her test at the Event.
- 40.12 The PR has consistently adhered to best practices in the care and management of her horses. Her care for her horses is deliberate and far from negligent. Anyone involved in her horses' care such as her trainer, Mr. Larrazabal and her groom are aware of the risks of cross-contamination. To support her position that her horses are properly cared for, the PR submitted the following three witness statements: Luis Fernando Larrazabal, the PR's trainer; Dr. Sarah Allendorf, the veterinarian for Scarlett and Condara; and Dr. Carlos Larrazabal. The FEI accepted these witness statements as evidence, which eliminated the need to call them to the hearing.
- 40.13 Luis Larrazabal is a professional show jumper and the PR's trainer. His statement is summarised as follows:
- a. He has been training the PR since 2020 and cares for Scarlett and Condara at his stables in Wellington.
 - b. He is responsible for choosing what Scarlett eats. Scarlett and Condara consume largely the same feed and supplements. The only difference is that Scarlett consumed Producer's Pride Oats and Central States Show Time oats.
 - c. He would never intentionally administer any Prohibited Substance to Scarlett or any other horse. He was extremely surprised of Scarlett's positive test result.

- d. He stated that the PR has never, and would never, administer Ractopamine to any horse.
- e. He and Dr. Allendorf concluded that Scarlett must have ingested something contaminated with Ractopamine.
- f. He had disposed of all feed and supplements that were open before leaving Chile.
- g. He does a thorough and high-quality job caring for his horses and none of them have ever tested positive for a Prohibited Substance. Scarlett and Condara were tested six to seven times at different competitions last year, and all tests, with the exception of the one at issue in this case, were negative.

40.14 Dr. Sarah Allendorf is a licensed veterinarian who has been practising equine veterinary medicine since 2014. Her statement is summarised as follows:

- a. She has treated the PR's horses for approximately five years.
- b. She conducts performance exams on Scarlett on an as-needed basis and before large competitions.
- c. She carries out the necessary bloodwork on Scarlett required for overseas travel to FEI competitions. She took blood from Scarlett before the Event and tested for various infectious diseases.
- d. She is also the veterinarian for Condara and has not observed any differences in how the horses are cared for. Scarlett and Condara have a dedicated groom and Mr. Larrazabal keeps the horses up-to-date with vaccines, de-worming, dental work and Coggins tests.
- e. When Mr. Larrazabal considers purchasing a new supplement for Scarlett, he sends her a photo of the ingredients to ensure that the supplement does not contain any Prohibited Substances.
- f. She stated that in her experience, Mr. Larrazabal is extraordinarily careful with his horses and the PR's horses.
- g. She was extremely surprised when she learned that Scarlett had a positive test result, particularly given that Scarlett had been tested several times earlier in the year.
- h. She is confident that neither Mr. Larrazabal nor the PR intentionally or knowingly administered Ractopamine to Scarlett.

40.15 Dr. Carlos Larrazabal is a licensed veterinarian who has been practising equine veterinary medicine since 1987. He is the National Head FEI Veterinarian for Venezuela and also Luis Larrazabal's uncle. His statement is summarised as follows:

