



**DECISION of the FEI TRIBUNAL**

**dated 31 March 2011**

**In the matter of**

**ESCON MARKETING GMBH ("Escon Marketing")**

**Protestor and Counter-Respondent**

**vs.**

**FEDERATION EQUESTRE INTERNATIONALE ("FEI")**

**Respondent and Counter-Protestor**

(Together, the "Parties")

**1. COMPOSITION OF PANEL**

Mr. Ken E. Lalo, Chairman  
Mr. Erik Elstad  
Mr. Pierre Ketterer

**2. SUMMARY OF THE CASE RECORD**

**2.1 Submissions and evidence before the FEI Tribunal**

The FEI Tribunal duly took into consideration all written evidence, submissions and documents presented in the case file, as well as the Parties' oral presentations and witness evidence during the hearing.

**2.2 Oral hearing:** In-person on 8 December 2010 (Geneva, Switzerland).

Present: The FEI Tribunal Panel

For Escon Marketing:

Mr. Michael Klimke, Legal Counsel  
Dr. Kaspar Funke, Director of Escon Marketing  
Mr. Hubertus Funke; Witness (by telephone call)

Ms. Andrea Struckmeier; Witness (by telephone call)  
Ms. Marne Martin-Tucker, Witness (by telephone call)  
Mr. Martin Richenhagen, FEI Judge; Witness (by telephone call)  
Mr. Friedrich Otto-Erley, Head of Competitive Sports Department, GER NF; Witness (by telephone call)

For the FEI:

Ms. Lisa F. Lazarus, FEI General Counsel  
Ms. Carolin Fischer, FEI Legal Counsel  
Mr. Trond Asmyr, Director Dressage and Paraequestrian Dressage; Witness  
Mr. Paul Greenwood, Head of Investigations, QUEST; Equestrian Community Integrity Unit; Witness

**2.3 Articles of the Statutes/Regulations which are applicable:**

Statutes 22<sup>nd</sup> edition, revision effective 15 April 2007, updated 19 November 2009 ("**Statutes**").

General Regulations, 23<sup>rd</sup> edition, effective 1 January 2009 ("**GRs**"), and General Regulations, 23<sup>rd</sup> edition, effective 1 January 2009 ("**GRs**"), updated 1 January 2010 as the case may be; in particular Articles 102.1, 102.3, 115.1, 116.2, 116.3

Internal Regulations of the FEI Tribunal, effective 15 April 2007, updated 1 February 2008.

FEI Rules for Dressage Events, 23<sup>rd</sup> edition, effective 1<sup>st</sup> January 2009, including modifications for 01.01.2010, in particular Article 423.

**Article 102.3 GRs**

[ ... ]

3. All Athletes invited or nominated for an International Event must be entered by their NFs. All foreign Athletes selected by their NFs, in accordance with the relevant Sport Rules and as specified in the schedule, must be accepted by the OC. OCs shall not accept any other entries.

**Article 116.2 GRs**

[ ... ]

2. All Athletes invited or nominated for an International Event must be entered by their NFs. All foreign Athletes selected by their NFs, in accordance with the relevant Sport Rules and as specified in the Schedule, must be accepted by the OC. OCs may not accept any other entries.

3. NFs are responsible for selecting and entering qualified Horses and Athletes. This includes the fitness and capability of the Horses and the Athletes to participate in the Competitions for which they are entered.

### **Article 423 Rules for Dressage Events**

#### **Article 423 Invitations, Entries and Substitutions**

Invitations must be extended through the respective NF. For CDI3\*/CDI4\*/CDI5\* in Europe at least six countries, including the host NF, plus three reserve countries, with a minimum of two athletes each must be invited or accepted or 12 countries with a minimum of 1 athlete each.

In each case an organizer may never invite more home athletes than foreign athletes. The NFs concerned will make the final choice of the athletes sent to an event."

[ ... ]

**OC Invitations and OC Wild Cards.** These invitations (foreign and/or home athletes) must be under the same conditions as for other participants and must in no way be directly or indirectly in connection with financial contribution. Pay Cards and Appearance fees are strictly prohibited."

#### **Invitation System for CSI 3\*+ 4\* events in Europe**

[ ... ]

The following fines will be imposed on Organising Committees not respecting the above procedure: 1<sup>st</sup> offence CHF 20'000.-; 2<sup>nd</sup> offence CHF 40'000.- ; at the 3<sup>rd</sup> offence, the event will not be permitted to take place. These fines will be payable directly by the Organising Committees concerned to the FEI.

## **3. DECISION**

### **3.1 The Facts**

1. This case involves various alleged violations of FEI regulations concerning entries and so-called "pay cards" by Escon Marketing GmbH ("Escon Marketing"), a company which has been organizing Equestrian Events since 1987 at various European venues. Key individuals acting as representatives of Escon Marketing in connection with the incidents below are Dr. Kaspar Funke, Director of Escon Marketing, his brother, Mr. Hubertus Funke, Director of Escon Marketing until 31 December 2009, and Ms. Andrea Struckmeier. The following facts relate to the incidents leading to the above violations alleged by the FEI.

### **3.1.1 CDI4\* Oldenburg (GER), 5 to 8 November 2009**

2. The United States Equestrian Federation (the "USEF") is a member federation of the FEI in accordance with Article 5 of the FEI Statutes, and is therefore considered a "National Federation" or "NF" of the FEI. In early November 2009, Escon Marketing and the "USEF" exchanged numerous emails about the expected participation of several US riders at the CDI4\* in Oldenburg, scheduled to take place from 5 to 8 November 2009 and organised by Escon Marketing. In particular, Escon Marketing requested authorisation from the USEF, as it is required to do under the rules, for the participation of Dressage rider Ms. Marne Martin-Tucker at the above CDI4\*.
3. By email of 2 November 2009, the USEF informed Andrea Struckmeier of Escon Marketing that the USEF Dressage Credentials Committee had disapproved Ms. Martin-Tucker's participation, and that consequently, the USEF was unable to give permission to Ms. Martin-Tucker to compete at the CDI4\* in Oldenburg. By return email of 2 November 2009, Mr. Hubertus Funke of Escon Marketing repeated the request for the USEF's approval of the participation of Ms. Martin-Tucker. Mr. Funke further stated that if permission was not forthcoming from the USEF for the participation of Ms. Martin-Tucker, Escon Marketing would have to consider withdrawing the invitations to the three (3) other US competitors who had previously been invited and who were already at the showgrounds at the time the email was sent.
4. The USEF, on 2 November 2009, requested the FEI's assistance in dealing with Escon Marketing to ensure that the three qualified riders were permitted to compete at the CDI4\* in Oldenburg and that Ms. Martin-Tucker was not permitted to compete.
5. In a 3 November 2009 email to the USEF, Andrea Struckmeier, representative of Escon Marketing, stated that, in the absence of a response to Mr. Funke's email of 2 November 2009, Escon Marketing assumed that Ms. Martin-Tucker had been approved to compete in Oldenburg and that starting places would be given to the other three US riders. By reply email, the USEF repeated to Escon Marketing its earlier position that Ms. Martin-Tucker did not have the USEF's authorization to compete at the CDI4\* in Oldenburg.
6. Subsequent to the above email exchange, Mr. Trond Asmyr, Director Dressage and Paraequestrian Dressage

