

DECISION of the FEI TRIBUNAL
dated 6 July 2020

1. Case 2019/BS13:

Horse/Passport: **COMTESSA 102** /103UL07 /MEX

Person Responsible/ID/NF: Karime PEREZ NUÑEZ/10109611/MEX

Event/ID: CSI2* - San Miguel de Allende (MEX) 2019_CI_1141_S_S_01

Date of Event: 7-10.03.2019

Prohibited Substance(s): Synephrine

Start of Provisional Suspension of Horse: 11 April 2019

2. Case 2019/BS14:

Horse/Passport: **DALIEN SWALLY R.P.** /105CH62/URU

Person Responsible/ID/NF: Juan Manuel LUZARDO/10055118/URU

Event/ID: CSI2* - San Miguel de Allende (MEX) 2019_CI_1141_S_S_01

Date of Event: 7-10.03.2019

Prohibited Substance(s): Synephrine

Start of Provisional Suspension of Horse: 11 April 2019

3. Case 2019/BS19:

Horse/Passport: **BEAUTIFUL RED**/104RP40/MEX

Person Responsible/ID/NF: Salvador OÑATE/10009262/MEX

Event/ID: CSI4* - Balvanera (MEX), 2019_CI_1143_S_S_01

Date of Event: 28-31.03.2019

Prohibited Substance(s): Synephrine

Start of Provisional Suspension of Horse: 7 May 2019

4. Case 2019/BS20:

Horse/Passport: **UNION DE LA NUTRIA**/104YX41/MEX

Person Responsible/ID/NF: Alberto SANCHEZ-COZAR/10015476/MEX

Event/ID: CSI4* - Balvanera (MEX), 2019_CI_1143_S_S_01

Date of Event: 28-31.03.2019

Prohibited Substance(s): Synephrine

Start of Provisional Suspension of Horse: 7 May 2019

5. Case 2019/BS22:

Horse/Passport: **ELTON M.L**/104UK23/MEX

Person Responsible/ID/NF: Luis Alejandro PLASCENCIA O./10039815/MEX

Event/ID: CSI4* - Balvanera (MEX), 2019_CI_1143_S_S_01

Date of Event: 28-31.03.2019

Prohibited Substance(s): Synephrine

Start of Provisional Suspension of Horse: 7 May 2019

6. Case 2019/BS23:

Horse/Passport: **WEIHRAUCH CR**/103US47/MEX

Person Responsible/ID/NF: Karime PEREZ NUÑEZ/10109611/MEX

Event/ID: CSI4* - Balvanera (MEX), 2019_CI_1143_S_S_01

Date of Event: 28-31.03.2019

Prohibited Substance(s): Synephrine

Start of Provisional Suspension of Horse: 7 May 2019

7. Case 2019/BS26 CHAPILOT

Horse/Passport: **CHAPILOT**/104GV18/MEX

Person Responsible/ID/NF: Rodrigo LAMBRE /10021911/BRA

Event/ID: CSI2* - Mexico City (MEX), 2019_CI_0148_S_S_02

Date of Event: 11-14.04.2019

Prohibited Substance(s): Synephrine

Start of Provisional Suspension of Horse: 15 May 2019

8. Case 2019/BS27:

Horse/Passport: **PUERTAS SO WHAT** /104JN75/MEX

Person Responsible/ID/NF: Martina FRANCO STEPHAN /10114737/MEX

Event/ID: CSI2* - Mexico City (MEX), 2019_CI_0148_S_S_02

Date of Event: 11-14.04.2019

Prohibited Substance(s): Synephrine

Start of Provisional Suspension of Horse: 15 May 2019

I. COMPOSITION OF PANEL

Mr. Mohammed Al Saberi, one member panel

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 24th edition, effective 20 November 2018 ("**Statutes**"), Arts. 1.4, 38 and 39.

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

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

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

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, changes effective 1 January 2019.

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

FEI Code of Conduct for the Welfare of the Horse.

2. Persons Responsible: Karime PEREZ NUÑEZ, Juan Manuel LUZARDO, Salvador OÑATE, Alberto SANCHEZ-COZAR, Luis Alejandro PLASCENCIA O., Rodrigo LAMBRE and Martina FRANCO STEPHAN, represented by Morgan Sports Law, London, United Kingdom.