- a. He has known the PR and her horses for more than ten years. While he is not licensed in the United States, he considers himself to be part of the team of veterinarians and others who routinely care for her horses.
 - b. He was the responsible veterinarian for Scarlett at the Event.
 - c. He keeps apprised of the substances that are prohibited by the equestrian governing bodies, such as the FEI and USEF. He has regular discussions with his clients to ensure that they are not administering any Prohibited Substances to their horses. He stated that the PR understands the importance of this issue and she would not knowingly permit a horse in her care to be subject to a Prohibited Substance.
 - d. He was present when Scarlett was tested at the Event. He was not concerned in any way that Scarlett would test positive for any Prohibited Substance, as neither he nor any member of Scarlett's team has ever administered Prohibited Substances to horses. Scarlett had been tested many times before and had never returned a positive result.
 - e. He was extremely surprised that Scarlett had tested positive for the presence of Ractopamine. He had never been associated with its use on horses.
 - f. He stated that based on his knowledge of the PR and her practices, as well as his observation and care of the PR's horses over a long period of time, he believed that Scarlett's positive test result was caused by factors beyond the PR's control, such as feed contamination.
- 40.16 The PR submitted an expert report dated 21 October 2024 from Ihar Nekrashevich. He was specifically asked whether the A Sample was consistent with the ingestion of a contamination amount of Ractopamine. He responded, *"In answer to the question posed, I therefore do consider that the Sample Result is consistent with the ingestion of a contamination amount of ractopamine."* He also stated that, *"I consider that a 'contamination amount' of ractopamine to be approximately 1mg or less."*
- 40.17 The PR acknowledged that the violation of Article 2.1 is a strict liability offence, established simply by proof that a Prohibited Substance was present in the A Sample and the B Sample (together, the **Samples**). She is cognisant that she will be found in violation of Article 2.1, but given all circumstances, she argued that she should receive a reduced sanction that recognises her lack of culpability.
- 40.18 Article 3.1 of the EAD Rules makes it the FEI's burden to establish all the elements of the EAD Rule violation to the comfortable satisfaction of the Tribunal. When the burden shifts to the PR to rebut the presumption or establish specific facts

or circumstances, the standard of proof is on a balance of probability. The PR argued that Article 3.1 does not mandate the PR to identify the exact source. Instead, the PR is required to establish the source on a balance of probability—meaning more likely than not—how the Prohibited Substance entered Scarlett's system.

- 40.19 The PR further argued that this is not, and should not be, an excessively high burden, as proving the precise means of exposure is often impossible, particularly in cases of contamination or intentional doping by an unknown party. In such situations, without an extraordinary stroke of luck, such as a confession or a manufacturer's recall, meeting an absolute standard would be unrealistic.
- 40.20 A fair and reasonable interpretation of Article 3.1 is that the PR must demonstrate to the Tribunal's satisfaction that she took all appropriate measures to control and monitor substances given to Scarlett.
- 40.21 Given the PR's diligence, the evidence supports the conclusion that contamination was the most probable cause. Accordingly, the PR submitted that she has met her burden and is entitled to a reduced sanction "*somewhat short*" of what the FEI is requesting, both in terms of suspension and financial penalties.
- 40.22 Lastly, the PR asserted that it would be unjust for her to pay the FEI's legal costs merely because she has been unable to identify the exact source, despite her extensive efforts. The PR also urged the Tribunal to consider that she has already endured significant consequences, having not competed since 29 October 2023, the date when Scarlett was tested.

B. Submissions by the FEI:

- 41. On 4 December 2024, the FEI submitted the FEI Response to the Tribunal. The FEI also presented its position at the hearing. The FEI's position is summarised as follows:
 - 41.1 Article 2.1 of the EAD Rules prohibits the presence of a Banned Substance and/or its Metabolites or Markers in a horse's sample. As a strict liability offence, it is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1.
 - 41.2 In the present case, the analysis of the Samples confirmed the presence of Ractopamine in Scarlett's system. This finding alone satisfies the requirements of Article 2.1 of the EAD Rules.

