CAS 2021/A/8197 International Weightlifting Federation (IWF) v. Natasha Rosa Figueiredo
CAS 2021/A/8270 World Anti-Doping Agency (WADA) v. International Weightlifting Federation (IWF) & Natasha Rosa Figueiredo

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President:	Prof. Luigi **Fumagalli**, Professor and Attorney-at-Law, Milan, Italy
Arbitrators:	The Hon. Michael J. **Beloff** MA KC, Barrister, London, United Kingdom
	Mr Jeffrey G. **Benz**, Barrister and Attorney-at-Law, London, United Kingdom, and Los Angeles, California, United States of America
Ad hoc Clerk:	Mr Dennis **Koolaard**, Attorney-at-Law, Amsterdam, The Netherlands

in the arbitration between

World Anti-Doping Agency, Lausanne, Switzerland

Represented by Mr Adam Taylor, Kellerhals Carrard, Lausanne, Switzerland, and Mr Ross Wenzel, WADA General Counsel, Lausanne, Switzerland

- Appellant in CAS 2021/A/8270 -

and

International Weightlifting Federation (IWF), Lausanne, Switzerland

Represented by Ms Dominique Leroux, Ms Damien Clivaz and Ms Ayesha Talpade, International Testing Agency, Lausanne, Switzerland

- Appellant in CAS 2021/A/8197 / First Respondent in CAS 2021/A/8270 -

and

Ms Natasha Rosa Figueiredo, Brazil

Represented by Mr Marcelo Franklin Filho, Attorney-at-Law, Rio de Janeiro, Brazil

- Respondent in CAS 2021/A/8197 / Second Respondent in CAS 2021/A/8270 -

I. PARTIES

1. The World Anti-Doping Agency ("WADA") is the international anti-doping agency recognised as such by the International Olympic Committee ("IOC"), constituted as a private law foundation under Swiss law. WADA has its registered seat in Lausanne, Switzerland, and has its headquarters in Montreal, Canada.

2. The International Weightlifting Federation (the "IWF") is the world governing body for the sport of weightlifting recognised as such by the IOC. The IWF has its registered seat in Lausanne, Switzerland. As a signatory of the World Anti-Doping Code, the IWF has enacted the IWF Anti-Doping Rules (the "IWF ADR"). The IWF has delegated the implementation of the IWF anti-doping programme to the International Testing Agency (the "ITA"). This delegation includes the Results Management[1] and subsequent prosecution of anti-doping rule violations ("ADRVs") under the jurisdiction of the IWF.

3. Ms Natasha Rosa Figueiredo (the "Athlete") is an International-Level Athlete for the purposes of the IWF ADR and is a member of the Brazilian Weightlifting Confederation (the *Confederação Brasileira de Levantamento de Peso* – the "CBLP"). The Athlete competes in a "lightweight" category, *i.e.*, 49 kgs. The Athlete's results include a gold medal in the 2019 South American Championships, a bronze medal in the 2019 Open Senior Championships, a fourth place in the 2019 Pan-American Games, and a bronze medal in the 2019 IWF Grand Prix.

4. WADA, the IWF and the Athlete are hereinafter jointly referred to as the "Parties".

II. INTRODUCTION

5. The present appeal arbitration proceedings concern two separate appeals lodged by WADA and the IWF against the decision issued by a Sole Arbitrator of the CAS Anti-Doping Division (the "CAS ADD"), whereby the Athlete was sanctioned with a one-month period of ineligibility under a contaminated supplement scenario (the "Appealed Decision").

6. WADA and the IWF are challenging the Appealed Decision before the CAS Appeals Arbitration Division, requesting a two-year period of ineligibility to be imposed on the Athlete, because they submit that a contaminated supplement scenario has not been established and that the Athlete cannot benefit from a reduced sanction under No Significant Fault or Negligence, whereas the Athlete seeks a confirmation of the Appealed Decision.

III. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing

[1] Terms defined in the IWF ADR are also capitalized in the present arbitral Award.

a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the later legal discussion.

A. Doping control and results management

8. On 31 March 2021, the Athlete underwent an out-of-competition doping control in Nova Iguaçu, Brazil (the "OOC Doping Control"). On the Doping Control Form, she declared having used the following supplements: "*Bone Crusher, Black Skull, Kihera, Cafelife*".

9. On 20 April 2021, the Athlete underwent an in-competition doping control during her participation in the 2020 Pan-American Championships in Santo Domingo, Dominican Republic (the "IC Doping Control"). On the Doping Control Form, she declared having used the following supplements: "*Multivitamina, Preentreno, Teatino*".

10. On 22 April 2021, the analysis of the A-sample of the OOC Doping Control conducted by the WADA-accredited laboratory in Montreal, Canada, reported an Adverse Analytical Finding (the "OOC AAF") for the presence of hydrochlorothiazide (concentration of 90 ng/ml) and its metabolite chloraminophenamide. Hydrochlorothiazide is a specified substance prohibited at all times under Section 5 (Diuretics and Masking Agents) of the 2021 WADA Prohibited List.

11. On 7 May 2021, on behalf of the IWF, the ITA informed the Athlete that she was provisionally suspended with immediate effect.

12. On 21 May 2021, the Athlete provided her "*Information Regarding Possible AAF*". Her first explanation for the OOC AAF was the possibility of contamination of the supplements listed in the Doping Control Form. The second explanation referred to her daily contact with her mother, with whom she lived: she stated that her mother suffered from high blood pressure and used hydrochlorothiazide in her treatment, and that she also prepared all of the family's meals on a daily basis. The third explanation referred to the herbal teas consumed by her mother.

13. On 23 May 2021, the Montreal Laboratory reported that the analysis of the B-sample collected at the OOC Doping Control confirmed the OOC AAF.

14. On 25 May 2021, the analysis of the A-sample of the IC Doping Control conducted by the WADA-accredited laboratory in Cologne, Germany, reported an AAF for the presence of hydrochlorothiazide (concentration of approximately 180 ng/ml) (the "IC AAF"; together with the OOC AAF, the "AAFs").

15. On 26 May 2021, on behalf of the IWF, the ITA provided the Athlete with a notice of charge, whereby she was informed that the AAFs would be considered together as a single ADRV.

16. On 3 June 2021, the Athlete asserted that she had received supplements "*from an official website, in the form of sponsorship*" and submitted them to an orthomolecular pharmacist, her coach and a nurse, for verification. She then stated that three professionals "*checked the ingredients indicated on the labels and even checked the internet if there were any suspicion/complaints*" and, there being none, authorized her

to use the product. The Athlete also provided evidence of a prescription for hydrochlorothiazide given to her mother by a hospital.