Department, had a telephone conversation with a Mr. Funke who presented himself as a representative of Escon Marketing, about the participation of Ms. Martin-Tucker. During that conversation, Mr. Asmyr explained that NFs have to approve the participation at FEI Events of all riders, and that absent the NF's approval, the respective rider could not be allowed to compete. According to Mr. Asmyr, Mr. Funke explained to him that these were difficult financial times for events and that the participation of Ms. Martin-Tucker would help in this situation because the Event "needed the money".

7. By email of 4 November 2009, Ms. Lisa F. Lazarus, FEI General Counsel, reminded Escon Marketing that - in the absence of USEF approval - Escon Marketing was not permitted to allow Ms. Martin-Tucker to participate at the Event. In the email, Ms. Lazarus emphasized to Escon Marketing that the conditioning of invitations to the other three (3) riders on the approval of Ms. Martin-Tucker's participation as threatened by Escon Marketing on 2 November 2009 violated the fundamental requirement of fair and good faith dealing underlying the FEI's regulation system.
8. On 5 November 2009, Ms. Lazarus spoke to Mr. Hubertus Funke on the telephone, advised him of the FEI rules and regulations pertaining to entries and invitations and explained to him why Escon Marketing could not accept the entry of Ms. Martin-Tucker. By email of the same day, the FEI further provided the text of the respective FEI rules and regulations to Escon Marketing, making clear that it could not allow Ms. Martin-Tucker to compete against the USEF's wishes.
9. By email of 5 November 2009 to the USEF, Escon Marketing stated that since it had not received an answer to its email of the previous day, it was assumed that Ms. Martin-Tucker could start at the CDI4\* in Oldenburg. By response email of the same day, the USEF emphasized once again that Ms. Martin-Tucker did not have the USEF's permission to compete at the Oldenburg Event.
10. Despite the disapproval of the USEF of the participation by Ms. Martin-Tucker and the FEI's clear instructions to Escon Marketing, both over the telephone and by email, that allowing her to participate would be in violation of FEI rules and regulations, Escon Marketing allowed Ms. Martin-Tucker to compete at the CDI4\* in Oldenburg. She finished the Grand Prix with a result of 56% which was the lowest score obtained amongst all competitors in that class.

11. The FEI and the USEF learned only after the Event that Ms. Martin-Tucker had competed. The USEF took punitive action against Ms. Martin-Tucker under its national rules; Ms. Martin-Tucker accepted administrative penalties in lieu of a proceeding before the USEF hearing body for the rule violation. Specifically, Ms. Martin-Tucker paid the USEF \$1,000, and accepted a suspension of one (1) month. As set forth more fully below, Ms. Martin-Tucker testified that no one from Escon Marketing ever informed her that she was not permitted to compete and that the whole situation has therefore caused her much embarrassment as she never would have competed against the wishes of her National Federation.

**3.1.2 CDI3\* Bremen (GER), 5 to 7 March 2010 – Ms. Isabel Bache**

12. By email dated 29 January 2010, the Norwegian Equestrian Federation ("NOR NF") asked Escon Marketing for an invitation for Ms. Isabel Bache for the CDI3\* in Bremen from 5 to 7 March 2010.
13. By email of 16 February 2010, Escon Marketing replied that Ms. Bache was on the waiting list. Two weeks later, by email of 1 March 2010, Escon Marketing reverted to the NOR NF, informing it that there was a possibility for Ms. Bache to start in Bremen if she had a sponsor.
14. On 4 March 2010, the NOR NF replied that Ms. Bache had been asked whether she and her sponsor wanted to pay extra for Ms. Bache's start, but that they were not interested.
15. There was no further exchange between the NOR NF and Escon Marketing with regard to the participation of Ms. Bache at the CDI3\* in Bremen. Escon Marketing subsequently contacted Ms. Bache directly, offering her the possibility of participating at the Event if she had a sponsor. Bache did not compete at the Event.

**3.1.3 CDI3\* Bremen (GER), 5 to 7 March 2010 – Ms. Katarzyna Milczarek**

16. On 8 March 2010, the Polish Equestrian Federation ("POL NF") addressed an email to Escon Marketing stating its surprise that Ms. Katarzyna Milczarek had competed at the CDI3\* in Bremen. The POL NF inquired as to who had submitted the entries for Ms. Katarzyna Milczarek since only the POL NF was authorized under the rules to do so, and highlighted that Ms. Katarzyna Milczarek had no valid FEI license, and was furthermore not validly registered with the POL NF.

17. By email of 9 March 2010, Escon Marketing replied that it had received the entries by email from Mr. Jarek Klima, indicating the individual's email address. Further, that Escon Marketing did not know that this could be problematic.
18. On the same day, the POL NF replied that Mr. Jaroslaw Klima is the boyfriend and coach of Ms. Milczarek, and that Mr. Klima had been informed that the POL NF could not approve any entries for Ms. Milczarek because of her missing registration both with the FEI and the POL NF.

