

**Decision of the FEI Tribunal  
dated 26 August 2020**

**Case:** 2019/FT15

**Horse/Passport:** MELKIOR LEREM/105CH28/GBR

**Person Responsible/ID/NF:** Datar Singh Ghuman SINGH/10082282/UAE

**Trainer/ID/NF:** Majed Ali Hassan AL MARZOUQI/10017915/UAE

**Event/ID:** CEI1\* 80 – Dubai (UAE)/2019\_CI\_0497\_E\_S\_03

**Date:** 20 – 24 March 2019

**Prohibited Substance:** Meloxicam

**I. COMPOSITION OF PANEL**

Ms. Diane Pitts, one member panel

**II. SUMMARY OF THE FACTS**

1. **Memorandum of case:** By Legal Department.
2. **Summary information provided by Person Responsible (PR) and Trainer:** The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available to the PR and Trainer.
3. **Hearing:** none.

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

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

Statutes 24<sup>th</sup> edition, effective 20 November 2018 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2019, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, changes effective 1 January 2019.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2<sup>nd</sup> edition, changes effective 1 January 2019.

Veterinary Regulations ("**VRs**"), 14<sup>th</sup> edition 2018, effective 1 January 2019, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

FEI Endurance Rules ("**ERs**"), Updated 9<sup>th</sup> Edition, effective 1 February 2019.

**2. Person Responsible:** Mr. Datar Singh Ghuman SINGH.

**3. Trainer:** Mr. Majed Ali Hassan AL MARZOUQI.

**4. 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)."

**GRs Art. 118.3:** "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

**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 ECM 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."

**ERs Article 800:** "3. For the purpose of this Codex, the "Trainer" is defined as the person who is in charge of the preparation of the Horse both physically and mentally for Competition. 4. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate Veterinary care and the administration of therapeutic substances under Veterinary advice."

## IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced. 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 MELKIOR LEREM (the "**Horse**") participated at the CEI1\* 80 in Dubai, United Arab Emirates ("**UAE**"), from 20 to 24 March 2019 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Datar Singh Ghuman SINGH, who is considered as the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**"). The registered trainer for the Horse at the time of the Event was Mr. Majed Ali Hassan AL MARZOUQI (the "**Trainer**").
- 1.2 The Horse was selected for sampling during the Event on 20 March 2019. Analysis of the urine and blood samples at the FEI approved laboratory – The Hong Kong Jockey Club (the "**Laboratory**") – revealed the presence of Meloxicam in the urine.
- 1.3 Meloxicam is an anti-inflammatory drug with analgesic effects. Meloxicam is classified as a Controlled Medication Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Furthermore, no valid Veterinary Form exists for this substance. Therefore, the positive finding for Meloxicam in the Horse's sample gives rise to a Controlled Medication Rule violation under the EADCMRs.

### 2. Notification Letters

- 2.1 On 30 April 2019, the FEI Legal Department officially notified the PR, through the UAE National Federation ("**UAE-NF**") and through the Indian National Federation ("**IND-NF**"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences implicated.
- 2.2 The proceedings with the PR were initiated under the so-called Administrative Procedure (also known as "Fast Track") due to the respective prerequisites under Article 8.3 of the ECM Rules for that type of procedure being fulfilled. The PR did not accept the Administrative sanctions offered to him.

- 2.3 On the same day, the FEI Legal Department also officially notified the Trainer, through the UAE-NF, that as registered Trainer of the Horse he qualified as a member of the Support Personnel, and he was the Additional Person Responsible for the rule violation. The Trainer was notified of an apparent ECM Rule violation under Article 2.1 of the ECM Rules.<sup>1</sup>
- 2.4 The Notification Letter included notice that the Trainer was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the Tribunal.

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

- 3.1 Together with the Notification Letters of 30 April 2019, the PR and the Trainer were also informed that they were entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 None of those individuals requested the performance of the confirmatory analysis.

### **4. Written submissions by the PR and the Trainer**

- 4.1 On 20 October 2019, the UAE-NF provided the Trainer's explanations for the positive finding, which were submitted on his behalf by the Al Aryam Endurance Team. It was submitted that the Trainer accepted the positive finding and explained that it was caused due to a wrong calculation of the withdrawal time of a medication administered by the assistant trainer. Further, he apologised for the mistake.
- 4.2 Furthermore, he requested – since he has been suspended for almost six (6) months – the lifting of the Provisional Suspension. He did not request for a Preliminary Hearing to be held.
- 4.3 The PR did not submit any explanations with regard to the positive finding.

### **5. Preliminary Decision**

- 5.1 On 25 October 2019, the Preliminary Hearing Panel issued a Preliminary Decision and decided to lift the Provisional Suspension of the Trainer as of 30 October 2019, *i.e.*, the Trainer's Provisional Suspension reaching six (6) months on that day.