17. On 9 June 2021, the Athlete confirmed that she would only be submitting one supplement, namely Kiron Acqua Optimization (the "Kiron Supplement") to the WADA Laboratory for testing.

18. On 24 June 2021, the Cologne Laboratory reported that the analysis of the B-sample collected at the IC Doping Control confirmed the IC AAF.

19. On 1 July 2021, on behalf of the IWF, the ITA informed the Athlete that the provisional suspension imposed on her was lifted, as a matter of discretion, following the detection of the presence of hydrochlorothiazide in the Kiron Supplement that had been sent for testing by the Athlete to the Cologne Laboratory.

20. On 15 July 2021, the Athlete explained why only the Kiron Supplement had been chosen for testing. She maintained that it had been chosen because she had used it on both occasions, which produced the AAFs.

B. First Instance proceedings before the CAS Anti-Doping Division

21. On 9 July 2021, the ITA, on behalf of the IWF, submitted the matter to the CAS ADD, applying for a period of ineligibility to be imposed on the Athlete of between 8 and 16 months.

22. On 20 July 2021, and in light of the imminent commencement on 23 July 2021 of the postponed 2020 Olympic Games held in Tokyo, a video hearing was held. The hearing was limited to a statement by the Athlete and the Parties did not make oral submissions.

23. On 22 July 2021, the Sole Arbitrator of the CAS ADD issued the Appealed Decision with the following operative part:

> "*1. The request for arbitration filed on 9 July 2021 by the International Weightlifting Federation against Ms Natasha Rosa Figueiredo is partially upheld.*
>
> *2. Ms Natasha Rosa Figueiredo committed an Anti-Doping Rule Violation pursuant to Article 2.1 of the IWF Anti-Doping Rules.*
>
> *3. Ms Natasha Rosa Figueiredo is sanctioned with a period of ineligibility of one (1) month, such period having already been served in totality when provisionally suspended from 7 May 2021 to 1 July 2021.*
>
> *4. All competitive results obtained by Ms Natasha Rosa Figueiredo during the 2020 Pan-American Championship in Santo Domingo (Dominican Republic) are disqualified with all resulting consequences, including forfeiture of any medals, points and prizes.*
>
> *5. The award is pronounced without costs, except for the ADD Court Office fee of CHF 1,000 (one thousand. Swiss Francs)paid by the International Weightlifting Federation, which is retained by the ADD.*
>
> *6. Each party shall bear their own legal costs and other expenses incurred in*

connection with this arbitration.

7. All other motions or prayers for relief are dismissed."

24. The reasoning of the Appealed Decision was summarised by WADA as follows, which the Panel considers to be an accurate account of the grounds of the Appealed Decision:

"*(i) It was accepted by the parties that the case was one of contaminated supplements.*

(ii) 'No Fault' did not apply as it does not apply to positive tests arising out of mislabelled or contaminated supplements, as per the comment to Article 10.5 of the IWF ADR.

(iii) Considering 'No Significant Fault' under Article 10.6, the Athlete's degree of fault was 'nearly exemplary', despite the Sole Arbitrator having prepared a table wherein he noted that the Athlete failed to declare the product on both DCF's, the product was described as performance-enhancing, and the product is advertised as a diuretic. The Fault was therefore in the lower part of the light degree of fault category."

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 12 August 2021, the IWF filed a Statement of Appeal with the Court of Arbitration for Sport ("CAS"), challenging the Appealed Decision in accordance with Articles R47 and R48 of the 2021 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the IWF nominated the Hon. Michael J. Beloff MA KC, Barrister in London, United Kingdom, as arbitrator. These proceedings were referenced by the CAS Court Office as *CAS 2021/A/8197 IWF v. Natasha Rosa Figueiredo*.

26. On 25 August 2021, the Athlete nominated Mr Jeffrey G. Benz, Barrister in London, United Kingdom and Los Angeles, California, United States of America, as arbitrator.

27. On 26 August 2021, WADA filed a Statement of Appeal with CAS, challenging the Appealed Decision in accordance with Articles R47 and R48 of the CAS Code. In this submission, WADA also nominated the Hon. Michael J. Beloff MA KC as arbitrator. These proceedings were referenced by the CAS Court Office as *CAS 2021/A/8270 WADA v. IWF & Natasha Rosa Figueiredo*.

28. On 21 September 2021, following a proposal by the CAS Court Office to which neither of the Parties objected, the proceedings *CAS 2021/A/8197* and *CAS 2021/A/8270* were consolidated in accordance with Article R52.5 CAS Code.

29. On 22 September 2021, the IWF informed the CAS Court Office that without prejudice discussions were ongoing between the Parties as to a potential acceptance of consequences and requested the suspension of the deadline for the filing of its Appeal Brief.

30. On 27 September 2021, also WADA requested the deadline for the filing of its Appeal Brief be suspended for the same reason as put forward by the IWF.

31. On 28 September and 5 October 2021, in the absence of any objection being filed by the Athlete, the CAS Court Office informed the Parties that the deadlines for the IWF and WADA to file their Appeal Briefs were suspended.

32. On 13 May 2022, WADA informed the CAS Court Office that the "*settlement discussions have recently become unproductive*" and requested that the proceedings be continued.

33. On the same date, 13 May 2022, WADA filed its Appeal Brief in *CAS 2021/A/8270* in accordance with Article R51 of the CAS Code.

34. On 16 May 2022, the CAS Court Office informed the IWF that the suspension of its deadline to file its Appeal Brief was lifted.

35. On 16 June 2022, the IWF filed its Appeal Brief in *CAS 2021/A/8197* in accordance with Article R51 of the CAS Code.

36. On 13 July 2022, the IWF filed its Answer in *CAS 2021/A/8270* in accordance with Article R55 of the CAS Code.

37. On 16 August 2022, the Athlete filed her joint Answer in *CAS 2021/A/8197* and in *CAS 2021/A/8270* in accordance with Article R55 of the CAS Code.

38. On 22 August 2022, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the Panel appointed to decide the present case was constituted as follows:

President:	Prof. Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy
Arbitrators:	The Hon. Michael J. Beloff MA KC, Barrister, London, United Kingdom
	Mr Jeffrey G. Benz, Barrister and Attorney-at-Law, London, United Kingdom and Los Angeles, California, United States of America.