#### **3.1.4 CDI4\* Lingen (GER), 4 to 6 June 2010**

19. On 24 May 2010, Ms. Angie Meredith, Acting Secretary General of the South African National Equestrian Federation ("RSA NF"), addressed an email to Mr. Ernst J. Holtz, President of the RSA NF, asking him to assist her in the entering process of Mr. Adriaan Van Wyk to the CDI4\* in Lingen from 4 to 6 June 2010. In her email, Ms. Meredith stated that Mr. Van Wyk did not have "the €2,500 to pay the additional fee".
20. By reply of the same day, Mr. Holtz reported having spoken to Dr. Kaspar Funke on the telephone (and provided an accurate mobile telephone number for Dr. Funke) about the participation of Mr. Van Wyk. That there was a distinct possibility of an entry, but no concession with regard to an entry fee. That an entry would cost Mr. Van Wyk 3,000 EUR, and that there was no possibility of further negotiation.
21. In an email of 25 May 2010 to Mr. Ian Jacobs, Ms. Meredith stated that the RSA NF had "tried everything", and that even Mr. Holtz had agreed to help. That Mr. Van Wyk was entered for the CDI4\* in Bremen, but that it has been expensive.
22. On 26 May 2010, Mr. Trond Asmyr addressed an email to Escon Marketing stating that the FEI wished to give a wild card to Mr. Van Wyk. Mr. Asmyr explained that the case of Mr. Van Wyk was an ideal scenario for a wild card insofar as Mr. Van Wyk wished to qualify for a championship and was a developing rider. Mr. Van Wyk ultimately competed at the Event on a wild card invitation issued by the FEI.

## 3.2 The Proceedings

### 3.2.1 Pre-Hearing Correspondence

23. By letter of 8 December 2009 ("Letter of 8 December 2009"), the FEI imposed a fine of 20,000 CHF on Escon Marketing for its express and knowing contravention of FEI rules and regulations in accepting Ms. Martin-Tucker's entry to participate at the CDI4\* in Oldenburg. The FEI contended that Escon Marketing had acted both in violation of the FEI Dressage Rules governing entries, and pay cards. The FEI further emphasised that the violations occurred following clear directives communicated by the USEF not to enter Ms. Martin-Tucker, and despite the numerous warnings by the FEI.
24. By letter of 13 January 2010, Escon Marketing replied stating that Ms. Martin-Tucker had never sponsored any Event organized by Escon Marketing. That riders from the US had been invited upon request by either well-known trainers, or the riders themselves. Lastly, that Escon Marketing had coordinated its approach of inviting riders with the Deutsche Reiterliche Vereinigung ("GER NF").
25. By letter of 26 January 2010, Escon Marketing, represented by its counsel Mr. Michael Klimke, Dr. Klimke & Kollegen, registered a formal protest ("the Protest") against the imposition of the CHF 20,000 fine by the FEI. In its Protest, Escon Marketing contested the legal basis for the fine imposed. Escon Marketing further argued that it had the right to invite Ms. Martin-Tucker to the Event in Oldenburg, claiming that organisers have the right to invite two (wild card) Athletes to a CDI4\*. Escon Marketing admitted that Ms Martin-Tucker had been invited despite the missing approval from the USEF. Lastly, Escon Marketing disputed that Ms. Martin-Tucker had paid any money for her participation, and that a statement from Ms. Martin-Tucker to that effect would be subsequently provided.
26. On 5 August 2010, the FEI submitted its Response to the 26 January 2010 submission, along with a Counter-Protest. In its Response, the FEI repeated the legal regulations applicable to the question of entries and pay cards. It further emphasized that any invitations had to be made "through" the NF of the respective rider, meaning that the rider's NF had to approve the participation. With respect to the amount of CHF 20,000, the FEI argued that whereas the FEI Dressage Rules did not prescribe any specific penalty for pay cards, a fine of CHF 20,000 was foreseen in the FEI Jumping Rules for first time violators of the pay card rules. Referring to



Article 43 of the FEI Statutes, the FEI further argued that any lacuna in the Dressage Rules may be filled by applying the principles set forth in the Jumping Rules. In conclusion, the FEI requested that the Protest by Escon Marketing be rejected.

27. In its Counter-Protest, the FEI alleged violations of the FEI rules and regulations by the handling of Escon Marketing of the cases involving Ms. Milczarek, Ms. Bache and Mr. Van Wyk. Together with its Counter-Protest, the FEI submitted various email exchanges by Escon Marketing and third persons about the participation of these three (3) riders, along with statements by Mr. Trond Asmyr, and Ms. Esther B. Hoff of the NOR NF, as well as additional evidence. The FEI argued that in the case of Ms Milczarek, Escon Marketing had violated the FEI regulations governing entries and pay cards, in particular Articles 102 and 116.2 of the FEI General Regulations, as well as Article 423 of the Dressage Rules. With respect to the cases of Ms. Bache and Mr. Van Wyk, the FEI contended that the FEI rules prohibiting pay cards, specifically Article 423 of the Dressage Rules, had been violated by Escon Marketing.
28. By Letter of 10 September 2010, Escon Marketing rejected the Counter-Protest, in general terms.
29. In the Protest, Escon Marketing stated that it intended to provide substantial reasons for its Protest of 10 September 2010 prior to the Final Hearing scheduled to take place on 27 October 2010. In light of the scheduled Hearing date, by FEI email of 13 October 2010, Escon Marketing was requested to submit any further statements and reasons by Tuesday, 19 October 2010 at the latest.
30. On 19 October 2010, after close of business, the FEI wrote to Escon Marketing reminding it that it had not complied with the deadline to provide any further responses within the set time limit.
31. Two days later, on 21 October 2010, Escon Marketing responded to the Counter-Protest. In the case of Ms. Milczarek, Escon Marketing argued that Ms. Milczarek's participation at the Event was good for the sport since she had won the Competition. Escon Marketing further admitted that the entry for Ms. Milczarek had been submitted by Mr. Jarek Klima, and alleged that it did not have information that Ms. Milczarek did not have the necessary approval by the POL NF. Escon Marketing finally claimed that no financial contribution had been made by Ms. Milczarek for her participation. As to the

case of Ms. Bache, Escon Marketing argued that Ms. Bache had been the first on the waiting list for the Event, but that ultimately there was no space for an additional competitor. That Ms. Bache had not been asked for any financial contribution, and that it was "legal, normal and necessary to run a competition" for an organizer to ask the question whether a competitor had a sponsor. Lastly, Escon Marketing contended that there was no request for a payment of 3,000 EUR for the start of Mr. Van Wyk in Lingen, and that Mr. Van Wyk had made no financial contribution to Escon Marketing.

32. Further on 21 October 2010, the FEI submitted statements by: Mr. Konrad Rychlik of the POL NF, Ms. Sonja Keating, USEF General Counsel, Mr. Paul Kevin Greenwood, Equestrian Community Integrity Unit ("ECIU"), Mr. John P. Roche, FEI Director Jumping, as well as a report by QUEST, the company running the ECIU, containing Escon Marketing Corporate information.

