

**DECISION of the FEI TRIBUNAL**

**Dated 7 April 2021**

**(FEI Case number: FEI 2019/CM12-CALANDRIA NOE)**

**FEI Tribunal Hearing Panel:**

**Ms. Constance Popineau**

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**FEI Tribunal Reference:** C20-0002

**Horse/Passport:** CALANDRIA NOE/104YX20/UAE

**Person Responsible/ID/NF:** Mr. Facundo Leites/10055292/URU

**Trainer/ID/NF:** Mr Ali Nasser Sultan AL YABHOUNI/1007251/UAE

**Event/ID:** CEI1\* 80 – Bou Thib (UAE) 2019\_CI\_0495\_E\_S\_02

**Date of Event:** 16/02/2019

**Prohibited Substances:** Flumetasone

**Bar Code Nos.:** 5578622

## **I. Factual background**

1. Mr. Ali Nasser Sultan AL YABHOUNI (FEI ID 10072571) is the registered Trainer of the Horse CALANDRIA NOE (the **Horse**), and the Additional Person Responsible (the **APR**) in these proceedings. The Person Responsible (the **PR**) Facundo LEITES participated with the horse, CALANDRIA NOE (at the event CEI1\* 80 – Bou Thib (UAE) on 16 February 2019 (the **Event**)).
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).
3. Blood and urine samples were collected from the Horse on 16 February 2019 and sent to the FEI approved laboratory, the Hong Kong Racing Laboratory (the **Laboratory**) in Sha Tin, Hong Kong, China, for analysis. The Horse's samples were divided into an "A sample" and "B sample".
4. The Laboratory analysis of the A sample reported adverse analytical findings for Flumetasone which is a **Controlled Medication Substance** under the FEI's Equine Anti-Doping and Controlled Medications Regulations (the **EADCMR**) and the FEI Prohibited Substances List.

## **II. Initial Proceedings**

5. On the 18 March 2019, the FEI Legal Department officially notified the APR through the National Federation of the United Arab Emirates (**UAE-NF**) of the presence of a Prohibited Substance in the A sample, the rule violation, and the potential consequences (the **Notification Letter**).
6. The Notification Letter also explained that at the time of the Event he was the registered Trainer of the Horse. In Endurance the "Trainer" is defined as the person who oversees the preparation of the Horse both physically and mentally for Competition (Art. 800 of the Endurance Rules, updated 9th Edition, effective 1 February 2019). Due to the nature of the Endurance discipline wherein Trainers must take relevant decisions about the Horse, a Trainer is regarded as an Additional Person Responsible in accordance with Article 118.3 of the General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2019.

7. The Notification Letter included notice that in accordance with Article 7.4.1 ECM Rules he was provisionally suspended with immediate effect due to previous violations of the ECM Rules involving Horses trained by the Trainer and as such, he was no longer eligible to participate in or attend, in any capacity, including as a spectator, any Event that is authorised or organised by the FEI or any National Federation, unless the FEI Tribunal decides otherwise. Furthermore, he was also informed that he was prohibited from training any FEI and/or national horses during this period of provisional suspension.
8. The APR was also informed in the Notification Letter of his right to request an analysis of the B sample and by failing such right to request the B sample analysis was deemed as waived. He also did not challenge the results of the A sample nor request a Hearing in relation to these proceedings.

### **III. Further Proceedings**

9. By email dated 22 January 2021, the FEI submitted its request to the FEI Tribunal for the appointment of a hearing panel.
10. On 4 February 2021, the FEI Tribunal informed the Parties of the appointment of a one-person hearing panel to decide this case. The Parties were asked to provide any objections to constitution of the hearing panel by 8 February 2021. The APR was also granted the opportunity to respond to the FEI's allegations that a Prohibited Substance was present in the horse's system by providing a statement of defence and any supporting evidence by 17 February 2021. The APR was informed that should he fail to comply with this deadline, the hearing panel would decide this case based on the file in its possession. Finally, the Parties were informed that they had the right to request an oral hearing.
11. On 4 February 2021, the FEI informed the FEI Tribunal that it did not have any objections to the constitution of the hearing panel and that it wishes to reserve its right to request a hearing until the FEI has had the chance to review the Trainer's Reply.
12. There was no communication from the APR regarding any objection to the hearing panel selected. Therefore, by not responding within the deadline, it is deemed that he agreed to the constitution of the hearing panel.
13. Neither Party requested an oral hearing.