39. On 22, 24 and 25 August 2022 respectively, following an inquiry from the CAS Court Office in this respect, WADA requested that a hearing be held; the IWF indicated that it did not oppose to a hearing being held, and the Athlete indicated that she preferred that the case be decided solely on the basis of the written submissions.

40. On 29 August 2022, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing.

41. On 17 October 2022, the Athlete inquired about the possibility of the hearing being held remotely.

42. On 20 October 2022, following a number of potential hearing dates having been discussed, the CAS Court Office confirmed on behalf of the Panel that the hearing would be held on 25 January 2023 in Lausanne, Switzerland, but that any participants could choose to appear remotely.

43. On 12 December 2022, the CAS Court Office informed the Parties that Mr Dennis

Koolaard, Attorney-at-Law in Arnhem, The Netherlands, had been appointed as *Ad hoc* Clerk.

44. On 16 and 19 December 2022 respectively, the IWF, WADA and the Athlete returned duly signed copies of the Order of Procedure, provided to them by the CAS Court Office on 12 December 2022.

45. On 25 January 2023, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, the Parties confirmed that they had no objection to the constitution and composition of the Panel.

46. The hearing was attended in person, unless indicated otherwise below. In addition to the members of the Panel, Ms Andrea Sherpa-Zimmermann, CAS Counsel, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

a) For WADA:
   1) Mr Ross Wenzel, WADA General Counsel;
   2) Mr Cyril Troussard, WADA Associate Director for Results Management (by video);
   3) Ms Marissa Sunio, WADA Senior Counsel, Regulatory Affairs and Litigation (by video);
   4) Ms Lou Levadoux, WADA Intern (by video);
   5) Mr Adam Taylor, Counsel.

b) For the IWF:
   1) Ms Dominique Leroux-Lacroix, Counsel;
   2) Ms Ayesha Talpade, Counsel.

c) For the Athlete:
   1) Ms Natasha Rosa Figueiredo, the Athlete (by video);
   2) Mr Marcelo Franklin, Counsel (by video);
   3) Mr Leonardo Mello, Interpreter (by video).

47. The following persons were heard, in order of appearance:

   1) Ms Natasha Rosa Figueiredo, the Athlete (by video);
   2) Ms Michele Oliveira, Marketing Director of Petra Nutrition, witness called by the Athlete (by video);
   3) Mr Márcio Ferreira Compião Júnior, Biomedical Specialist, husband and fitness coach of the Athlete, witness called by the Athlete (by video);
   4) Ms Elizabeth Taveira, Pharmaceutic, witness called by the Athlete (by video).

48. All witnesses were invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law.

49. The Athlete had initially also indicated an intention to call Mr Edmilson Dantas,

Physical Educator, who had provided a declaration, as a witness, but before the hearing indicated that he would not be called. No objection was raised in this respect by the IWF or WADA.

50. The Parties were given full opportunity to present their cases. In particular, the Parties had full opportunity to examine and cross-examine the witnesses, to submit their arguments and authorities, and answer the questions posed by the members of the Panel.

51. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

52. On 27 February 2023, the CAS Court Office provided the Parties with the Operative part of the present Award.

53. On 13 April 2023, following a request for clarification filed by WADA on 10 March 2023, the CAS Court Office provided the Parties with an amended Operative part, in accordance with Article R63 of the CAS Code.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

54. The following summary of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. WADA's Appeal Brief

55. WADA's submissions, in essence, may be summarised as follows:

- The Athlete has accepted the ADRV and the proceedings at first instance only concerned the applicable sanction. Accordingly, the Panel need not concern itself with the admitted commission of the ADRV.

The No Significant Fault provisions do not apply

- Pursuant to Articles 10.2.1 and 10.2.2 IWF ADR, the starting point for sanctioning is a period of ineligibility of two years, as hydrochlorothiazide is a specified substance and WADA is not in a position to prove that the Athlete consumed the substance intentionally.
- However, the burden of proof is on the Athlete to establish any further reduction beyond the two-year period of ineligibility, pursuant to the provisions of Article 10.6 IWF ADR (Article 10.6.1.1 entitled "*Specified Substances or Specified Methods*" and 10.6.1.2 entitled "*Contaminated Products*"). It is WADA's position that neither rule applies to the Athlete's case.
- For the reasons set out below, namely that other potential sources exist for the positive test and that the Athlete's fault is significant (given the way the

product was advertised and the lack of adequate investigations) the present case is not exceptional.

- The Athlete is required to prove the origin of the prohibited substance on a "balance of probability" basis. This burden lies solely on the Athlete. In the present case, the Athlete has not established the origin of the Prohibited Substance in order to benefit from either of the No Significant Fault provisions.
    - Firstly, the Athlete provided two other completely different versions to the contaminated supplement justification, namely (i) her mother's hydrochlorothiazide prescription and (ii) her mother's use of teas that may contain hydrochlorothiazide. There are therefore multiple competing potential causes to the contamination. The Athlete has not taken any steps to explain why her (now) preferred third explanation is more likely than the other two explanations put forward.
    - Secondly, the Athlete did not declare the Kiron Supplement on either of her Doping Control Forms, despite declaring other products and despite the bizarre suggestion in her Answer that it is the only supplement she is sure that she took on both occasions of doping control, as she liked the taste. The explanation for why she did not declare the Kiron Supplement is unconvincing. It is clear from the website advertisement and the packaging of the tub that it is plainly a performance-related product with specific diuretic effects. There would be no reason, if the Athlete genuinely thought the Kiron Supplement was just a "tea drink", to purchase or obtain it in powdered supplement form, instead of an alternative product that was clearly "just a drink", such as a bottle of iced tea or a box of tea bags.
    - Thirdly, the Athlete's evidence on where she sourced the supplements was entirely unconvincing. Her sole evidence on this matter is an invoice that is not even addressed to her. The Athlete stated that she won a subscription from a website, but she has provided no evidence of said website and "*Fitness Comercio De Suplementos LTDA*" does not appear to have any website.
    - Fourthly, the Kiron Supplements actually tested by the WADA-accredited laboratory were (a) an open tub and (b) a closed tub of a different lot/batch number to the open tub. The finding of hydrochlorothiazide in the open tub lacks evidential weight, as the possibility of tampering cannot be ruled out with such a tub. Similarly, the finding of hydrochlorothiazide in the closed tub lacks evidential weight, because it comes from a different lot number to the open tub (LOT 180 and LOT 150 respectively). In any event, the ITA, on behalf of the IWF, has acquired a tub of the Kiron Supplement with batch number 170 and expiry date of November 2022 (this being closer to the open tub that was tested – and thus of the actual supplement allegedly used – than the closed tub tested by the Athlete), and that this tub was tested at the WADA-accredited laboratory in Cologne, Germany, where no hydrochlorothiazide was detected.