### **3.2.2 The Hearing Cancellation**

33. Two days before the scheduled hearing, on 25 October 2010, counsel for Escon Marketing cancelled the Hearing. Mr. Klimke explained that he had trained with his horse the day before, and was experiencing back problems resulting from the training. Following a request by the FEI, Mr. Klimke submitted a medical certificate stating that he was not in a position to work from 25 October 2010 to 1 November 2010. The FEI incurred various expenses associated with cancelling the hearing, which were submitted together with the case file.
34. By letter of 5 November 2010, and in light of the cancellation of the Hearing by Escon Marketing, the FEI Tribunal issued precise procedural instructions to the Parties for the case going forward. Amongst others, the Tribunal requested that by the deadline of 3 December 2010, both Parties submit a list of witnesses with an accompanying witness statement for each witness setting forth under oath the facts that would be testified to at the hearing. The Tribunal further instructed that any previously submitted witness statements and witness lists be formally resubmitted.
35. Further, on 5 November 2010, Escon Marketing submitted a "summary of the state of affairs and legal status". Together with its submission, Escon Marketing submitted a statement by Ms. Milczarek as well as various further pieces of evidence, details of which will be addressed below. With respect to the case of Ms. Martin-Tucker, Escon Marketing argued that organisers may give wild

cards to competitors without the permission of any National Federation (NF) or organization (FEI). That additionally, Dr. Kaspar Funke of Escon Marketing had asked the judges at the Event whether they had any concerns regarding Ms. Martin-Tucker's participation at the Event, and that the judge, Mr. Martin Richenhagen, had no objections to Ms. Martin-Tucker competing, provided she was given a wild card. Escon Marketing further alleged that the GER NF similarly did not object to Ms. Martin-Tucker being given a wild card without the permission of the USEF. With respect to the alleged financial contribution by Ms. Martin-Tucker, Escon Marketing contended that in his phone conversation with Mr. Asmyr in early November 2009, Dr. Kaspar Funke did not mention that Ms. Martin-Tucker must financially help or pay, but that Dr. Funke had only explained that a lot of organisers needed the support of the rider contacts for sponsoring to run a show. Referring to an email by Ms. Martin-Tucker to Escon Marketing dated 27 October 2010, Escon Marketing reiterated that Ms. Martin-Tucker had not paid for her participation at the Event. In response to the allegation of a pay card in the case of Ms. Milczarek, Escon Marketing submitted an email by Ms. Milczarek to Escon Marketing dated 27 October 2010, in which Ms. Milczarek stated that at no time was any proposal made by Escon Marketing or Dr. Kaspar Funke concerning any financial contribution for her participation at the Event. Ms. Milczarek further claimed that she had already informed the POL NF in December 2009 of having scheduled the Event as "one of the certain events before WEG". With respect to the question of whether Ms. Bache had a sponsor for the competition, Escon Marketing reiterated its opinion that such requests to riders were not in violation of any rules. That Dr. Kaspar Funke himself, once he became aware of the matter, had intervened because he did not want to convey the impression that a payment was related to starting permission. With respect to the case of Mr. Van Wyk, Escon Marketing stated that it had not considered the latter's sport performance as sufficient, and had therefore not given entry permission to Mr. Van Wyk. That the FEI itself, as requested by Mr. Asmyr in his email of 26 May 2010, had given a wild card to Mr. Van Wyk, and could therefore not argue at the same time that there had been a financial contribution by Mr. Van Wyk to Escon Marketing.

36. On 24 November 2010, Escon Marketing produced a written statement by Mr. Richenhagen, member of the Ground Jury at the CDI4\* in Oldenburg. In his statement, Mr. Richenhagen explained that he had been approached, prior to the Event, by Dr. Kaspar Funke with respect to the participation of Ms. Martin-Tucker. That Dr. Funke

had explained that Ms. Martin-Tucker did not belong to the riders invited by the USEF, but that her trainer requested starting permission for her, and that Mr. Fritz Otto-Erley of the GER NF was informed of the invitation, and "prepared to agree when the ground jury had accepted the rider". Mr. Richenhagen concluded that in the Ground Jury's opinion, the decision to allow Ms. Martin-Tucker to compete was adequate as the well known rider and trainer Mr. Markus Gribbe had confirmed that both rider and horse were ready for the task.

37. On 30 November 2010, Escon Marketing provided a written statement by Ms. Andrea Struckmeier of Escon Marketing dated 26 November 2010. In her statement, Ms. Struckmeier commented on the cases of Ms. Martin-Tucker, Ms. Milczarek, Ms. Bache and Mr. Van Wyk. The details of Ms. Struckmeier's statement will be discussed below insofar as they are relevant to the decision.
38. Despite the FEI Tribunal's instructions, Escon Marketing never submitted a list of witnesses, never re-submitted its witness statements, and the witness statements it did provide were not under oath as required. By letter of 3 December 2010, the FEI noted Escon Marketing's failure to adhere to the Tribunal's instructions of 5 November 2010. The FEI further submitted a list of witness statements, a statement by Ms. Esther Berg Hoff, representative of the NOR NF, as well as revised versions of the statements by Ms. Keating, Mr. Asmyr, Mr. Roche and Mr. Greenwood. All statements were provided under oath in compliance with the FEI Tribunal's instructions.

### **3.2.3 The Final Hearing**

39. On 8 December 2010, a final Hearing took place in Geneva.
40. Both Parties presented their arguments and their witnesses.
41. With respect to procedural questions, the FEI contended that Escon Marketing had blatantly disregarded the instructions by the Tribunal since it had not provided witness statements under oath by its witnesses with accompanying evidence. Furthermore, the FEI complained that Escon Marketing, notwithstanding the request by the FEI for specific witnesses under its control to be made available to testify, had not organized for those witnesses to be ready to provide testimony during the Hearing, and that it was extremely difficult and time-consuming to reach the witnesses for testimony. Further, that despite having been offered translation services for

the Hearing by the FEI, there were many language difficulties with Escon Marketing representatives that prevented the FEI from duly conducting the Hearing, and receiving accurate responses to the relevant questions. While recognizing that Dr. Kaspar Funke is the corporate representative of Escon Marketing, the FEI nonetheless highlighted that he did not submit a witness statement as required which made it impossible for the FEI to prepare to respond to this testimony at the Hearing, in particular any new evidence or allegations.