#### **IV. Considering**

##### **A. Articles of the Statutes/Regulations which are, *inter alia*, applicable:**

Statutes 24<sup>th</sup> edition, effective November 19, 2019 ("**Statutes**"), Arts. 1.5, 38 and 39.

General Regulations, 24<sup>th</sup> edition, January 1, 2020, Arts. 118, 143.1, 159, 164, 165 and 167 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 2<sup>nd</sup> edition, changes effective January 1, 2020. The EADCM Regulations are comprised of the equine anti-doping rules (the "**EAD Rules**") in the first half and the equine controlled medication rules (the "**ECM Rules**") in the second half.

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

Veterinary Regulations ("**VRs**"), 14<sup>th</sup> edition 2018, effective January 1, 2020, Arts. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

##### **B. Additional Person Responsible:** Mr. Ali Nasser Sultan AL YABHOUNI.

##### **C. 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."

**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."

**ECM Rules Art. 10.2:** "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6.

A Fine of up to CHF 15,000 and appropriate legal costs shall also be imposed for any Equine Anti-Doping or Controlled Medication violation".

## **V. The Parties' Submissions**

### **A. The Submissions of the APR**

14. On 7 January 2020, the Trainer submitted a short statement to the FEI stating the following:

*"...Even I am the register trainer of the horses in our stable which one of the respectful stables in the country applying the rules and giving chance to many riders from UAE and else countries to ride our horses.*

*What happened with the mention case, after I return I conducted a full investigation, I found out it was sure our horse received the mention substance but it was miss communication between stable staff and recording the treatment and the entry made for the ride.*

*I would again apologize for that and assure you there in future will take all measures To avoid such case..."*

15. In addition to the statement of the APR, note is taken that on 19 April the PR submitted a short statement explaining that the Horse "was receiving Flumetazone to treat LF [left front] fetlock joint chronic arthrosis. The stable vet injected the mare 8 days before the race with 1.5 mg of flumetazone. The problem raise that the race was changed on the date and was transfer

*to an early date. It was no aim of cheating and or interfering with the horse performance. The mistake was not to update the race calendar...".*

16. No further submissions were received by the FEI.

**B. Written Response of the FEI**

17. On 22 January 2021, the FEI submitted its response in this case to the FEI Tribunal.

18. As mentioned at the initial proceedings section above the FEI provisionally suspended the APR in accordance with Article 7.4.1 of the ECM Rules and in this regard referred to previous ECM violations involving Horses trained by the APR (Trainer), details of which are as follows:

- Case 2017/FT04 LOBITA;
- Case 2019/FT04 LA UNO;
- Case 2019/CM02 ALTANERA.

Following the Trainer's request, the Provisional Suspension of the Trainer was lifted by the FEI Tribunal with a preliminary decision issued on 14 January 2020. The FEI did not oppose to such lifting as the Trainer had been provisionally suspended for a period of time that warranted the lifting of the Provisional Suspension pending the final Decision of the FEI Tribunal in this matter. The FEI however highlighted that any potential lifting of the provisional suspension does not prevent the FEI Tribunal to further impose a longer period of Ineligibility if required.

19. In their response, the FEI submitted that Article 3.1 of the ECM Rules makes it their burden to establish all of the elements of the ECM Rule violation charged, to the comfortable satisfaction of the FEI Tribunal. Such elements of Article 2.1 violation are straightforward wherein *'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, the FEI noted it is a *'strict liability'* offence, established simply by proof that a Controlled Medication Substance was present in the Horse's Sample.
20. Therefore, the FEI submitted that the results of the analysis of the A Sample taken from the Horse at the Event confirm the presence of Flumetasone and together constitute sufficient proof of the violation of Article 2.1 of the ECM Rules.