- This is not a Contaminated Product case.
    - Firstly, the burden of proof is on the Athlete to prove that Article 10.6.1.2 IWF ADR applies. However, the Athlete has not provided the product label. Therefore, the Athlete has no evidence by which she can argue that hydrochlorothiazide was not disclosed on the product label.
    - Secondly, the Athlete cannot rely on Article 10.6.1.2 IWF ADR because the prohibited substance in fact was disclosed, by virtue of being a member of an identified class, through a basic internet search. The manufacturer website stated that "*Kiron is rich in vitamins, minerals and selected ingredients to promote intense diuretic action*", without specifying what those selected ingredients were. Therefore, it was highlighted that the product, which was specifically designed as a diuretic and advertised to be such, contained selected ingredients for that very purpose. Diuretics are a specific class on the WADA Prohibited List, widely defined: "*the following diuretics and masking agents are prohibited, as are other substances with a similar chemical structure or similar biological effect(s)*". This advertisement should therefore have been a red flag, and the Athlete cannot misappropriate Article 10.6.1.2 IWF ADR.
- The Athlete has not demonstrated No Significant Fault. As has already been set out above , the provisions based upon No Significant Fault shall only apply in exceptional cases.
    - It has been repeatedly made clear in the case law of CAS and other similar adjudicative bodies that athletes cannot avoid a finding of significant fault, nor responsibility for ingesting a Prohibited Substance, by simply relying on others around them to make checks on their behalf as the Athlete did here.
    - In the present case, the Athlete consumed a product which, from its website and from the evidence provided by the Athlete, appears to have had no list of ingredients attached to it. She therefore blindly consumed a product that advertised itself in the strongest terms as having an intense diuretic effect and containing diuretic substances (which were not specifically identified). The same case law is clear that, if an athlete uses a product failing to inquire or ascertain whether the product contains a prohibited substance, such athlete's conduct constitutes significant fault or negligence as is the case here.
    - Furthermore, there is no suggestion that the Athlete made any checks on the manufacturer or the (incredibly vague) distributor of the supplements, *i.e.*, the entity that organised the competition, or the website through which it was apparently run.
    - Finally, the Athlete relied at first instance on the checks on the product that were supposedly made by three professionals. WADA does not understand how any adequate checks can have been carried out by these individuals, or any appropriate advice given, in circumstances where the product advertised itself as containing diuretic ingredients and having an intense diuretic action. Therefore, the Athlete was wrong to accept

the assurances of these individuals when she must have known that they had no proper basis for making such assurances, and/or she must be held responsible for their significant fault in making such careless assessments.

- Furthermore, WADA notes that the "orthomolecular pharmacist" whose check is relied on by the Athlete appears to be her own husband, despite her not revealing that fact at any point, with the result that her argument at first instance gave the misleading impression that she had thereby consulted an independent professional.

Alternatively, the sanction for No Significant Fault was inadequate

- To the extent that Article 10.6.1.1 or Article 10.6.1.2 IWF ADR applies (which is denied), the range of sanctions is between a reprimand and two years' ineligibility, and therefore the categories of fault set out in CAS 2017/A/5301 & 5302, *i.e.*, the "*Errani Principles*" are relevant.
- WADA submits that the facts and circumstances of the case warrant a sanction at the top end of the 12-to-24-month bracket, based on the Athlete's degree of both objective and subjective fault.
- As to the objective elements, the Athlete did not adduce in evidence any list of ingredients, and none was available on the manufacturer's website. She appears to have done nothing to check that the manufacturer or the distributor or the competition organiser, *i.e.*, the entity that organised the competition where the Athlete won her subscription that enabled her to acquire the Kiron Supplement, or the website through which it was apparently run (WADA apparently construing the Athlete's contention that she "*won a subscription from a website*" to mean that she participated in a competition to win the subscription). She did not sufficiently or diligently instruct her alleged experts, because they appear to have made no checks on the diuretic nature of the product or the manufacturer (and its processes) in that context.
- As to the subjective elements, the Athlete has no subjective factors that benefit her. Her experience counts against her.
- Therefore, even if the Athlete were to prove No Significant Fault (which is denied), the period of ineligibility should be at the top of the 12-to-24-month bracket.

56. On this basis, WADA submits the following requests for relief in its Appeal Brief:

"*1. The Appeal of WADA is admissible.*

2. The decision dated 22 July 2021 rendered by the Sole Arbitrator of the CAS Anti-Doping Division in the matter of Natasha Figueiredo is set aside.

3. Natasha Rosa Figueiredo is found to have committed an anti-doping rule violation pursuant to Article 2.1 and/or Article 2.2 of the IWF ADR.

4. Natasha Rosa Figueiredo is sanctioned with a two-year period of ineligibility starting on the date on which the CAS Appeals Division award enters into force. Any period of provisional suspension or

ineligibility effectively served by Natasha Rosa Figueiredo before the entry into force of the CAS Appeals Division award shall be credited against the total period of ineligibility to be served.

5. *All competitive results obtained by Natasha Rosa Figueiredo from and including 31 March 2021 until the date on which the CAS Appeals Division award enters into force are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).*
6. *The Respondents are ordered, jointly and severally, to pay the arbitration costs of these proceedings (if any).*
7. *The Respondents are ordered, jointly and severally, to pay a contribution to WADA's legal and other costs.*"

B. The IWF's Appeal Brief

57. The IWF's submissions, in essence, may be summarised as follows:

Procedural background

- During the results management phases and the first instance proceedings, given the short timeframe of the matter, the ITA was not in a position to itself purchase the Kiron Supplement and have it analysed by the Cologne Laboratory and therefore was constrained by the information and evidence on file, *i.e.*, that the analysis of both the opened (LOT 150 and expiry date VAL 10/22) and sealed (LOT 180 and expiry date VAL 12/22) products of Kiron Acqua Optimization had detected the presence of hydrochlorothiazide.
- In such circumstances, the ITA, for the limited purposes of the request to the CAS ADD, was willing to proceed on the basis that the source of the Prohibited Substance in the Athlete's samples was the use of the Kiron Supplement.
- The procedural timeline of the CAS ADD proceedings was agreed upon between the IWF and the Athlete with the overriding objective of having a final decision handed down prior to the commencement of the Tokyo Olympic Games. Accordingly, in the interest of time, the parties agreed to forego an oral hearing on merits and, apart from the oral testimony of the Athlete, requested the Sole Arbitrator to make a determination based on the written submissions.