- 41.3 Article 118.3 of the GRs establishes that, *"the Person Responsible shall be the Athlete who rides [...] the Horse during an Event [...]"*. The PR is the Athlete who rode Scarlett at the Event.
- 41.4 Article 9.1 of the EAD Rules establishes that an EAD Rule *"in connection with a test in a given Competition automatically leads to the Disqualification of the result(s) of the Person Responsible and Horse combination obtained in that Competition with all resulting Consequences, including forfeiture of any related medals, points and prizes."* Even if a Sanction is reduced or eliminated under Article 10.1.2 below, such reduction or elimination does not reverse the automatic Disqualification of the Result(s) mandated by this Article.
- 41.5 Article 10.1.2 of the EAD Rules also provides that, *"an EAD Rule violation occurring during or in connection with an Event shall, upon the Decision of the FEI Tribunal, lead to Disqualification of all of the Person Responsible's results obtained in that Event, with any and all Horses, with all Consequences, including forfeiture of all medals, points and prizes [...]"*
- 41.6 To maintain a level playing field, the FEI requests the disqualification of all the results obtained by the PR and Scarlett during the Event, in accordance with Articles 9.1 and 10.1.2 of the EAD Rules.
- 41.7 Article 10.2 of the EAD Rules provides that a Person Responsible with no previous EAD Rule violation, but who violates Article 2.1 of the EAD Rules, is subject to a period of Ineligibility of two (2) years, unless she can rebut the presumption of Fault on a balance of probability.
- 41.8 Therefore, in this case, to rebut the presumption of Fault, the PR must establish to the satisfaction of the Tribunal (on a balance of probability), how the Ractopamine entered Scarlett's system. The PR must also demonstrate one of the following:
1. She bears No Fault or Negligence for that occurrence, i.e., that she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that she had administered to the horse (or the horse's system otherwise contained) a Banned Substance. If proven, the period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EAD Rules.
 2. She bears No Significant Fault or Negligence for that occurrence, in which case, the period of Ineligibility may be reduced based on the degree of fault,

pursuant to Article 10.5 of the EAD Rules.

- 41.9 The FEI submitted that despite her extensive efforts, the PR was unable to identify the source of the Ractopamine in Scarlett's system.
- 41.10 The FEI further noted that the analysis of Scarlett's hair sample is limited to detecting the possible systemic administrations of the Prohibited Substance over a prolonged period of time. Therefore, its evidentiary value is limited.
- 41.11 Considering the above, the FEI argued that it did not have any concrete evidence on how the Prohibited Substance entered Scarlett's system. Since the PR did not satisfy the "threshold requirement" of proving the source of the Ractopamine, the PR cannot benefit from any elimination or reduction of the period of Ineligibility.
- 41.12 At the hearing, the FEI claimed that it could not be ruled out that the supplements were the source of the Ractopamine found in the Samples. In the FEI's opinion, the most suspicious source of the contamination were the supplements, which it expected the PR to have analysed. The FEI claimed that the withdrawal time of a substance in a horse's body varies between horses and depends on their differences in size, metabolism, degree of fitness, recent illness or disease, etc. These differences could explain why Scarlett tested positive whereas Condara did not. In addition, the FEI pointed out that Scarlett had ingested supplements directly aimed at muscle optimisation and muscle growth, which have the same effect as Ractopamine. This increased the risk that these supplements were spiked with Ractopamine or inadvertently contaminated. Moreover, the FEI contended that, "the production and manufacturing of supplements is much less regulated." The FEI has also never had a case of contaminated oats. The FEI added that oats undergo very little processing as opposed to other types of feed or supplements, so the risk of contamination is lower.
- 41.13 The FEI respectfully requested that the Tribunal issue a decision:
- (i) *upholding the charge that the PR has violated Article 2.1 of the EAD Rules;*
 - (ii) *disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the EAD Rules;*
 - (iii) *imposing a period of Ineligibility of two (2) years on the PR, commencing from the date of the Final Decision (the Provisional Suspension already served by the PR shall be credited against the imposed Ineligibility Period);*
 - (iv) *confirming the two (2) months suspension of the Horse (26 February 2024 – 25*

April 2024);

- (v) fining the PR in the amount of 7'500 CHF;*
- (vi) ordering the PR to pay the legal costs of 2'000 CHF that the FEI has incurred in these proceedings; and*
- (vii) ordering the PR to pay the costs of the B Sample analysis in the amount of 1'000 CHF.*

V. Legal Analysis

A. Jurisdiction

42. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, Article 8 of the EAD Rules and Article 18 of the IRs. The PR is a member of the Panamanian-NF, which is a member of the FEI; therefore, the PR is bound by the EAD Rules.