21. In relation to the disqualification of results, the FEI did not submit any request for the disqualification of results obtained by the PR and Horse combination at the Event as this matter was dealt with in the proceedings against the PR Mr Facundo Leites (a final Decision in this case was issued by the FEI Tribunal on 4 January 2021).
22. Pertaining to the issue regarding “the presumption of fault”, the FEI referred to Article 10.2 of the ECM Rules which provides that a PR with no previous doping and/or Controlled Medication offences who violates Article 2.1 of the ECM Rules is subject to a period of Ineligibility of six months, unless he is able rebut the presumption of fault. They furthered that in order to do so, the rules specify that he/she must establish to the satisfaction of the FEI Tribunal (it being his/her burden of proof, on the balance of probability<sup>1</sup>):
- (i) How the Prohibited Substance (Flumetasone) entered into the horse's system; and
- (ii) That he/she bears No Fault or Negligence for that occurrence, i.e., that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had administered to the horse (or the horse's system otherwise contained) a Controlled Medication Substance (in which case, the presumptive six months period of Ineligibility is eliminated completely pursuant to Article 10.4 of the ECM Rules); or
- (iii) That he/she bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive six months period of ineligibility may be reduced depending on his degree of fault, pursuant to Article 10.5 of the ECM Rules).
23. The FEI then addressed the matter of the “threshold requirement” in respect of proving how Flumetasone entered the Horse's system, the following particulars were noted by the FEI:
- Mr Facundo Leites (the PR in this case, who was prosecuted in separate proceedings on 4 January 2021) clarified that the Horse was receiving Flumetasone to treat a left front fetlock joint due to chronic arthrosis. He also explained that the stable veterinarian injected the Horse 8 days before the “race” with 1,5 mg of Flumetasone. The PR added that the problem arose when the “race” was rescheduled on an earlier date;

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<sup>1</sup> Art. 3.1 ECMR

- The Trainer (APR) confirmed that after a full investigation it was discovered that a miscommunication between the stable staff occurred with regards to the recording of the treatment and the entry made for the competition. The Trainer reassured the FEI that in future he will take all measures to avoid such a case;
  - The FEI submitted that the PR's and the Trainer's explanation, at this stage of proceedings, lacked decisive information and was unsubstantiated. They stated that for them to evaluate the plausibility of the explanation submitted by the Trainer they would need additional information and documents on the treatment and a clear explanation of the alleged miscommunication, the explanation received so far does not provide clarity on whether the Horse received Flumetasone multiple times or only a one-off dose 8 days before the Competition. The FEI noted that neither the PR or the Trainer had provided the exact date of such administration or any other documents that would attest such administration e.g., the veterinary records of the Horse, statement from the veterinarian that injected the horse etc. In addition, the FEI noted that the miscommunication that allegedly occurred amongst the staff which led to this Adverse Analytical Finding has not been clearly explained;
  - Considering the particulars submitted above, the FEI confirm they are not satisfied that the Trainer has met his burden of proving, on the balance of probability, how the Prohibited Substances entered the horse's system. In addition, based on the provided explanations by the PR and the Trainer, the FEI Tribunal have already confirmed in its final decision against the PR that the PR did not meet his burden of proving how Flumetasone entered the body of Calandria Noe and accordingly the same reasoning should apply to the Trainer;
  - The FEI therefore submits to the Tribunal that the Trainer has not established how Flumetasone entered the body of the Horse.
24. In terms of the assessment in the Fault/Negligence factors of the Rule Violation, the FEI stated that due to the Trainer's inactiveness in providing a substantiated explanation of the circumstances that led to an Equine Controlled Medication Rule Violation the FEI could not evaluate the Trainer's level of Fault, if any. Thus, Art. 10.4 and Art. 10.5 of the ECM Rules were inapplicable and as a result no elimination or reduction of the period of Ineligibility was considered.
25. As already detailed in paragraph 18 above previous violations of the ECM Rules involving Horses trained by the Trainer occurred and these Rule Violations pertained to Events which took place in December 2016 (notified



in January 2017 hence the reference no. 2017/FT04 LOBITA) and December 2018 (notified in January 2019 hence the reference no. 2019/FT04 LA UNO and 2019/CM02 ALTANERA). As a result of situations such as these, the FEI started to systematically charge the Trainers as additional Persons Responsible in EADCM Rules Violation as of January 2019, when the following changes to the EADCMRs took effect (please see below marked in bold for ease of reference):