The ADRV and the applicable consequences

- In the present matter, the analysis of the Athlete's B-samples for the OOC Doping Control and the IC Doping Control confirmed the presence of the Prohibited Substance in the respective A-samples. Therefore, as per Article 2.1.2 IWF ADR, it is undisputed that the Athlete committed an ADRV. Further, pursuant to Article 2.1.3 IWF ADR, hydrochlorothiazide is not a substance for which a quantitative threshold is required pursuant to the 2021 WADA Prohibited List; therefore, the presence of any quantity of this Prohibited Substance or its Metabolites or Markers in an Athlete's Sample constitutes an ADRV. The Athlete's ADRV having been established, the only matter left open for determination is the applicable sanction for the ADRV.
- The Athlete tested positive for the prohibited diuretic hydrochlorothiazide. This

is a synthetic drug and it is not naturally produced by the human body. Moreover, hydrochlorothiazide helps to reduce fluid and may either help weight loss and/or accelerate the excretion of other banned substances. Therefore, it is highly relevant in a sport like weightlifting, which is organized by weight categories, especially in a light-weight category like the Athlete's 49kgs category.

- Once an ADRV has been established, the Athlete must demonstrate, on a balance of probability, two things to mitigate the applicable period of ineligibility:
  a. First and foremost, it is for the Athlete to prove the source of the AAF, *i.e.*, how the Prohibited Substance entered her system and resulted in the AAF.
  b. Then, if successful, the Athlete must demonstrate that she bears No Fault or Negligence or No Significant Fault or Negligence within the meaning of Articles 10.5 or 10.6 IWF ADR respectively.
- In the present matter, the ITA on behalf of the IWF is of the opinion that no grounds for mitigation apply here.
- Pursuant to the comment to Article 10.5 IWF ADR, a mislabelled or a contaminated supplement is not a ground to eliminate the period of ineligibility on the basis of No Fault or Negligence insofar as athletes are ultimately responsible for what they ingest and have been warned of the inherent risk linked to taking nutritional supplements.

No reduction or elimination of the Period of Ineligibility applies under Article 10.6 IWF ADR

- Reference is made to WADA's Appeal Brief wherein WADA details an athlete's evidentiary threshold and requirement to establish source. On that basis, the IWF submits that the Athlete has been unable to discharge her burden of proof as to the source of the Prohibited Substance and is therefore not entitled to benefit from the No Significant Fault or Negligence provisions. The following factual elements lend support to the fact that the Athlete has been unable to prove how the Prohibited Substance entered her body on two occasions and returned the AAFs for a diuretic:
  - The Athlete did not declare the use of the Kiron Supplement in either her OOC Doping Control Form or her IC Doping Control Form.
  - In the CAS ADD proceedings, the Athlete initially provided three possible explanations for the source of the Prohibited Substance in her samples, referring to four supplements which could potentially be the source of the AAFs in her samples, three of which had been declared on her Doping Control Forms. However, surprisingly, on 10 June 2021, the Athlete requested the analysis of only the Kiron Supplement without giving any concrete explanations as to why she chose to only analyse this supplement.
  - Lastly, the Athlete has not provided details on how she sourced the supplement, which raises questions as to the chain of custody of their procurement. The Athlete merely stated that she "*won the supplements from an official website, in the form of sponsorship*" and has only provided an invoice from "Fitness Comercio De Suplementos LTDA", addressed to "*Michelle Oliveira*", without any further details or information.

- All the above raises significant doubts as to the veracity of the Athlete's statements and shows that the Athlete has been unable to demonstrate conclusively how the substance entered her system.
- Whilst it is acknowledged that the analysis of Kiron Acqua Optimization LOT 150 (opened product used by the Athlete) and LOT 180 (sealed product provided by the Athlete) by the Cologne Laboratory did show the presence of hydrochlorothiazide, it is the IWF's opinion that this does not enable the Athlete to discharge her burden as to source. Firstly, considering that LOT 150 was an opened, unsealed product, the analytical result cannot be conclusively relied upon to establish source, since tampering cannot, technically speaking, be excluded. Moreover, the presence of hydrochlorothiazide in LOT 180 also does not allow for a final conclusion on source as this was obviously not the batch of the supplement actually taken by the Athlete. Lastly, and perhaps more tellingly, the ITA purchased Kiron Acqua Optimization LOT 170, the analysis of which revealed that no hydrochlorothiazide was detected in the supplement.

The Athlete has not demonstrated No Significant Fault or Negligence

- Even if the Panel were to accept that the Athlete has met her burden of proof with respect to the source of hydrochlorothiazide, *quod non*, the second requirement to establish that she bears No Significant Fault or Negligence, namely that the Athlete was diligent in ensuring that no Prohibited Substance entered her body, is not met. Once again, reference is made to WADA's Appeal Brief, with the following additional submissions.
- When it comes to intake of supplements, ever since the 2000s, athletes have been warned of the risk that supplements may be contaminated with prohibited substances. It is therefore reasonable to assume that athletes are aware that consumption of any supplement brings with it an inherent risk and accordingly, there is a higher standard which must be applied while determining the extent to which an athlete is entitled to a reduction in the period of ineligibility under Articles 10.6.1.1 and 10.6.1.2 IWF ADR.
- In the present case, the Athlete knowingly took a product sold as a "*diuretic*" to "*rapidly lose weight*". She did so in circumstances where "diuretics" are specifically listed as a banned category on the WADA Prohibited List and are prohibited at all times – In and Out of Competition.
- In the present case, it can only be concluded that the Athlete did not take any real precaution to ensure that no Prohibited Substance entered her body. She chose to ignore all the warnings and blindly took supplements advertised as "diuretics", thereby accepting the risk of committing an ADRV.
- In addition, the Athlete had a "significant level of fault" based on the following:
    - Although the Athlete claims that she consulted three professionals about the use of the supplement, athletes cannot rely on the advice of their support personnel, including doctors and coaches prior to taking supplements, and the failure of a doctor or coach does not exempt an athlete from personal responsibility and/or from the obligation to satisfy the required duty of care of an athlete.