B. Legal Discussion

43. Although the Tribunal has fully considered all the facts, legal arguments and evidence in the present proceedings, it refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

i. The Burden of Proof

44. Article 2.1 of the EAD Rules states that sufficient proof of a violation is established by the presence of a Banned Substance in a horse's sample. The Tribunal is satisfied that the laboratory reports on the Samples reflect that the analytical tests were performed in an acceptable manner and that the findings are accurate. The Tribunal is further satisfied that the test results evidence the presence of Ractopamine in the Samples taken from Scarlett at the Event. Ractopamine is a Banned Substance and the presence of this substance in a horse's system is prohibited at all times under Article 2.1 of the EAD Rules.
45. Pursuant to Article 3.1 of the EAD Rules, the FEI bears the burden to establish all of the elements of the EAD Rule violation to the comfortable satisfaction of the Tribunal. The Tribunal notes that it is not in dispute that the FEI had successfully established that the PR committed an EAD Rule violation. As a strict liability offence, it is not necessary to prove intent, Fault, negligence or knowing Use.
46. The burden of proof then shifts to the PR. The standard of proof for the PR to establish how the Prohibited Substance entered Scarlett's system is by a balance of probability,

pursuant to Article 3.1 of the EAD Rules. It is not disputed by the Parties that for the PR to escape a two (2) year sanction, she must establish, on a balance of probability: (i) how the Prohibited Substance entered Scarlett's system; and (ii) she bears No (Significant) Fault or Negligence pursuant to Articles 10.5 or 10.6 of the EAD Rules.

47. It is established caselaw that the PR must present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. It is accepted that the 51% threshold is understood as meaning that hearing panels should separately compare each alternative scenario with the scenario invoked by the person responsible. The PR's scenario has to reach a 51% threshold for it to be successful.²
48. The law as discussed in the previous four paragraphs is well founded and understood. The Tribunal, however, decided to take a closer look at the meaning of "burden of proof". As guidance, the Tribunal considered the discussion of "burden of proof" in the decision of CAS 2011/A/2384 & CAS 2011/A/2386 UCI & WADA v. Alberto Contador & RFEC (the **Contador Decision**). Although the Contador Decision relates to a human anti-doping matter, the principles of law can be applied here. The hearing panel in the Contador Decision stated the following at paragraphs 98 to 102:

98. The question of who bears the risk of a certain fact not being ascertained only comes into consideration if the fact submitted by the party bearing the burden of proof is contested by the other party.

99. Therefore, a crucial question is what efforts a party must make in order to validly contest the allegations made by the other party.

100. According to Swiss Law a valid contestation of facts needs to be specific, i.e. it must be directed and attributable to an individual fact submitted by the party bearing the burden of proof (DIKE-ZPO/LEU, 2011, Art 150 no. 59). Whether in addition to that, the contesting party needs to substantiate its submission, in particular whether the contesting party is under an obligation to give an explanation of why it thinks that the facts it contests are wrong, is not clearly regulated. The new CPC appears to point in that direction (DIKE-ZPO/LEU, 2011, Art 150 no. 59). However, the threshold for meeting such an obligation to specify the contestation is – under normal circumstances – rather low, since it must be avoided that the prerequisites for contesting an allegation result in a reversal of the burden of proof (BSKZPO/GUYAN, 2010, Art 150 no. 4; BSK-ZGB/SCHMID/LARDELLI, 4th ed, 2010, Art. 8 no. 30).

² See for example Viret, M., "Evidence in Anti-Doping at the Intersection of Science & Law", Asser International Sports Law Series, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWF v. UKAD & Gibbs. See for example also FEI Tribunal Decisions 2017/BS32 SAURA DE FONDCOMBE dated 24 February 2020 and C23-0046 [2023/CM08 BALLON PARIS] dated 6 December 2023.

101. Nevertheless, there are exceptions to this low threshold.

102. The exceptions concern cases in which a party is faced with a serious difficulty in discharging its burden of proof (*“état de nécessité en matière de preuve”, “Beweisnotstand”*). A cause for the latter may be that the relevant information is in the hands or under the control of the contesting party and is not accessible to the party bearing the burden of proof (cf. ATF 117 Ib 197, 208 et seq.). Another reason may be that, by its very nature, the alleged fact cannot be proven by direct means. This is the case whenever a party needs to prove “negative facts”.