*"Art. 7.1.4 of the ECM Rules*

***....In the discipline of Endurance, where a Provisional Suspension is imposed on a registered Trainer of the Horse pursuant to either Clause 7.4.1 or 7.4.2 below, the registered Trainer shall be notified accordingly and the provisions of this Article 7 that apply to the Person Responsible and the Owner shall also apply to the registered Trainer.***

*and*

*Art. 7.4 of the ECM Rules, Provisional Suspensions*

*7.4.1 The FEI shall provisionally suspend a Person Responsible, member of the Support Personnel, and/or the Person Responsible's Horse prior to the opportunity for a full hearing based on: (a) an admission that an ECM Rule violation has taken place (for the avoidance of doubt, an admission by any Person can only be used to provisionally suspend that Person); or (b) all of the following elements: (i) an Adverse Analytical Finding for two Controlled Medication Substances from the A Sample or A and B Samples provided that neither of the Controlled Medication Substances is a Specified Substance; (ii) the review described in Article 7.1.2; and (iii) the Notification described in Article 7.1.4 above. **For the discipline of Endurance, where the criteria at (b) above are met, the FEI shall provisionally suspend the registered Trainer (as defined in the FEI Endurance Rules) of the Horse and the registered Trainer shall be considered as a member of the Support Personnel for the purposes of these ECM Rules.***

***Additionally, and notwithstanding the above provisions or the provisions of Article 7.4.2 below, for the discipline of Endurance, the FEI shall provisionally suspend the registered Trainer of the Horse based on all of the following elements: (i)an Adverse Analytical Finding for one (1) Controlled Medication Substance (including its metabolites or markers) from the A Sample or A and B Samples, except where the Controlled Medication Substance is a Specified Substance;***

**and**

**(ii) a previous violation of the ECM Rules within the last four (4) years or a previous violation of the EAD Rules within the last ten (10) years involving the same Horse or another Horse trained by the registered Trainer provided that the registered Trainer was the registered Trainer of that Horse at the time of the previous violation(s);**

**and/or**

**(iii) a pending EAD or ECM Rule violation involving the same Horse or another Horse trained by the registered Trainer provided that the registered Trainer was the registered Trainer of that Horse at the time of the previous violation(s).**

26. Considering that the systematic charging of the Trainer as APR's only commenced from January 2019, the Trainer has not been charged with an Equine Controlled Medication Rule Violation in the previously listed Rule Violations from the year 2016 and 2018 involving Horses trained by him. As a result, Article 10.8 of the ECM Rules ("Multiple Violations") cannot be applied and the present Rule Violation i.e., 2019/CM12 CALANDRIA NOE shall be considered as the Trainer's first Rule Violation.
27. By virtue of the specific wording of Article 7.4.1 of the ECM Rules, the FEI had the right to provisionally suspend the Trainer pending the issuance of the Final Decision of the FEI Tribunal. The relevant provision requires a previous or pending violation involving the same Horse or another Horse trained by the registered Trainer. A charge against the Trainer is therefore not required, as merely the existence of a previous or pending Rule Violation involving a Horse trained by the Trainer is sufficient for the imposition of the provisional suspension on a Trainer.
28. Although the previous violations of the ECM Rules involving Horses trained by the Trainer cannot be used for the application of Article 10.8 of the ECM Rules as already explained, the FEI believes that such actions serve as aggravating circumstances which justify the imposition of a Period of Ineligibility greater than the standard sanction, in accordance with Article 10.7 of the ECM Rules where it states:

*"Aggravating Circumstances Which May Increase the Period of Ineligibility if the FEI establishes in an individual case involving an ECM Rule violation other than violations under Article 2.4 above (Assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an ECM Rule violation or any Attempted Rule*

*violation) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard Sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of two (2) years unless the Person Responsible and/or member of the Support Personnel (where applicable) can prove to the comfortable satisfaction of the Hearing Panel that he or she did not knowingly commit the ECM Rule violation. The occurrence of multiple substances or methods may be considered as a factor in determining aggravating circumstances under this Article 10.7. The Person Responsible and/or member of the Support Personnel can avoid the application of this article by admitting the ECM Rule violation as asserted promptly after being confronted with the Rule violation by the FEI”.*