- Weightlifting is a sport that is organised by weight class. Therefore, it is commonly known that athletes must often rapidly reduce their body mass prior to the weighing to meet their weight division. For such purpose, some athletes fall back on diuretics to lose weight.

Alternatively, the Athlete's degree of Fault and Negligence is Significant

- To the extent that Article 10.6 IWF ADR applies, *quod non*, the range of the sanction shall be between a reprimand and two years of ineligibility. Therefore, the categories of fault set out in the "*Marin Cilic award*" and modified by the "*Sara Errani award*" apply within the context of Article 10.6 IWF ADR.
- The facts and circumstances of the case warrant a sanction at the top end of the 16-to-24-month bracket of the Cilic and Errani awards, based on the Athlete's degree of objective and subjective fault.
- On the objective level of fault, the Athlete has not provided any reliable evidence to show her "duty of care". More particularly, the Athlete did not check that the supplements were safely sourced and just accepted to use supplements "*she won from an official website, in the form of sponsorship*". Rather in a display of reckless and negligent behaviour, the Athlete knowingly consumed supplements clearly advertised as "diuretics". Lastly, the Athlete chose to blindly trust "experts" despite being well aware that athletes are at all times personally responsible for what they ingest.
- On the subjective elements, the Athlete is an experienced international-level athlete, who was part of the IWF Registered Testing Pool at the time of her sample collection. She has undergone many anti-doping tests and is well aware of the risks associated with consuming a supplement. Therefore, there is no subjective factor that would support a reduction in the period of ineligibility.

58. On this basis, the IWF submits the following requests for relief in its Appeal Brief:

"*1. The IWF's appeal is admissible.*

2. The decision dated 22 July 2021 rendered by the Sole Arbitrator of the CAS Anti-Doping Division in 2021/ADD/24, IWF v Natasha Rosa Figueiredo is set aside.

3. Ms Natasha Rosa Figueiredo is found to have committed an anti-doping rule violation under Article 2.1 of the IWF Anti-Doping Rules.

4. Ms Natasha Rosa Figueiredo is sanctioned with a two-year period of ineligibility starting on the date on which the CAS Appeals Division award enters into force. Any period of provisional suspension or ineligibility effectively served by Natasha Rosa Figueiredo before the entry into force of the CAS Appeals Division award shall be credited against the total period of ineligibility to be served.

5. All competitive results obtained by Natasha Rosa Figueiredo from and including 31 March 2021 until the date on which the CAS Appeals Division award enters into force are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

6. The costs of the proceedings, if any, shall be borne by Ms Natasha Rosa

Figueiredo

7. *A substantial contribution to IWF's legal and other costs associated with these proceedings shall be borne by Ms Natasha Rosa Figueiredo.*
8. *Any other prayer for relief that the Panel deems fit in the facts and circumstances of the present case.*"

C. The Athlete's Answer

59. The Athlete's Answer, in essence, may be summarised as follows:

Factual background

- In an attempt to clarify what has happened, the Athlete started to investigate the possibility of contamination of the WADA-permitted supplements she was using upon pharmaceutical clearance.
- The Athlete won some supplements from an official website, in the form of sponsorship, and, before taking them, she was careful enough to submit them to an Orthomolecular pharmacist, to her coach, and to a nurse. These three professionals checked the ingredients indicated on the labels and even checked in the internet whether there were any suspicions/complaints about the supplements. As no complaints or suspicions were found, they authorised the Athlete to use the supplements. The Athlete herself also researched the internet to verify whether the product may contain a prohibited substance, and nothing suggested that the supplements may be contaminated.
- The Athlete is not 100% sure of the dates and times of use. However, according to her best memory, she was using the supplements below during the OOC Doping Control and is sure that she used the Kiron Supplement at the time of both tests. The Kiron Supplement was bought together with other supplements on 8 March 2021, as evidenced by an invoice presented. The invoice was in the name of Ms Michelle Oliveira, because the latter is entitled as Marketing Director of the sponsor company to distribute the supplements. The Athlete could not have anticipated receiving them, which is the reason why the invoice was not addressed to her. The reference to the prices of the product demonstrates that a discount was given, to gratify the Athlete.
- The definitive proof of contamination of the Kiron Supplement was produced by the ITA itself inasmuch as the supplements were tested by the Cologne Laboratory which pointed out the contamination. Therefore, even beyond a balance of probabilities, and as agreed by the ITA/IWF, it turns out to be undisputed that the Athlete has been the victim of contamination of the product previously cleared by a pharmacist, a nurse and her coach. It would be unreasonable and disproportionate to sanction an athlete for the practice of a lawful product, *i.e.*, using products allowed by WADA, such as a tea/natural drink.
- It would have been better for the Athlete if she had listed the Kiron Supplement on the Doping Control Forms, but, even without such list, there is more than enough evidence of the Athlete's use of that product. The Athlete believed that Kiron was not a supplement and for this reason did not list it on the Doping

Control Forms. The Kiron Supplement label says it is a "*bebida*" (a drink). Moreover the product label on the manufacturer's website states that the product is basically composed of natural ingredients such as yerba mate, green tea and guarana.

- The Athlete requested the Kiron Supplement to be tested, because it was the one product she was sure that she used on both occasions, mainly because she enjoyed the taste. When the Athlete remembered this fact, it became very important for the defence, because it became clear that the most likely source of contamination was the Kiron drink. The Athlete did not have the financial means to test all the products.
- Although the manufacturer classifies Kiron in the section of diuretic products, it clearly states that the reason behind its diuretic functions is the presence of 100% natural teas (green tea, guarana, pineapple, and hibiscus powder), which consequently stimulates a WADA-permitted diuretic action and whose use is allowed for all athletes.
- If the Athlete had understood that Kiron was indeed a supplement, not a drink, surely, she would have listed it on her Doping Control Forms. It was an honest misunderstanding, and the Athlete should not be severely punished for such misunderstanding.

Burden of proof

- The Athlete has undergone many anti-doping tests without positive results, the contamination of the product was attested by a WADA-accredited laboratory, and the minimum amount of hydrochlorothiazide found in the urine samples is compatible with contamination. Therefore, the Athlete complied with the burden of proof imposed on her (balance of probabilities), of the cause of the AAFs, namely contamination.
- The Athlete requested more than one batch to be tested: the LOT 150 (an opened batch that was used by the Athlete) and the LOT 180 (a sealed, never used batch). Hydrochlorothiazide was discovered in both batches.
- The test performed by the ITA on a third batch of the Kiron Supplement does not invalidate the result of contamination of the first two batches of the Kiron Supplement. It is well-known that poor manufacturing often leads to both contaminated batches and uncontaminated batches.
- Hence, it is not proportionate, based on the balance of probabilities principle, to sanction the Athlete on the basis that she did not provide sufficient evidence regarding the source of the contamination, when the Athlete has demonstrated that the probabilities of contamination are higher than other explanations for he ADRV.