49. When the obligation is on the PR to discharge her burden of proof, the FEI has a low threshold to substantiate its reasons why it thinks that the facts raised by the PR to support her position are incorrect, as the FEI has already established the elements of an EAD Rule violation. As confirmed by the hearing panel in the Contador Decision, if this were not the case, it would result in a reversal of the burden of proof.
50. The hearing panel stated, however, that there are exceptions to the low threshold. One exception occurs when the relevant information is in the hands or under the control of the contesting party and not available to the party with the burden of proof. The other exception is that by its very nature, the alleged fact cannot be proven by direct means. In this case, the PR can only succeed in discharging her burden of proof by proving that: (i) feed contamination was possible; and (ii) other sources from which the Ractopamine could have entered Scarlett’s system do not exist or are less likely. The Tribunal finds that the latter exception applies in this case because proving source could only be established by proving “negative facts”. The PR required either an admission of a manufacturer (Viterro Limited or Furst-McNess), a positive test result from one of the many samples that she had sent to the Laboratory, or a positive test result from one of the supplements, which she did not have tested. The problem was she no longer had access to the feed or supplements actually given to Scarlett at the Event, as opened bags of feed and supplements are not permitted to be transported back into the United States. The samples sent to the Laboratory were from different bags of feed with most likely different lot numbers.
51. The hearing panel in the Contador Decision discussed how proving negative facts impacts the contesting party, or the FEI in this case, at paragraphs 104 to 105:

104. In its decision the Swiss Federal Tribunal makes it clear that difficulties in proving “negative facts” result in a duty of cooperation of the contesting party. The latter must cooperate in the investigation and clarification of the facts of the case. However, according to the Swiss Federal Tribunal the above difficulties do not lead to a re-allocation of the risk if a specific fact cannot be established.

Instead, this risk will always remain with the party having the burden of proof.

105. Furthermore, the Swiss Federal Tribunal states that in assessing and determining whether or not a specific fact can be established, the court must take into account whether or not the contesting party has fulfilled its obligations of cooperation.

52. As confirmed by the hearing panel, the Swiss Federal Tribunal clearly stated that proving “negative facts” results in a duty of cooperation of the contesting party but this does not result in a re-allocation of risk. In this case, the risk remains with the PR but, as a matter of procedural fairness and good faith, the FEI has a duty to cooperate by investigating and clarifying facts. This would naturally include substantiating the veracity of its arguments as they relate to the facts on which the FEI is relying. In this case, the Tribunal finds that the FEI fell short of its duty to cooperate in certain instances.
53. The FEI chose not to cross-examine the PR’s expert, Mr. Nekrashevich on his conclusion that, *“the Sample Result is consistent with the ingestion of a contamination amount of ractopamine.”* This becomes even more relevant as Mr. Nekrashevich stated, *“[t]he excretion of ractopamine in horses is not well documented”* and he relied on a study that was based on only one horse. The FEI instead accepted his report as evidence.
54. The FEI submitted arguments at the hearing about: (i) the effects that Ractopamine would have on horses, which could be similar to supplements, such as Muscle Power Plus or Lactanese, given to Scarlett; and (ii) the lesser regulation of supplement manufacturing. In the absence of any supporting evidence from the FEI on any of these arguments (e.g., scientific papers, expert testimony, expert reports, etc.), the Tribunal cannot be persuaded by any of them however reasonable they may seem at first sight.
55. The timing of some of the FEI’s arguments was also unfortunate, in the Tribunal’s opinion, for the following reasons:
 - 55.1 The Panel notes that in her letter of 28 November 2023 as well as the Reply of 21 October 2024, the PR had referred to the supplements that were given to Scarlett.
 - 55.2 In the FEI’s Response of 4 December 2024, there was no reference to any of the supplements, the potential similarities between Ractopamine and Muscle Power Plus or Lactanese, or the alleged higher risks of contamination in supplement manufacturing.
 - 55.3 The PR did not raise any arguments about supplements in her Final Reply of 6 January 2025.