42. On the merits, the FEI alleged five (5) violations by Escon Marketing of the FEI rules and regulations pertaining to entries and invitations. The FEI highlighted that the respective rules and regulations were intended to protect the integrity of the sport and to ensure a level playing field. The FEI argued that under the FEI General Regulations and the Rules for Dressage Events, all invitations must be under the same conditions as for other participants and that conclusively, all invitations required the approval of the respective NF administering the rider. Furthermore, that all invitations must in no way be directly or indirectly in connection with a financial contribution.
43. In the case of Ms. Martin-Tucker, the FEI emphasized that it had been approached by the USEF for assistance in enforcing the applicable rules and had informed Escon Marketing of the applicable rules and their interpretation. With respect to the alleged financial contribution by Ms. Martin-Tucker for her participation, the FEI referred to the statement of Mr. Asmyr, in particular his conversation with Dr. Funke, a representative of Escon Marketing. The FEI further highlighted that Escon Marketing had promised numerous times during the proceedings that it would produce a statement by Ms. Martin-Tucker denying any financial contribution for her participation at the CDI4\* in Oldenburg, but that such a statement had never been submitted. That the only evidence produced by Escon Marketing in this context was an unsigned email by Ms. Martin-Tucker making a request to Escon Marketing to send her a statement to sign.
44. As to the entry of Ms. Milczarek, the FEI stated that the violation of the obligation to get approval of the POL NF for participation had been confirmed by Mr. Rychlik in his statement submitted on 21 October 2010, and was furthermore undisputed. Further, that it was obvious from the evidence provided by the FEI that the request for the entry for Ms. Milczarek was not submitted by an email of the POL NF. That organisers, in case of applications for entries being sent by random emails, are obliged to at

least do the most basic follow-up with the NF to ensure approval by it for the participation in question.

45. In the context of the case of Ms. Bache, the FEI referred to the statement by Ms. Struckmeier of 26 November 2010, in which the latter admitted that she requested that Ms. Bache have a sponsor if she wished to start at the Competition and apologized for this action; the FEI underlined that it did not assert, and did not have the burden to prove, that money was actually paid by Ms. Bache; the FEI clarified that it alleged a violation of the invitation rules, i.e. a violation of the prohibition against conditioning invitations on financial contribution. Lastly, the FEI referred to the statement of Ms. Hoff of the NOR NF, in which the latter described that both herself and Ms. Bache understood the invitation to be conditional on a financial contribution.
46. In the case of Mr. Van Wyk, the FEI argued that the emails exchanged between representatives of the RSA NF about the 3,000 EUR fee demanded for the participation of Mr. Van Wyk were clear evidence of a violation by Escon Marketing of the rules governing pay cards. The FEI further stressed that it had the right to give a wild card to Mr. Van Wyk insofar as the Athlete's NF had approved his participation. The FEI clarified that it is not alleging a violation based on an improper entry with Mr. Van Wyk, but instead that a pay card was demanded. Finally, the FEI pointed out that the request by Escon Marketing for the financial contribution had been made before the FEI had granted the wild card to the rider.
47. Conversely, with respect to the procedural observations by the FEI, Escon Marketing contended during the Hearing that it had complied with the Tribunal's instructions. As to the testimony of Dr. Funke during the Hearing, Escon Marketing argued that, as the person being accused of the violations, Dr. Funke should be allowed to testify. That, under civil law, Dr. Funke had to be considered as a party, not as a witness.
48. On the merits, Escon Marketing argued that it had not violated any rules in the context of the five cases alleged by the FEI. In the case of Ms. Martin-Tucker, Escon Marketing argued that, since it had already granted three (3) entries to US riders, it had the right to give an additional wild card to Ms. Martin-Tucker. Dr. Kaspar Funke himself admitted however that he knew that Ms. Martin-Tucker did not have the approval of the USEF. Escon Marketing further contested any financial contribution having been made by Ms. Martin-Tucker.

49. With respect to the case of Ms. Bache, Dr. Kaspar Funke explained that he had stopped the requests made by Andrea Struckmeier on Escon Marketing's behalf since he wanted to avoid the impression of the connection between finding a sponsor and allowing an Athlete to compete. Escon Marketing further contended that Ms. Bache had not competed at the Event, and that therefore, there could not possibly be any allegation of any pay card.
50. As to the case of Ms Milczarek, Escon Marketing argued that the Athlete had already in December 2009 stated to her NF that she wanted to compete at the CDI3\* in Bremen.
51. In the case of Mr. Van Wyk, Escon Marketing argued that it made no sense for the FEI to claim a violation of the pay card rules insofar as the FEI had itself granted a wild card to the Athlete.
52. As a general remark, Escon Marketing highlighted the necessity for organisers, in light of the financial risks associated with the organisation of competitions, to find sponsors, even through information received from riders or minor sponsors buying, for example, a VIP table. Escon Marketing underlined that it was a reality for organisers to ask riders that compete whether they wanted to have a VIP table, but that this would not present any proof of the use of pay cards.
53. During his testimony, Dr. Funke provided background information on the operations and profile of the company Escon Marketing, and further explained his personal feelings about Escon Marketing being implicated in the present proceedings. Dr. Funke highlighted the importance of Escon Marketing as a show organiser and its huge contribution to the sport and to the community of riders. Dr. Funke further took position with regards to some of the alleged violations, details of which will be addressed below insofar they are relevant.
54. Mr. Asmyr testified at the Hearing and highlighted that all entries of riders have to be approved by NFs, and that wild cards and invitations are subject to the approval of NFs. Further, that the rule concerning entries is taken seriously by the FEI, and therefore enforced where necessary. With respect to the CDI4\* in Oldenburg, Mr. Asmyr recalled that the FEI had instructed Escon Marketing that, absent the approval by the USEF, Escon Marketing was not permitted to grant entry for Ms. Martin-Tucker to the Event.