3. Justification for sanction:

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."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel*

will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. 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.”

EAD Rules Art. 7.6.1: “At any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3.”

III. DECISION

1. The Parties

- 1.1 The Persons Responsible (“**PRs**”) are jumping riders for Mexico, Uruguay and Brazil.
- 1.2 The Fédération Equestre Internationale (the “**FEI**” and 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 (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

2. Factual Background

- 2.1 The PRs competed with the Horses in March and April 2019 at several FEI Events in Mexico. The Horses were selected for testing. Analysis of the samples revealed the presence for Synephrine, a Banned Substance on the 2019 FEI Equine Prohibited Substances List. Synephrine is also designated as a “Specified Substance”.
- 2.2 With respective Notification Letters the FEI imposed two-months Provisional Suspensions on the Horses.

3. Further proceedings

- 3.1 On 28 May 2019, the Preliminary Hearing Panel – following a Preliminary Hearing on 24 May 2019 – decided to maintain the Provisional Suspensions of the Horses for two-months, starting from the respective impositions by the FEI.
- 3.2 On 14 June 2019 (operative part, and on 28 June 2019 reasoned decision), the Preliminary Hearing Panel decided to lift the Provisional Suspension of the Horses as of 20 June 2019, midnight Swiss time.
- 3.3 On 29 June 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the consolidated cases referenced above and submitted the Agreement to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EAD Rules.
- 3.4 On 6 July 2020, the FEI Tribunal Chair nominated a panel for the case at hand. Neither party objected to the constitution of the panel.

4. Agreement between Parties

- 4.1 On 24 June 2020 the Parties reached the following Agreement:

*** Quote***

NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR DISPOSAL OF THE ANTI-DOPING PROCEEDINGS:

The Persons Responsible and the FEI agree in accordance with 7.6.1 EAD Rules on the following:

The Persons Responsible:

- (i) admit the violation of Article 2.1 of the EAD Rules;
- (ii) waive their right to a final hearing; and
- (iii) cooperate with the FEI fully with respect to their cases.

The FEI is satisfied that the Persons Responsible have established:

- (i) on a balance of probabilities how the Synephrine entered the Horses' systems;
- (ii) that they bore No Fault or Negligence for the rule violation; and

- (iii) that the circumstances of the case are exceptional, such that the Persons Responsible could not reasonably have known that the Teff Grass contained Synephrine.

The FEI agrees that:

- (a) the Persons Responsible bear no fault or negligence for the respective violations. The Persons Responsible shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e. two years) shall be eliminated;
- (b) in accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 8 (Multiple Violations) of the EAD Rules;
- (c) in accordance with EAD Rules 9.1 and 10.1.2,¹ the results achieved by Persons Responsible and the Horses combinations at the Events are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes; and
- (d) that Persons Responsible shall not incur any fines or costs.
- (e) No other Sanctions (other than the Disqualification of the Horses results at the Event in accordance with Article 9 and Article 10.1.2 and of the EAD Rules) should apply in each case.

Each party will bear its own legal and other costs incurred in connection with these proceedings.

The parties hereby request that the FEI Tribunal issue a Decision incorporating the terms of this agreement.

The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, that the Decision will be made public by the FEI. The

¹ EAD Rules 9.1 and 10.1.2 provide as follows:

9.1 A violation of these EAD Rules in connection with a test in a given Competition automatically leads to the Disqualification of the result 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 below, such reduction or elimination shall under no circumstances reverse the automatic Disqualification of Individual Results mandated by this Article 9.

10.1.2 At Events other than those listed above: an EAD Rule violation occurring during or in connection with an Event may lead to Disqualification of 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, except as provided in Article 10.1.4.

terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

This agreement is made in accordance with Article 7.6.1 of the EAD Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal.

This agreement will constitute the Decision for this case. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.

The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

End Quote

- 4.2 Furthermore, the Parties provided the following Case Summary and Full Reasoning for the case at hand:

The PRs are the Persons Responsible (“**PR**”) in accordance with Article 118.3 of the FEI General Regulations, competed with their Horses at FEI Events and are jumping riders for Mexico and Uruguay. The PRs were bound by the EADCM Regulations.

The Fédération Equestre Internationale (the “FEI” and together with the PRs, the “Parties”), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para Dressage and Para Driving).