- 55.4 Despite this, the FEI chose to focus its closing statements at the hearing solely on the issue of supplements, arguing that supplement contamination was the most likely source of the Ractopamine found in the Samples. This was the first time that the FEI raised any arguments about supplements in these proceedings. The FEI referred to the decisions of Horizon and Don Principe,³ as examples of supplements contaminated with Ractopamine, in its closing submissions at the hearing also for the first time. They were not mentioned in the FEI's Response of 4 December 2024.
- 55.5 If the FEI had addressed supplements, even generally, in the FEI Response of 4 December 2024 or sooner, the PR may have thought to ask Mr. Nekrashevich to opine on whether any of the supplements have effects similar to Ractopamine.
56. As a matter of procedural fairness and good faith, the Tribunal would have expected the FEI to present all its facts and arguments from the outset of the proceedings, rather than at the eleventh hour.
57. The Tribunal thoroughly examined the facts and evidence of this case over an extended period, and it ultimately determined that the FEI's shortcomings in its duty to cooperate did not have an impact on the outcome of the case, for the reasons that will be explained below. However, in a different scenario, if the person responsible had produced sufficient evidence, the FEI's arguments – even if reasonable – would have lacked evidentiary weight and may not have been supported by a hearing panel.

ii. Anti-Doping Rule Violation

58. As mentioned above, the violation of Article 2.1 of the EAD Rules is not in dispute. The analysis of the Samples revealed the presence of Ractopamine in Scarlett's system, which constitutes sufficient proof of the violation of Article 2.1. Therefore, the FEI satisfied its burden to establish the EAD Rule violation and sufficiently proved the objective elements of the violation pursuant to Article 3 of the EAD Rules.

iii. Elimination or Reduction of the Period of Ineligibility

59. Pursuant to Article 10.2 of the EAD Rules, the period of Ineligibility for an Article 2.1 violation is two (2) years, subject to a potential reduction for No (or No Significant) Fault or Negligence in accordance with Articles 10.5 or 10.6 of the EAD Rules. To benefit from

³ FEI Tribunal Decisions: 2017/BS15 HORIZON dated 2 May 2017 and 2017/BS16 DON PRINCIPE dated 2 May 2017.

a reduction, the PR must establish as a threshold requirement how the Prohibited Substance entered Scarlett's system.⁴

60. To achieve the 51% threshold, the PR's case had the following strengths:

- 60.1 The PR's testimony was persuasive and compelling at the hearing. The Tribunal found her to be credible.
- 60.2 The PR has been a member of the FEI for 25 years and has had an unblemished record until Scarlett tested positive at the Event.
- 60.3 The witness statements of Luis Larrazabal, Dr. Allendorf and Dr. Carlos Larrazabal support most of the PR's testimony.
- 60.4 Scarlett was tested in May, June and August 2023, and all test results were negative. Her testing history shows that she has always tested negative.
- 60.5 Mr. Nekrashevich concluded that the low concentration of Ractopamine detected in Scarlett's system suggested accidental exposure rather than intentional administration. The FEI did not request to cross-examine him and accepted his report as evidence.
- 60.6 The sample of Scarlett's hair returned a negative test result, which as the FEI indicated, would detect the possible systemic administrations of Ractopamine over a prolonged period of time. Therefore, any long-term use of Ractopamine was ruled out by this test.
- 60.7 The PR's other horse, Condara was tested four days after Scarlett, and returned a negative test result. According to the PR, Condara had ingested the same supplements and similar feed as Scarlett but unlike Scarlett, Condara was not given any oats.

61. Despite the above, the PR's case had the following weaknesses:

- 61.1 The PR confirmed at the hearing that she did not know how the Ractopamine entered Scarlett's system.

⁴ FEI Tribunal Decisions: C23-0031 [FEI 2023/FT12 – ALASOUF] dated 12 October 2023, C23-0034 [FEI 2023/CM05 – SAHM II] dated 8 September 2023, C23-0045 [FEI 2023/FT24 – DIFF LOOK] dated 2 November 2023, C23-0046 [2023/CM08 BALLON PARIS] dated 6 December 2023.