55. Mr. Greenwood, Head of Investigations at QUEST, which manages the ECIU, testified that the ECIU was mandated by the FEI to conduct various investigations relating to the integrity of the sport. With respect to the case of Mr. Van Wyk, Mr. Greenwood testified having had a conversation with Mr. Holtz of the RSA NF about his email of 24 May 2010, sent by Ms. Ingrid Broodryk on behalf Mr. Holtz. That Mr. Holtz had confirmed having written the email, and that, whereas a third person had spoken to Dr. Funke in that matter, the third person had reported to him that a payment of 3,000 EUR had been requested by Dr. Funke for the participation of Mr. Van Wyk at the Event. That in conclusion, Mr. Holtz fully agreed with the content of the email, but had declined giving evidence in the case at hand since he felt uncomfortable becoming involved with this matter at "that time of his life and career". Dr. Funke testified not remembering having spoken to anybody at the RSA NF but confirmed, as referenced above, that the phone number mentioned in the email of 24 May 2010 was, in fact, his mobile telephone number.
56. Mr. Hubertus Funke explained in his testimony during the Hearing that he left Escon Marketing at the beginning of 2010 to work for a different company and that he has therefore not been involved in equestrian sport since that time. He remembered that there had been an issue about Ms. Martin-Tucker's participation at the Oldenburg Event, but since he had been informed on the day of the Hearing that he had to testify, he was not able to prepare himself, and could not remember the details. Mr. Hubertus Funke however remembered that he had spoken to Mr. Otto-Erley about the matter and was told by him that it was permissible for Ms. Martin-Tucker to start, and this is why Escon Marketing finally decided to allow Ms. Martin-Tucker to compete. Mr. Hubertus Funke further explained that the participation of a new rider with a new story attached to that new rider's participation represents potential financial revenue for organisers and is beneficial to the sport.
57. Ms. Andrea Struckmeier testified during the Hearing that she started working for Escon Marketing in 2002, as a secretary. That later on, she got more involved in the sports matters, and is one of several Escon Marketing employees dealing with riders' entries. With respect to entries, Ms. Struckmeier confirmed knowing that she is required to ask NFs to send her the entries for riders participating in Escon Marketing Events. In the case of Ms. Martin-Tucker, Ms. Struckmeier acknowledged having been told by the USEF that it would not authorize an entry for Ms. Martin-Tucker, and that Escon Marketing had never received an entry for Ms. Martin-Tucker. That she



had however informed the USEF that Escon Marketing was extending a personal invitation to Ms. Martin-Tucker. In the case of Ms. Bache, Ms. Struckmeier confirmed that she had asked her for a sponsor, explaining that she had not been trained by anybody in her new position dealing with entries, and that only after the incident she had been told by Dr. Funke that the question about the sponsor may only be asked once the rider had been entered to the Competition. With respect to the case of Ms. Milczarek, Ms. Struckmeier explained having shown the email by Mr. Jarek Klima to Dr. Funke, who approved the start since Ms. Milczarek's performance at the event in 2009 was very good. Ms. Struckmeier explained that she did not know until after the event that the POL NF had not approved the start, and that prior to that, she had assumed that the POL NF had no objection to Ms. Milczarek starting at the Event. When Ms. Struckmeier was asked to comment on the low score of Ms. Martin-Tucker of 56%, Ms. Struckmeier stated that in the case of Ms. Martin-Tucker, a very well known trainer had supported her participation, and that it had been accepted in light of that support. As a general remark, Ms. Struckmeier testified never having heard about any money being paid by any competitor to Escon Marketing or Dr. Funke connected to a starting place. That only after the riders had received their respective starting places, their entourage were approached about whether they were interested in purchasing a VIP table. Ms. Struckmeier further explained that once she had received the entries, she informed her co-worker from sponsoring in charge of VIP tables, who thereupon contacted owners or trainers.

58. Mr. Fritz Otto-Erley testified in the context of the case of Ms. Martin-Tucker that at the beginning of the Event, he had had a telephone conversation with Mr. Hubertus Funke as to whether or not Ms. Martin-Tucker was allowed to compete at the Event. That to him, at that moment, the Rules for Dressage were not clear with regards to pay cards, invitations by the organizers or wild cards, and that a specific document, as for example the Annex in the Jumping Rules entitled "Invitation System for CSI3\* + 4\* Events in Europe", was missing from the Dressage Rules. Therefore, according to Mr. Otto-Erley, it was not clear that pay cards were prohibited in Dressage. That he had therefore advised Dr. Funke to discuss the situation with the Ground Jury at the Event since it is the FEI representative at the Event, even though he was aware that the USEF did not approve Ms. Martin Tucker's entry and that the FEI had already communicated with Escon Marketing making clear that FEI rules prohibited Escon Marketing from accepting Ms. Martin-Tucker's entry.

Mr. Otto-Erley argued in this context that once an Event had started, it was the responsibility of the FEI representatives present at the Competition to find a solution to any given problem or question. Therefore, Mr. Otto-Erley explained that he thought it would be a good strategy for Escon Marketing to raise the issue with the Ground Jury at the Event. Mr. Otto-Erley did confirm, however, that he was aware that organizers may not accept any entries, invitations or wild cards unless those entries, invitations or wild cards are supported by the NF of the rider entered. Later, during cross-examination, Mr. Otto-Erley conceded that it was true that even in Dressage, participation may not be conditioned on a financial contribution. While insisting that the Dressage Rules did not contain a regulation similar to the Jumping Rules (presumably the fine scale), Mr. Otto-Erley admitted ultimately that the prohibition on pay cards also applies to the discipline of Dressage. Mr. Otto-Erley, while explaining the recommendation he made to Escon Marketing to present the issue to the Ground Jury, did not testify that he informed the Ground Jury of the USEF's objection to Ms. Martin-Tucker's participation or that the position of the FEI General Counsel was that such participation was therefore prohibited.

59. Mr. Richenhagen testified that, when he became involved in the matter of Ms. Martin-Tucker, he knew that Ms. Martin-Tucker did not have direct permission from the USEF to compete in Oldenburg, but that he understood she was using one of the wild cards retained by the Organiser. That however he did not know that the USEF had specifically said that Ms. Martin-Tucker had no authorization to compete, and further did not know that the FEI had written numerous emails and also indicated by telephone that she did not have approval to compete. Mr. Richenhagen was not informed by Escon Marketing or by the German NF of the USEF's and the FEI's objection to Ms. Martin-Tucker's participation.
60. Ms. Martin-Tucker testified that she did not learn, until after her participation at Oldenburg, that both the USEF and the FEI objected to her participation. She explained that what had happened has been very embarrassing to her personally. She made clear that she would never have participated at the Event had she known the circumstances. That she had accepted the sanctions offered by the USEF since the entire incident was a major embarrassment for her. Ms. Martin-Tucker further stated that Escon Marketing never requested that she make a financial contribution to the Event in order to participate. Significantly, Ms. Martin-Tucker explained that her trainer previously referred to in prior testimony by Escon

Marketing representatives as being well-known and accomplished and therefore the reason she was accepted to compete at the Event, is also the trainer for Dr. Funke's daughter, Julia Funke.