No Fault or Negligence

- The Athlete has never been warned that a drinking product that claimed to be 100% natural could be contaminated with banned substances. The prior cases dealing with contaminated nutritional supplements are largely inapplicable to an analysis of this case. It is unrealistic and impractical for an anti-doping

programme to impose on an athlete an obligation not to consume a product labelled as 100% natural, cleared by a doctor, a nurse and a pharmacist, with no history of previous problems, just because of fear that someday such product might be contaminated.

Elimination or reduction of the Period of Ineligibility

- The Athlete already established how the Specified Substance entered her body. Jurisprudence of similar cases arising from contamination by prohibited substances indicates that if there is to be any suspension at all in this case, based on an analysis of the degree of her fault it should be the minimum (reprimand). The Athlete acted with utmost care; it is hard to think of what could have been done more by her to avoid the AAFs.
- This is not a case of cheating, but rather a case of an accidental (not intentional) event, allowing the Panel to apply flexibility and proportionality in sanctioning. The Athlete is nearly 26 years old and has little time ahead to participate in her sport; Tokyo 2020 may have been her last participation at the Olympic Games. The Athlete has been training for the Olympic Games for the past 5 years. Taking away her lifetime Olympic dream (and her results) due to contamination would not be proportional to the misconduct (if any) of the Athlete.
- If any Period of Ineligibility is applied, it should be retroactive to the date of the OOC Doping Control (31 March 2021).
- The findings of the Sole Arbitrator in the Appealed Decision should be taken into account.
- Finally, it is worth remembering that the facts happened in a very special period, maybe the most dramatic Olympic period of sports history due to the pandemic.

60. On this basis, the Athlete submits the following requests for relief in her Answer:

> "[…] *the Appeals shall be dismissed, and the Appellants shall bear costs linked to these proceedings and be ordered to contribute to the Respondent's legal and other costs.*"

D. The IWF's Answer

61. In its Answer in *CAS 2021/A/8270*, the IWF indicated that it "*adopts and confirms the contents of WADA's Appeal Brief dated 13 May 2022 and agrees with the position taken by WADA therein*" and that it "*maintains and incorporates the contents of its own Appeal Brief dated 16 June 2022 in matter no. CAS 2021/A/8197*". No additional submissions were made in the IWF's Answer.

VI. JURISDICTION

62. Article R47 CAS Code provides as follows:

> "*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and*

> *if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*
>
> *An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.*"

63. The jurisdiction of the CAS Appeals Arbitration Division, which is not disputed, derives from Articles 13.1.3, 13.2.1 and 13.2.3.1 IWF ADR. These provisions, in turn, provide as follows:

> "*Where WADA has a right to appeal under Article 13 and no other party has appealed a final decision within IWF's process, WADA may appeal such decision directly to CAS without having to exhaust other remedies in IWF's process.*"
>
> "*In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS.*"
>
> "*In cases under Article 13.2.1, the following parties shall have the right to appeal to CAS:* […] *(c) IWF;* […] *(f) WADA.*"

64. No Party objected to jurisdiction, and all Parties participated fully in the proceedings.

65. It follows that the CAS Appeals Division has jurisdiction to adjudicate and decide on the present appeals.

VII. ADMISSIBILITY

66. Article R49 CAS Code provides as follows:

> "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.*"

67. Article 13.6.1 IWF ADR provides, *inter alia*, as follows:

> "*The time to file an appeal to CAS shall be twenty-one (21) days form the date of receipt of the decision by the appealing party.* […]
>
> *The above notwithstanding, the filing deadline for an appeal filed by WADA shall be the later of:*
>
> *(a) Twenty-one (21) days after the last day on which any other party having a right to appeal could have appealed, or*
>
> *(b) Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.*"

68. Since the Appealed Decision was received by the IWF on 22 July 2021 and the IWF filed its Statement of Appeal on 12 August 2021, the IWF complied with the applicable 21-day time limit. WADA filed its Statement of Appeal on 26 August

2021, *i.e.*, within the applicable time-limit for WADA. The admissibility of the appeals is not disputed.

69. It follows that the appeals of the IWF and WADA are admissible.

VIII. APPLICABLE LAW

70. Article R58 CAS Code provides as follows:

> "*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

71. It is not in dispute between the Parties, in the Panel's view correctly, that the proceedings are governed by 2021 edition of the IWF ADR.

72. It follows that the Panel will apply the 2021 edition of the IWF ADR.

IX. MERITS

A. The Main Issues

73. The main issues to be resolved by the Panel are the following:

i. Did the Athlete commit an Anti-Doping Rule Violation pursuant to Article 2.1 IWF ADR?

ii. If an Anti-Doping Rule Violation was committed, what is the appropriate sanction to be imposed?

i. Did the Athlete commit an Anti-Doping Rule Violation pursuant to Article 2.1 IWF ADR?

74. Article 2.1.1 IWF ADR provides as follows:

> "*It is the Athletes' personal duty to ensure that no Prohibited Substance enters their bodies. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, Negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*"

75. This provision contains the following footnote:

> "*[Comment to Article 2.1.1: An anti-doping rule violation is committed under this Article without regard to an Athlete's Fault. This rule has been referred*

> *to in various CAS decisions as "Strict Liability". An Athlete's Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.]*"

76. The Athlete does not contest that she committed an Anti-Doping Rule Violation in the sense that hydrochlorothiazide was present in her samples taken at the OOC and IC Doping Controls of 31 March and 20 April 2021. Consistently, she also raises no issue with respect to the validity of the samples, the identity thereof, the chain of custody, or other similar matters potentially relevant in this context.

77. In accordance with the strict liability principle, the presence of hydrochlorothiazide in her samples is an Anti-Doping Rule Violation, regardless of whether the Athlete acted with intent, No Fault or Negligence or No Significant Fault or Negligence. Such circumstances are taken into account in imposing an appropriate sanction in the section below, but do not impact on whether or not an Anti-Doping Rule Violation is committed, which, the Panel repeats, is admitted.