29. The FEI noted that the Trainer has been the registered Trainer of three other Horses that were involved in an ECM Rule Violation i.e. *The presence of a Controlled Medication Substance and/or its Metabolites or markers in a Horse’s sample*. They furthered that as the Trainer he was responsible for the conditioning of those Horses for the Competition which involves the exercise programme, nutrition of the Horses, seeking appropriate veterinary care and the administration of therapeutic substances under veterinary advice in accordance with Art. 800 of the Endurance Rules. The FEI submitted that at a minimum, it appears that the Trainer has not established a well-functioning anti-doping system for the prevention of positives samples under the EADCMRs, despite, a fourth Horse trained by the Trainer testing positive for a Controlled Medication Substance. The FEI considered this an aggravating circumstance which justifies the imposition of a higher sanction.
30. Consequently, the FEI submitted to the Tribunal that one (1) year should be the applicable period of Ineligibility to be imposed on the Trainer.
31. The FEI also referred to Article 10.2 of the ECM Rules again which provides that a Person Responsible should also be fined up to CHF 15,000 and be ordered to pay *'appropriate legal costs'* for an Article 2.1 violation. In this regard the FEI respectfully submitted that fairness does not dictate that no fine be levied in this case, and duly requests that a fine be imposed on the Trainer, and that the Trainer be ordered to pay the legal costs that the FEI has incurred in pursuing this matter.

32. The FEI then referenced the FEI Guidelines for fines and contributions towards legal costs for additional guidance on the appropriate fines and legal costs for Controlled Medication and Banned Substance cases taking

into account the level of Fault/Negligence, multiple violations, aggravating circumstances, if present etc. In this regard for a first time Controlled Medication Substance Rule Violation without any reduction of the Ineligibility period, as in present case, the proposed range for the fine is between 3'000 -5'000 CHF with a contribution towards legal costs ranging between 1'000 – 5'000 CHF.

For the reason detailed above, the FEI requested the following prayers for relief:

- (i) upholding the charge that the Trainer violated Article 2.1 of the ECM Rules;
- (ii) confirming aggravating circumstances exist that warrant the imposition of a Period of Ineligibility greater than the standard sanction;
- (iii) Imposing a period of Ineligibility of one (1) year on the Trainer, commencing from the date of the Final Decision (the Provisional Suspension served by the Trainer be credited against the imposed Ineligibility Period);
- (iv) fining the Trainer in the amount of a minimum of three thousand five hundred (3,500 CHF); and
- (v) ordering the Trainer to pay the legal costs of three thousand (3,000 CHF) that the FEI has incurred in these proceedings.

The FEI also requested to reserve a right for an oral hearing (if necessary) to be held in this case to respond to any new arguments and/or evidence set out in the Trainer's reply, if any.

## **VI. Jurisdiction**

33. The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCM Regulations, as well as Article 18 of the IRs. The PR is a member of the UAE-NF, which is a member of the

FEI and as such is subject to the FEI Equine Controlled Medication Rules.

## **VII. The Decision**

34. 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 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 the findings of the laboratory are accurate. The Tribunal is further satisfied that the test results evidence the presence of a Controlled Medication Substances in the A sample taken from the Horse at the Event. The Tribunal notes that the APR did not challenge the accuracy of the test results or the positive findings.
35. As a result, the FEI has established the adverse analytical findings and has sufficiently proven the objective elements of the violation in accordance with Article 3.1 of the ECM Rules.
36. Additionally, as noted in the submissions of the FEI in accordance with Article 7.1.4 in the discipline of Endurance, where a Provisional Suspension is imposed on a registered Trainer of the Horse, the registered Trainer shall be notified accordingly and the provisions of this Article 7 that apply to the Person Responsible and the Owner shall also apply to the registered Trainer.
37. Pursuant to Article 10.2.1 of the ECM Rules, the period of Ineligibility for an Article 2.1 ECM rule violation, *i.e.*, the presence of a Controlled Medication Substance in a Horse's sample is six months, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 OR 10.6 of the ECM Rules and subject to a potential increase pursuant to Article 10.8.2 of the ECM Rules.
38. In cases brought under the EADCM Regulations, 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, the PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation pursuant to Article 10.4 of the ECM Rules, or "*No Significant Fault or Negligence*" pursuant to Article 10.5 of the ECM Rules.
39. For Articles 10.4 and 10.5 of the ECM Rules to be applicable, the APR must establish, as a threshold requirement, how the Prohibited Substance entered the Horse's system.
40. As confirmed by various CAS panels as well as FEI Tribunals, the Person