61. The Tribunal is basing its decision on all documents, testimonies and pleadings provided by the Parties and presented at the Hearing.
62. Following the Hearing, the Parties engaged in various attempts to agree on a "Joint Recommendation" to the FEI Tribunal on sanctions. As a preliminary matter, the FEI engaged with Mr. Klimke in a discussion of such potential Joint Recommendation. The FEI failed to reach any agreement on a Joint Recommendation with Mr. Klimke. By letter dated 13 January 2011 (which was consistent with previous correspondence), Mr. Klimke requested that the FEI Tribunal be provided with the correspondence between the Parties related to the negotiations on a potential Joint Recommendation. The FEI declined to do so directly, but in light of Mr. Klimke's request, submitted the letter of 13 January 2011 to the FEI Tribunal for consideration.
63. On 15 February 2011, the FEI Tribunal clarified that it was not in favour of seeing the Parties' correspondence related to attempts to agree on a Joint Recommendation as it had advised the Parties at the conclusion of the Hearing that such conversations, while encouraged, would be confidential discussions between the Parties. In that same letter, it issued a deadline of 21 February 2011 to the Parties to engage in such settlement discussions in light of the necessity to issue a Decision in the matter given that the Final Hearing had taken place on 8 December 2010. The FEI Tribunal's letter directed the Parties to indicate to it by 21 February whether a resolution on a Joint Recommendation had been reached or not by the Parties. It also ruled in the same letter that the record in the matter was formally closed and that accordingly no further submissions were requested from the Parties.
64. As of the date of this Decision, the FEI Tribunal has not received any correspondence by the Parties on a Joint Recommendation. Given all the time that has passed since the Final Hearing, and no indication that a Joint Recommendation from the Parties can be reached, the Tribunal is issuing the Decision below.

### **3.3 The Decision**

#### **3.3.1 Procedural Issues**

65. The Tribunal holds that, as indicated by the documentary evidence, the defendant in this case is not Dr. Kaspar Funke personally, but the company Escon Marketing GmbH. The Tribunal further decides that Dr. Kaspar Funke, Mr. Hubertus Funke and Ms. Andrea Struckmeier have acted as representatives of Escon Marketing during the time periods relevant to the incidents in question, and have therefore, by means of their actions, duly represented Escon Marketing.
66. As to the complaints by the FEI relating to the conduct of Escon Marketing in this case in ignoring the notified procedures, the Tribunal rules that Escon Marketing has not complied with its precise instructions, and that therefore, the Hearing was in parts more difficult to conduct and that the FEI was therefore somewhat disadvantaged in its presentation of the case. Nonetheless, the Tribunal allowed Escon Marketing to present its case as it deemed appropriate and heard all of the testimony and witnesses, indicating that in assessing costs it will take into account Escon Marketing's failure to abide by the procedural instructions. The Tribunal holds that it has all of the information necessary in order to render a fair and reasoned decision in this case.
67. The Tribunal highlights the importance of following FEI rules and regulations in running FEI Events. In particular, it is critical that the system of NF involvement with entries and approvals be respected. Further, the issue of "pay cards" is not a trivial one, but one that has had a considerable negative impact on the sport, particularly in Europe, for some time now. It not only subordinates sporting principles to financial ones, but it stifles development. Pervasive use of pay cards has the potential to kill the future of the sport. The importance of the allegations raised here is therefore clear. Nevertheless, each specific claim must be assessed carefully in light of the evidence presented by the Parties.

#### **3.3.2 CDI4\* Oldenburg (GER), 5 to 8 November 2009**

68. The FEI Tribunal holds that in the case of Ms. Martin-Tucker, the FEI has provided ample evidence for its allegation that her entry by Escon Marketing to the CDI4\* in Oldenburg was contrary to FEI rules and regulations. The actions of Escon Marketing with respect to Ms. Martin-Tucker are particularly egregious because they were in express contravention of USEF and FEI instructions. The

approval by Mr. Richenhagen is irrelevant in this context since first, as a judge, he did not have the requisite authority to determine Athlete entries, and perhaps more importantly, he was never advised that Escon Marketing had received express instructions from the USEF and the FEI not to allow her entry. It is somewhat surprising to the Tribunal that a representative of the GER NF suggested this solution with the full knowledge of the situation but declined to advise or ensure that the President of the Ground Jury had all of the necessary information. The Tribunal therefore determines that Escon Marketing has violated Articles 102.3 and 116.2 of the GRs as well as Article 423 of the Rules for Dressage Events in relation to its acceptance of Ms. Martin Tucker's entry to the Event.

69. With respect to the alleged financial contribution by Ms. Martin-Tucker for her participation at the CDI4\* in Oldenburg, the Tribunal would like to clarify that the stipulation contained in Article 423 of the Rules for Dressage, that invitations and wild cards "must in no way be directly or indirectly in connection with financial contribution", is intended to be broadly interpreted. In particular, the term "financial contribution" not only refers to direct payments, but is intended to also cover monetary payments to or through third parties such as sponsorship requests, contribution payments to a third person on your behalf, providing financial benefit through goods or services and so forth. As a general rule, any link between an entry, an invitation or a wild card and any financial benefit in consideration of the entry, invitation or wild card, could be considered a financial contribution. This would even be true if, for example, Ms. Martin-Tucker's trainer agreed to train Mr. Funke's daughter for free in exchange for Escon Marketing showcasing the trainer's clients at its Events.
70. The Tribunal, however, decides that with respect to Ms. Martin-Tucker there is insufficient evidence to sustain the FEI's allegation that her participation was secured by a financial contribution of any nature. The evidence submitted by the FEI in support of its allegation, specifically the statement by Mr. Trond Asmyr about his conversation with Mr. Hubertus Funke, in particular the alleged statements by Mr. Hubertus Funke that the "Event needed the money", "that it was difficult financial times for the events" and that the participation of Ms. Martin-Tucker would "help in this situation", while of concern to the Tribunal, is insufficient for it to render a finding that a pay card was issued to secure Ms. Martin-Tucker's participation at the Event. (This is further reinforced by the fact that Mr. Asmyr could not recall if it was Kaspar or

Hubertus Funke he spoke with on the phone.) In reaching this decision, the Tribunal specifically relies on the statement by Ms. Martin-Tucker during the Final Hearing, that no financial contribution had been sought from her by Escon Marketing, and that she had not made, directly or indirectly, any payments to Escon Marketing other than the usual stabling and entry fee.