- 61.2 The FEI has never had a case of contaminated oats.
- 61.3 The PR did not produce any logs or other record detailing the type of feed originally purchased (including the Central States Show Times oats and the Producer's Pride Oats), the date of purchase, where it was purchased and the lot number. For FEI-level show jumping horses, it is important that equestrians keep these types of logs or record.
- 61.4 The Tribunal noted that the FEI did not question the PR about the four Laboratory reports. Despite this, the Tribunal found that they lacked the following important details or documents:
- a. The reports contained general references to *"Feed Samples :: Sample 1 :: Non Animal :: Livestock Feed"*; *"Scarlett Du Sart Z-Feed :: Non Animal :: Livestock Feed"*; and *"Oats :: Non Animal :: Livestock Feed"*. Only one product, the Purina Ultium Competition coincides with a reference to one of the Laboratory's reports *"Ultium :: Non Animal :: Livestock Feed"*. To be helpful to the Tribunal, the reports should include the name of the feed, the lot number and a photo of the bag of feed. It is further important to know whether the Laboratory received a sealed bag of feed or samples only.
 - b. The PR most likely did not purchase the same lot numbers of the Central States Show Time oats and the Producer's Pride Oats as those of the original oats given to Scarlett.
 - c. The PR did not produce any invoices or receipts for any of the feed that was subsequently purchased for the purpose of testing.
- 61.5 The PR stated that she did not receive any assistance from the manufacturers, which are required to keep samples of its lots according to her testimony. Although the Tribunal found the PR credible, she did not produce any evidence such as emails showing her *"extensive efforts"* to obtain information from the manufacturers. The decisions of Horizon and Don Principe also did not assist her as the parties in these cases received statements from the manufacturer, confirming that there was contamination in its production lines. Be that as it may, the PR believed that the manufacturers are concerned about legal liability, which is not an unreasonable inference to make. Given the difficulty of proving the source, equestrians who find themselves in a similar situation and facing lengthy suspensions may have to consider signing a release of liability to obtain assistance from a manufacturer. If manufacturers retain samples of their lots, it must be with the intent to test them should an issue arise.

- 61.6 The PR's reason for not testing the supplements was, at face value, not unreasonable. The PR stated that Condara had ingested the same supplements, in the same quantities as Scarlett, for four additional days, as she was tested four days after Scarlett; Condara returned a negative test result. The PR thought it was logical to conclude that the supplements did not cause Scarlett's positive test result. However, the PR did not produce any evidence supporting her statement, such as a log listing the supplements together with the quantities given to each horse. She also did not produce any photos of labels showing that none of the supplements contained Ractopamine. Mr. Nekrashevich also indicated in his report that *"there will be some variability between horses"*, which suggests that horses metabolise feed and supplements differently.
- 61.7 The Tribunal noted that the PR had stated in her letter of 28 November 2023, *"In case that we are not able to find the ractopamine in the oats sample, we will proceed and test all of our supplements and feed as part of our investigation."* The result of not testing them is that there remains a potential alternative scenario whereby one of the supplements could have been contaminated.
62. The Tribunal believes that the PR took steps to investigate the potential source of the Ractopamine and has no reason to doubt the veracity of her testimony. However, as set out in paragraph 61, the PR did not support all of her facts with concrete evidence, which is necessary to discharge her burden of proof. Moreover, there remains a potential alternative – and plausible – scenario that a supplement was contaminated.
63. For all these reasons, the Tribunal finds that the PR did not discharge her burden of proving how the Prohibited Substance entered Scarlett's system.
64. Where this first hurdle has not been met (i.e., establishing the source of the Prohibited Substance), the Tribunal cannot continue with the second step and evaluate the PR's degree of Fault or Negligence. Therefore, the Tribunal finds that the PR is not entitled to any reduction of the otherwise applicable period of Ineligibility under Articles 10.5 or 10.6 of the EAD Rules.

iv. Sanctions

65. As the threshold of source has not been proven, the Tribunal finds that the applicable period of Ineligibility is two (2) years pursuant to Article 10.4 of the EAD Rules. The FEI did not object to the period of Ineligibility starting on the date when Scarlett was tested.