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<sup>1</sup> The FEI also notified the Trainer of his previous involvement in cases as per Article 7.4.1(ii) of the ECM Rules, namely Case 2016/BS01 BELLARINE ROSEBUD, and Case 2018/CM07 MAXIMAL PHOENIX STERLING. The FEI subsequently clarified that the Trainer was the registered Trainer in those cases, but that no charges were brought against him in either of those cases.

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

- 6.1 On 20 July 2020, the FEI provided its Responses for both cases and requested that the cases of the PR and Trainer be consolidated. Subsequently, on 11 August 2020, the FEI corrected its previous submissions with regard to the Trainer and clarified that the matter at hand was the first rule violation for which the Trainer has been charged.
- 6.2 Regarding the Trainer, the FEI submitted that according to the definition of Trainer pursuant to Article 800.3-4 of the ERs, and due to the specificities of the Endurance discipline with Trainers making relevant decisions about the horse, the Trainer was regarded as an additional Person Responsible in accordance with Article 118.3 of the GRs. In the discipline of Endurance the Trainer has an important role and responsibility for each and every horse that he is training. It is therefore mandatory to register the Trainer in charge of each horse in the FEI database. The FEI as a prosecutor relied on the FEI database system, and the registration system allowed the FEI to hold registered people accountable in case of violations of FEI Rules and Regulations. By registering in the FEI Database as a Trainer, the registered person acknowledged and accepted the definition of a Trainer as per Article 800 of the ERs. Once a person was registered as a Trainer in the FEI Database that person was irrebuttably presumed to be the person who is responsible for taking relevant decisions on the Horse. This was also confirmed by the Tribunal in recent cases (Case 2019/FT07 and 2019/CM08 CASTLEBAR CADABRA and 2019/CM06 VAGABON DE POLSKI, Final Tribunal Decision dated 25 June 2020). In consequence, the registered Trainer was considered as the additional Person Responsible and bore any EADCMRs Rule violation implications.
- 6.3 The FEI requested the following prayers for relief:
- a) With regard to the PR:
- i. upholding the charge that the PR has violated Article 2.1 of the ECM Rules;*
  - ii. disqualifying the results 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 ECM Rules;*
  - iii. imposing a period of Ineligibility of six (6) months on the PR, commencing from the date of the final decision;*
  - iv. fining the PR in the amount of 3,500 CHF; and*
  - v. ordering the PR to pay the legal costs of 1,500 CHF that the FEI has incurred in these proceedings.*

b) With regard to the Trainer:

- i. *upholding the charge that the Trainer has violated Article 2.1 of the ECM Rules;*
- ii. *imposing a period of Ineligibility of six (6) months on the Trainer, commencing on the day of the decision (the Provisional Suspension served by the Trainer shall be credited against the imposed Ineligibility Period);*
- iii. *fining the Trainer in the amount of 3,500 CHF; and*
- iv. *ordering the Trainer to pay the legal costs of 1,500 CHF that the FEI has incurred in these proceedings.*

6.4 In essence the FEI submitted that:

- a) Article 3.1 of the ECM Rules makes it the FEI's burden to establish all of the elements of the ECM Rule violation, to the comfortable satisfaction of the Tribunal.
- b) The elements of an Article 2.1 violation are 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 is 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 A-sample taken from the Horse at the Event confirmed the presence of Meloxicam and constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. In any event, the PR or the Trainer did not dispute the presence of this substance in the Horse's sample. Accordingly, the FEI submitted that it has discharged its burden of establishing that the PR and the Trainer have violated Article 2.1 of the ECM Rules.
- c) Where a Controlled Medication Substance is found in a horse's sample, a clear and unequivocal presumption arises under the ECM Rules that it was administered to a horse in a deliberate attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the ECM Rules provides that a Person Responsible and/or an Additional Person Responsible with no previous doping offence, but who violated Article 2.1 of the ECM Rules is subject to a period of Ineligibility of six (6) months, unless they are able to rebut the presumption of fault. If the PR/Trainer fails to do so, the six (6) months period of Ineligibility applies.
- d) The ECM Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR/Trainer proves how the substances entered into the Horse's system. Indeed, this

requirement had to be strictly applied because without such proof it would be impossible to assess the PR's and/or Trainer's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Controlled Medication Substance in the Horse. The FEI submitted in this context that the PR/Trainer have to provide clear and convincing evidence that proves how the Prohibited Substance has entered the Horse's system. In the case at hand, the PR has not provided any reply to the FEI's Notification Letter of 30 April 2019, despite several reminders from the FEI. In consequence, the PR has not established how the Prohibited Substance entered the Horse's system. The PR has therefore not discharged his burden of proving how Meloxicam entered the Horse's system. Furthermore, the FEI does not possess any conclusive evidence or information regarding how the Prohibited Substance entered the Horse's body from other sources.