Responsible (which is the APR in this case) must present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the Person Responsible. The Person Responsible scenario must reach a 51% threshold for it to be successful.<sup>2</sup>

41. The Tribunal notes that the APR submitted a short statement without any corroborating evidence to support his explanation. He also made no effort to explain in any detail how the Prohibited Substance entered the Horse's system other than it was a miscommunication between stable staff. As a result, the Tribunal finds that the APR has not established – on a balance of probability – how the Banned Substance entered the Horse's system.
42. Where the first hurdle has not been met, *i.e.*, establishing the source of the Controlled Medication Substance, the Tribunal cannot continue with the second step and evaluate the APR's degree of fault. The Tribunal finds that no reduction under Articles 10.4 and 10.5 of the ECM Rules is warranted in this case. The Tribunal further notes that Article 10.6 of the ECM Rules was not invoked.
43. The Tribunal has considered particulars of the case pursuant to Article 10.8 which sets out ineligibility periods relating to Multiple Violations of the ECM Rules however given that the Trainer had not been charged with an Equine Controlled Medication Rule Violation in any of the previously listed Rule Violations at paragraph 25 from the period 2016-2018, Article 10.8 cannot be applied. Thus, although the Trainer has been connected to previous ECM Rule Violations for Horses trained by him, the current Rule Violation *i.e.*, 2019/CM12 CALANDRIA NOE shall be considered as the Trainer's first Rule Violation due to the systematic changes in the EADCMRs of charging Trainers from 2019.
44. In addition, taking into account the fact that the Trainer was the registered Trainer of three other Horses of ECM Rule Violation, it appears that as the Trainer responsible for the conditioning and care of these Horses he has not ensured that there is a well-functioning anti-doping infrastructure in place to prevent positive EADCMRs violations. The Tribunal therefore considers

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<sup>2</sup> See for example Viret, M., "Evidence in Anti-Doping at the Intersection of Science & Law", *Asser International Sports Law Series*, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWBF v. UKAD & Gibbs. See for example also Case 2017/BS32 SAURA DE FONDCOMBE, Final Tribunal Decision dated 24 February 2020.

such circumstances as aggravating circumstances which justify the imposition of a Period of Ineligibility greater than the standard sanction, in accordance with Article 10.7 of the ECM Rules. The Tribunal also notes the Trainer was provisionally suspended from 18 March 2019 until the 14 January 2020. The APR should be credited for the time already served pursuant to Articles 10.10.4 of the ECM Rules.

### **VIII. Sanctions**

45. In summary, the Tribunal imposes the following sanctions on the APR in accordance with Article 169 of the GRs and Articles 10, and 10.7 of the ECM Rules:
  - a. upholds the charge that the APR has violated Article 2.1 of the ECM Rules;
  - b. imposes a period of Ineligibility of **One (1) year** on the APR. Taking into consideration the fact that the APR was credited for the time already served, therefore, the APR will be ineligible until the 10 June 2021.
  - c. the APR is fined in the amount of **three thousand five hundred Swiss Francs (CHF 3,500)**; and
  - d. the APR will contribute **three thousand Swiss Francs (CHF 3,000)** for costs that the FEI has incurred in these proceedings.
46. No APR 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 authorised or organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organised by any international or national-level Event organisation (Article 10.11.1 of the ECM Rules).
47. Where a Person Responsible, or APR, who has been declared Ineligible violates the conditions as set out in paragraph 46 during Ineligibility, the results of any such participation will be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate.
48. According to Article 168 of the GRs, the present decision is effective from

the day of the written notification to the Parties concerned.

49. 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 its receipt.

**FOR THE FEI TRIBUNAL**



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**Ms. Constance Popineau, One-Member Panel**