### **3.3.3 CDI3\* Bremen (GER), 5 to 7 March 2010 – Ms. Isabel Bache**

71. In the case of Ms. Isabel Bache, the Tribunal finds that Escon Marketing's request for a sponsor to secure Ms. Bache's start at the Event in Bremen, transmitted through the NOR NF, is clearly covered by the prohibition against financial contributions set forth in Article 423 of the Rules for Dressage. In this context, the Tribunal is also taking into account the statement by Ms. Esther Hoff of the NOR NF dated 17 June 2010, who explained that the NOR NF and Ms. Bache clearly considered the offer by Escon Marketing as a pay card. For the Tribunal, the statement of Esther Hoff is neutral since she was not and is not involved in this procedure. With this finding, the Tribunal emphasizes that the request for a sponsor was made prior to the rider being granted starting permission, and that therefore, her participation was expressly conditioned on her ability to find a sponsor who would contribute financially to the Event. The Tribunal understands that the sponsor request had been made by a representative of Escon Marketing at a time when that representative, allegedly, had not been properly informed about the procedures to be followed. The Tribunal, however, considers that Escon Marketing had an obligation to duly inform and train its employees of the relevant rules and procedures, and has to bear the consequences, and responsibility for any rule violation resulting from such lack of training. Nonetheless, in assessing penalties, the Tribunal will consider Escon Marketing employee's testimony regarding her mistake, Escon Marketing actions to remedy the situation and the fact that Ms. Bache did not ultimately participate at the Event and did not pay anything to Escon Marketing.

### **3.3.4 CDI3\* Bremen (GER), 5 to 7 March 2010 – Ms. Katarzyna Milczarek**

72. In the case of Ms. Milczarek, the Tribunal finds that Escon Marketing acted in violation of the rules governing entries. It is obvious from the email address by which the application for an entry had been sent that it was not an official National Federation, in particular not an email address of any representative of the POL NF.

Furthermore, Ms. Struckmeier of Escon Marketing had confirmed during the Hearing having assumed that the POL NF agreed to the entry, but had obviously not verified this with the POL NF. The Tribunal agrees in this context with the position of the FEI that organisers have to follow up with NFs for their approval of rider's entries, and may not only rely on random email submissions. Otherwise, it could not be assured that the NFs would indeed be in a position to actively provide their approval for the respective participation.

73. The Tribunal holds that there is no evidence of a financial contribution or pay card by Ms. Milczarek in this case.

### **3.3.5 CDI4\* Lingen (GER), 4 to 6 June 2010**

74. In the case of Mr. Van Wyk, while the Tribunal is concerned about the circumstances underlying his situation, particularly the clear description of the conversation with Dr. Kaspar Funke and the demands allegedly made in connection with Mr. Van Wyk's start, the Tribunal finds that there is insufficient evidence to find that Escon Marketing violated the prohibition on pay cards in his case. In the absence of testimony by Mr. Holtz, the Tribunal cannot rely on any hearsay evidence or the testimony of Mr. Paul Greenwood, representative of the ECIU, regarding the conversations he allegedly had in relation to Mr. Van Wyk. Therefore, the Tribunal finds that the FEI has not proven a violation by Escon Marketing of the FEI rules and regulations in the matter involving Mr. Van Wyk.

### **3.3.6 Costs**

75. With respect to the costs of the procedure, in particular the costs for the cancellation of the first scheduled Hearing, the Tribunal believes that given the late cancellation those costs should be allocated to Escon Marketing. The Tribunal also takes into account Escon Marketing's failure to abide by the clear procedural instructions of the Tribunal, which lengthened and complicated the proceedings. The Tribunal therefore imposes the costs related to the Hearing cancellation on Escon Marketing, and otherwise determines costs as detailed below.

## **3.4 Sanctions**

76. The Tribunal is imposing sanctions on Escon Marketing for three (3) violations of FEI rules as detailed above. In its letter of 8 December 2009, the FEI assessed administratively a fine of CHF 20,000 for Escon

Marketing's violation of FEI Dressage Rules in the case of CDI4\* Oldenburg (GER) (Ms. Martin-Tucker). The Tribunal accepts the FEI argument that even if the Dressage Rules do not prescribe the specific penalty for "pay cards", it is appropriate to incorporate as a reference the penalties imposed by the Jumping Rules for similar violations. However, since the Tribunal does not find that the evidence submitted by the FEI supports the allegation of financial contribution in the Martin-Tucker case, the Tribunal does not fully confirm the fine assessed by the FEI back in 2009. Nonetheless, given that the Tribunal is now issuing an overall sanction that is greater than CHF 20,000, it finds that there is no claim for interest relating to the payment of the fine in early 2010.

77. On the other hand, the Tribunal imposes sanctions for three (3) separate violations of the Dressage Rules by Escon Marketing. Considering the three (3) violations together and in view of the need to strictly apply the rules which have been violated in order to preserve the integrity and fairness of the sport as well as the orderly management of the sport in the international arena through NFs and not in the chaos of private encounters between organisers and riders, the Tribunal imposes a fine of CHF 25,000 for all three (3) violations taken together.
78. The FEI Tribunal imposes the following sanctions on Escon Marketing:
  - 1) Escon Marketing is fined **CHF 25,000.-**. Given the payment already made by Escon Marketing to the FEI of CHF 20,000, there is now **CHF 5,000** outstanding and immediately due and payable to the FEI; and
  - 2) Escon Marketing shall contribute **CHF 7,000.-** towards the legal costs of the judicial procedure, which amount includes CHF 3,000.- for the cancellation of the first scheduled Hearing.



**4. DECISION TO BE FORWARDED TO:**

**4.1 The Parties involved in proceedings: Yes**

**4.2 Any other: No**

**FOR THE PANEL**

A handwritten signature in blue ink that reads "Ken Lalo". The signature is written in a cursive style with a long horizontal stroke at the end.

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**THE CHAIRMAN, Mr Ken E. Lalo**