- e) The Trainer and the Al Aryam Endurance Team's statement with regard to the source of the Prohibited Substance was not corroborated by any evidence (such as for example name of the medication, date and route of administration of the medication, purpose for which the medication was used, medical record of the Horse as well as medical log book, veterinary statement, etc.) that would prove that indeed a medication containing the Prohibited Substance was given to the Horse. Consequently, given the lack of evidence supporting the claims of the Trainer and the Al Aryam Endurance Team, the FEI submitted that the Trainer has not established how the Prohibited Substance entered the body of the Horse.
- f) Since the PR/Trainer have not established how the Meloxicam entered the body of the Horse, there could be no reduction of the standard sanction for Controlled Medication Substances, namely six (6) months period of Ineligibility for both individuals.
- g) The Provisional Suspension served by the Trainer shall be credited against the imposed final period of Ineligibility.

## **7. Further proceedings**

- 7.1 On 20 July 2020, the Tribunal was provided by the FEI with the case file in the present cases, and requested to adjudicate the cases. In addition, the FEI requested that the cases be consolidated.
- 7.2 On 21 July 2020, the FEI Tribunal Chair nominated a panel for the cases at hand. Neither party objected to the constitution of the panel.
- 7.3 On the same day, the PR and the Trainer were once more granted with the opportunity to provide their explanations for the positive finding, and with the opportunity to respond to the FEI Response of 20 July 2020. In

addition, the PR and the Trainer were granted with the opportunity to comment on the FEI's request for consolidation of the proceedings. However, no further submissions by either the PR or the Trainer have been received by the Tribunal. Neither did the PR and/or the Trainer comment on the FEI's request for consolidation of the proceedings.

- 7.4 Moreover, the Tribunal asked the Parties to inform it whether a hearing is requested by either party. All parties waived the right for a hearing as no submission was received in this regard.
- 7.5 On 5 August 2020, the Tribunal consolidated the two proceedings, as the Tribunal found that the proceedings in question clearly fulfil the requirement for consolidation of "substantially similar or related" proceedings. In fact, the proceedings concern the same positive finding.
- 7.6 On 11 August 2020, the FEI corrected its previous submissions with regard to the Trainer.
- 7.7 On 12 August 2020, the Tribunal informed the Trainer of the corrected FEI submission and granted the Trainer with the opportunity to comment on that submission. However, no further comments were received from the Trainer.

## **8. Jurisdiction**

- 8.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs, as well as Article 18 of the IRs.

## **9. The Person Responsible & the Additional Person Responsible**

- 9.1 In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as he competed with the Horse at the Event.
- 9.2 In accordance with Article 118.3 of the GRs, Support Personnel may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. Pursuant to the definition of Support Personnel in the EADCMRs, trainers are included in the notion of Support Personnel. Furthermore, the term "Trainer" is defined in the ERs in Article 800.3-4 as *"the person who is in charge of the preparation of the Horse both physically and mentally for Competition. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate Veterinary care and the administration of therapeutic substances under Veterinary advice"*.

- 9.3 The Tribunal notes that according to the FEI Database the Trainer was the registered Trainer for the Horse at the time of the Event. The Tribunal further understands that the purpose of registering trainers in the discipline of Endurance is precisely in order to know and if necessary to hold accountable those persons who take the actual decisions of the Horse in preparation for competitions and such registration brings into effect the consequences of the definition of Article 800 of the ERs. This conclusion follows previous decisions made by the FEI Tribunal, such as for example Case 2019/FT07 and 2019/CM08 CASTLEBAR CADABRA and 2019/CM06 VAGABON DE POLSKI, Final Tribunal Decision dated 25 June 2020; Case 2018/BS18 SHADDAD, Final Tribunal Decision dated 15 August 2019; and Case 2019/CM09 ALRAHAWI, Final Tribunal Decision dated 5 March 2020.

## **10. The Decision**

- 10.1 To start with, and as previously decided, the cases of the PR and Trainer have been consolidated. The cases *de facto* concern the same rule violation.
- 10.2 As set forth in Article 2.1 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-sample. The Tribunal is satisfied that the laboratory reports relating to the A-sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Meloxicam in the urine sample taken from the Horse at the Event. The PR or the Trainer did not challenge the accuracy of the test results and the positive finding. This substance is considered as a Controlled Medication Substance under the FEI List and the presence of this substance in a Horse's body during an event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 10.3 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ECM Rules.
- 10.4 Pursuant to Article 10.2.1 of the ECM Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Controlled Medication Substance in a Horse's sample, as in the case at hand, shall be six (6) months, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the ECM Rules.
- 10.5 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM Rule violation

has been established by the FEI, a PR/Trainer has the burden of proving that he bears "*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.