66. Although the Tribunal concludes that the applicable sanction is two (2) years, it wishes to point out that it does not believe that the PR cheated or intentionally committed the EAD Rule violation. Her testimony at the hearing was persuasive and compelling and the Panel feels sympathy for her. Nevertheless, this cannot make up for the unanswered questions that are left open by the missing pieces of evidence.
67. The Panel wishes to echo the words of a hearing panel in a human anti-doping case as it finds that these conclusions also apply to the present matter and to the EADCMRs:

“The Panel is conscious of the much quoted legal adage “Hard cases make bad law”, and the Panel cannot be tempted to breach the boundaries of the WADC (or FIFA ADR) because their application in a particular case may bear harshly on a particular individual. Legal certainty is an important principle to depart from the WADC would be destructive of it and involve endless debate as to when in future such departure would be warranted. A trickle could thus become a torrent; and the exceptional mutate into the norm.

It is in the Panel’s view better, indeed necessary, for it to adhere to the WADC. If change is required, that is for a legislative body in the iterative process of review of the WADC, not an adjudicative body which has to apply the lex lata, and not some version of the lex ferenda.”⁵

68. Pursuant to Articles 9.1 and 10.1.2 of the EAD Rules, the results of the PR and Scarlett combination obtained in the entire Event are automatically disqualified, including forfeiture of any related medals, points and prizes.
69. Given the Tribunal’s statements about the PR’s credibility together with the FEI’s lapses in its duty of cooperation, the Tribunal does not believe a fine pursuant to the FEI Guidelines is justified in these circumstances. The Tribunal is therefore ordering the PR to pay a reduced fine of CHF 3,750.
70. The FEI is seeking a contribution towards legal costs. Since the FEI produced boilerplate submissions of approximately 7 pages and did not rely on any experts or witnesses, the Panel considers that no contribution is warranted in this case.
71. Finally, the PR is ordered to pay the costs of the B Sample analysis in the amount of 1’000 CHF.

⁵ CAS 2018/A/5546 & 5571 WADA v. FIFA & José Paolo Guerrero, paragraphs, 89 & 90.

VI. Terms of the Decision

72. As a result, the Panel makes the following decision and imposes the following sanctions in accordance with Article 164.11 of the GRs and Article 10 of the EAD Rules:
- a) Ms Hurtematte violated Article 2.1 of the EAD Rules.
 - b) Ms Hurtematte is suspended for a period of two (2) years. The period of the Ineligibility will be effective from the date when the Samples were collected from Scarlett (i.e., 29 October 2023) and the Provisional Suspension served by the PR will be credited against the ordered period of Ineligibility.
 - c) Ms Hurtematte's results at the Event are disqualified, including the forfeiture of any prize money, medals and ranking points.
 - d) Ms Hurtematte is ordered to pay a fine of three thousand seven hundred and fifty Swiss Francs (CHF 3,750).
 - e) Ms Hurtematte is ordered to pay one thousand Swiss francs (1'000 CHF) to the FEI for the cost of analysing the B sample.
73. Ms Hurtematte, the Panama-NF and the FEI will be notified this Decision.
74. Ms Hurtematte may not, 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 organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organized by any international or national-level event organisation (Article 10.14.1 of the EAD Rules).
75. If Ms Hurtematte violates any of the conditions in the previous paragraph during the period of Ineligibility, the results of any such participation will be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.14.3 of the EAD Rules).
76. According to Article 170 of the GRs, this Tribunal Decision is effective from the day of written notification to the persons and bodies concerned.

VII. Legal Action

77. In accordance with Article 13 of the EAD Rules the Parties may appeal this Tribunal Decision before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

FOR THE TRIBUNAL

A handwritten signature in blue ink, appearing to read 'H Thauli', is centered within a light gray rectangular box.

Ms Harveen Thauli, Sole Panel Member