The Horses were selected for testing at FEI Events. Analysis of the samples revealed the presence of Synephrine, a stimulant that causes vasoconstriction, increases heart rate and is used as a weight loss aid in humans. Synephrine is a Banned Substance under the 2019 FEI Equine Prohibited Substances List. Synephrine remaining a Banned Substance is also designated as a “Specified Substance”. The Persons Responsible identified below consolidated their individual cases due to the following commonalities:

- (i) They all reside and rear horses in Mexico;

- (ii) their horses were all subject to doping control in April / May 2019;
- (iii) their A sample analyses all test positive for the Specified Substance Synephrine;
- (iv) their horses all ingested Teff Grass (both routinely and on the day of their tests); and
- (v) they all purchased Teff Grass from the same manufacturer.

Schedule 1 sets out the particulars of each case.

The source of the Synephrine is Teff Grass. The manufacturer of the Teff Grass is Roberto Quintana. Mr. Quintana has been providing Teff Grass to horse owners, competing at FEI competitions, for five years. He has never before had any incident related to Synephrine.

Mr. Quintana accepts full responsibility for the presence of Synephrine in the Teff Grass. He arranged for the Teff Grass to be tested by a laboratory and wrote a letter to the FEI stating: *"I'm convinced that no person responsible had no fault or negligence in the above matter..."*. (Exhibit 1-2)

In order to conclusively determine that Teff Grass was the source of the Synephrine, the Persons Responsible commissioned an expert to review their circumstances. (Exhibit 3) The expert confirmed that if a horse ingested of a sufficient quantity of Teff Grass on the day of a sample collection, it should be expected that Synephrine would be detectable in the urine of that horse.

In a preliminary decision dated 28 June 2019, the FEI Tribunal lifted the suspensions of the Horses.

The PR's have submitted witness statements where they explained that: they are all careful individuals who take the necessary precaution to avoid the horses coming in contact with prohibited substances, they have purchased Teff Grass from the Producer and that they feed the Teff Grass to their horses on a daily basis. (Exhibit 9)

The Producer sent the Teff Grass for analysis and it showed the presence of Synephrine. (Exhibit 7)

The FEI issued a warning about Teff Grass and the risk of Synephrine, which explains that: In certain parts of the world, Synephrine can be found in plants such as common rush (*Juncus usitatus*), Mullumbimby couch (*Cyperus brevifolus*) and the leaves of citrus trees (e.g. mandarin, orange and lemon). Synephrine has also been detected in Teff grass hay in some countries. It can also be found as an ingredient of herbal and nutritional supplements, and commonly found in the peel extract of bitter orange (also known as Seville orange) which is used as a

flavouring agent. (Exhibit 8)

5. Jurisdiction

- 5.1 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.
- 5.2 As members of the National Federations of Mexico, Uruguay and Brazil, the latter being members of the FEI, the PRs were bound by the EAD Rules.
- 5.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 5.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

6. Approval of Agreement

- 6.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal has – among others – taken note, that the FEI accepts – on a balance of probability - that the source of the Synephrine was via the teff grass from the producer in Mexico.
- 6.2 Furthermore, the Tribunal takes note that the FEI accepts that the PRs bore No Fault or Negligence for the rule violations.
- 6.3 Following from Article 10.4 of the EAD Rules, where PRs establish that they bear No Fault or Negligence, then the otherwise applicable period of Ineligibility (2 years) and other sanctions (apart from Article 9) may be eliminated.
- 6.4 However, the Tribunal wishes to clarify that it did not evaluate the degree of fault of the PRs, nor did it take into account previous case law.
- 6.5 Moreover, the Tribunal notes that the Horses most likely competed with Synephrine in their systems throughout the entire Events in question. Therefore, the playing field was unlevel. The Tribunal acknowledges and agrees with the Parties that all results of the PRs and Horses combination achieved during the Events shall be disqualified.
- 6.6 Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable,

of the Event accordingly. Further, this Decision shall terminate the present consolidated cases.

7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PRs concerning the consolidated cases as outlined above is hereby ratified by the Tribunal with the consent of the Parties and its terms set out in Article 4 above are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

IV. DECISION TO BE FORWARDED TO:

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

FOR THE PANEL



Mr. Mohammed Al Saberi, one member panel