- 10.6 In order for Articles 10.4 and 10.5 of the ECM Rules to be applicable, the PR/Trainer must establish as a threshold requirement how the Prohibited Substance entered the Horse's system. Furthermore, the Tribunal notes that the PR or Trainer do not claim the applicability of Article 10.6 of the ECM Rules.
- 10.7 The Tribunal takes note of the Trainer's explanations with regard to the positive finding, namely that it was caused due to a wrong calculation of the withdrawal time of a medication administered by the assistant trainer. However, the Trainer has not provided any evidence of any treatment of the Horse, *i.e.*, timing and dose of substances administered. The PR on the other hand has – despite several reminders – not provided any explanations for the positive finding. As a result, the Tribunal finds that neither the PR nor the Trainer have established – on a balance of probability, as required under Article 3.1 of the ECM Rules – how the Prohibited Substance entered the Horse's system.
- 10.8 In the absence of establishing on the balance of the probability how the Prohibited Substance entered the Horse's system, the Tribunal cannot evaluate the degree of fault of the PR/Trainer for the rule violation.
- 10.9 Even if the source of the Prohibited Substance was established, the Tribunal would still conclude that No (Significant) Fault or Negligence does not apply in this case, because under Article 2.1.1 of the ECM Rules, it is the PR's and Trainer's personal duty to ensure that no Prohibited Substances are present in the Horse's system during an Event without a valid Veterinary Form and neither the PR nor Trainer have provided any information/evidence on whether any procedures were in place or what due diligence was exercised to fulfil this duty.
- 10.10 Therefore, the Tribunal concludes that no elimination or reduction of the otherwise applicable period of Ineligibility is warranted, neither in the case of the PR nor in the case of the Trainer.
- 10.11 The Tribunal takes note of the corrected FEI submission and the FEI's clarification that the matter at hand is the first rule violation for which the Trainer has been charged. As a result, the standard period of Ineligibility of six (6) months is also applicable for the Trainer in this case.

- 10.12 Further, the Tribunal takes note that the Trainer has been provisionally suspended for six (6) months from 30 April 2019 to 30 October 2019, and the Tribunal understands that the Trainer was not involved in any capacity while provisionally suspended; at least the Tribunal has not been provided with information otherwise. Therefore, the period of provisional suspension shall be credited against the final period of Ineligibility imposed.
- 10.13 Any other claims by the Parties shall be dismissed. While the Tribunal has taken them into account, the Tribunal finds that they were not decisive to the outcome of this decision.

### **11. Disqualification**

- 11.1 Since the ECM Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the ECM Rules.

### **12. Sanctions**

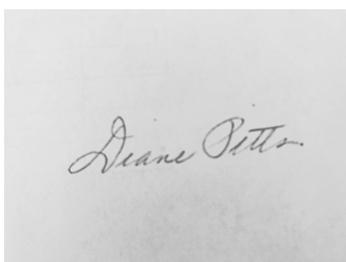
- 12.1 As a result of the foregoing, the period of Ineligibility imposed on the PR and on the Trainer for the present rule violation shall be six (6) months.
- 12.2 The Tribunal imposes the following sanctions on the PR and the Trainer in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
- 1) The PR shall be suspended for a period of **six (6) months** starting from the date of this Decision. Therefore the PR is ineligible through 25 February 2021.
  - 2) The Trainer shall be suspended for a period of **six (6) months**; the period of Provisional Suspension, effective from 30 April 2019 to 30 October 2019 shall be credited against the period of Ineligibility imposed in this Decision. Therefore, the Trainer has been eligible since 1 November 2019.
  - 3) The PR is fined **three thousand five hundred Swiss Francs (CHF 3,500.-)**.
  - 4) The Trainer is fined **three thousand five hundred Swiss Francs (CHF 3,500.-)**.
  - 5) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1,500.-)** towards the costs of these proceedings.
  - 6) The Trainer shall contribute **one thousand five hundred Swiss Francs (CHF 1,500.-)** towards the costs of these proceedings.

- 12.3 No Person Responsible and member of Support Personnel, *i.e.*, the Trainer, 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).
- 12.4 Where a Person Responsible or a member of the Support Personnel, *i.e.*, the Trainer, who has been declared Ineligible violates 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).
- 12.5 In accordance with Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 12.6 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 persons sanctioned: Yes**
- b. The President of the NF of the persons sanctioned: Yes**
- c. The President of the Organising Committee of the Event through the NF: Yes**
- d. Any other: No**

**FOR THE PANEL**

A rectangular box containing a handwritten signature in cursive script that reads "Diane Pitts".

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**Ms. Diane Pitts, one member panel**