78. Consequently the Panel confirms and formally finds that the Athlete committed an Anti-Doping Rule Violation pursuant to Article 2.1 IWF ADR.

ii. If an Anti-Doping Rule Violation was committed, what is the appropriate sanction to be imposed?

79. It is correctly not in dispute between the Parties that the starting point for determining the appropriate sanction to be imposed on the Athlete is a period of ineligibility of 2 years, as hydrochlorothiazide is a Specified Substance and because WADA and the IWF do not allege that the Athlete committed the Anti-Doping Rule Violation intentionally.

80. The Athlete however maintains that the period of ineligibility to be imposed should be lower than 2 years, because the hydrochlorothiazide came into her system by using a Contaminated Product and because she bore no Significant Fault or Negligence.

a. The applicable regulatory framework

81. Article 10.6.1.2 (headed "*Contaminated Products*") IWF ADR provides as follows:

> "*In cases where the Athlete or other Person can establish both No Significant Fault or Negligence and that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Athlete or other Person's degree of Fault.*"

82. The afore-mentioned provision contains the following footnote by way of aid to interpretation:

> "*[Comment to Article 10.6.1.2: In order to receive the benefit of this Article, the Athlete or other Person must establish not only that the detected*

> *Prohibited Substance came from a Contaminated Product, but must also separately establish No Significant Fault or Negligence. It should be further noted that Athletes are on notice that they take nutritional supplements at their own risk. The sanction reduction based on No Significant Fault or Negligence has rarely been applied in Contaminated Product cases unless the Athlete has exercised a high level of caution before taking the Contaminated Product. In assessing whether the Athlete can establish the source of the Prohibited Substance, it would, for example, be significant for purposes of establishing whether the Athlete actually Used the Contaminated Product, whether the Athlete had declared the product which was subsequently determined to be contaminated on the Doping Control form.*
>
> *This Article should not be extended beyond products that have gone through some process of manufacturing. Where an Adverse Analytical Finding results from environment contamination of a "non-product" such as tap water or lake water in circumstances where no reasonable person would expect any risk of an anti-doping rule violation, typically there would be No Fault or Negligence under Article 10.5.1*"

83. The term "*No Significant Fault or Negligence*" is defined as follows in the IWF ADR:

> "*The Athlete or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.*"

84. The term "*Contaminated Product*" is defined as follows in the IWF ADR:

> "*A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.*"

b. Did the Athlete use Kiron Acqua Optimization Supplement?

85. As indicated in the comment to Article 10.6.1.2 IWF ADR, in order for the Athlete to potentially benefit from a reduction of the default two-year period of ineligibility on the basis of having used a Contaminated Product, she is required to establish that she exercised a high level of caution before taking the alleged Contaminated Product. In this respect, the Athlete must establish the source of the hydrochlorothiazide detected in her samples and more specifically that the hydrochlorothiazide came from the Contaminated Product.

86. The first hurdle in this respect is that the Athlete did not disclose the use of the Kiron Supplement on the Doping Control Forms when submitting to sample collection at the OOC and IC Doping Controls.

87. Pursuant to the comment to Article 10.6.1.2 IWF ADR this is "*significant for the purposes of establishing whether the Athlete actually Used the Contaminated Product*".

88. While the Athlete's failure to disclose the use of the Kiron Supplement on the Doping Control Forms is significant, it is not decisive. As submitted by WADA itself, the Athlete is required to prove the origin of the prohibited substance on a balance of probability. The Panel finds that there is no reason why the Athlete's use of the Kiron Supplement cannot be sufficiently proven by other means than through its listing on Doping Control Forms. In the case at stake, the Panel finds that there are indeed other factors that demonstrate that the Athlete used the Kiron Supplement, as set out below.

89. The Athlete's allegation that she used the Kiron Supplement is not only corroborated by her own testimony. It is also supported by an invoice of *Fitness Comercio de Suplementos LTDA* addressed to Ms Michelle Oliveira, the authenticity of which is confirmed by the testimony of Ms Oliveira. While the invoice was addressed to Ms Oliveira, it contained the Athlete's home address, thereby establishing a clear link between the Kiron Supplement and the Athlete. The invoice not only listed the Kiron Supplement, but also the "*Bone Crusher*" supplement, the use of which the Athlete had disclosed on the Doping Control Form for the OOC Doping Control. The date of the invoice (8 March 2021) is also consistent with the AAFs at the OOC and IC Doping Controls on 31 March and 20 April 2021. The Athlete's allegation that she received the Kiron Supplement from a sponsor is also corroborated by the declaration of Mr Edmilson Dantas, the Athlete's Coach, to which no objection was taken. The authenticity of the invoice as such is also not disputed by WADA or the IWF.

90. The Athlete had the open tub of the Kiron Supplement examined, which demonstrated that it contained traces of hydrochlorothiazide. The Panel finds that this in itself corroborates the Athlete's allegation that she used the Kiron Supplement. The Panel considers it highly unlikely that, after being presented with the AAFs, she would have searched for and found another supplement than the one she used, containing traces of hydrochlorothiazide or herself spiked the Kiron Supplement with hydrochlorothiazide.

91. The Panel finds that the latter scenario can itself be ruled out, because the Athlete also provided a closed tub of the Kiron Supplement which also contained traces of hydrochlorothiazide. It strikes the Panel as improbable, nor has it been suggested by WADA or the IWF, that the Athlete would or even could somehow have spiked the closed tub of the Kiron Supplement with hydrochlorothiazide. The fact that the closed tub of the Kiron Supplement contained traces of hydrochlorothiazide reinforces the finding that also the open tub probably contained traces of hydrochlorothiazide.

92. Furthermore, the Athlete provided declarations of Dr Elizabet Taveira, Pharmacist, Mr Márcio Campião, Biomedic Oligotherapist and husband of the Athlete, and Mr Edmilson Dantas, the Athlete's Coach, all declaring that they had verified the product labels of "*Kimera, Kiron, Bone Crusher and Cafelife*" with WADA's Prohibited List, that they did not detect any prohibited substances and that they authorised the Athlete to use the supplements, including the Kiron Supplement.

93. As to the Athlete's reasons for not disclosing the Kiron Supplement on the Doping Control Forms, it is to be noted that the Kiron Supplement did not contain a product label with ingredients, but rather a product label with nutritional information.

94. As noted by the Athlete, certain products with diuretic effects are permitted to be used, such as drinks containing caffeine and natural antioxidants, and drinks such as Red Bull. Indeed, nothing on the product label with nutritional information indicated that the Kiron Supplement contained any substances prohibited by WADA. Insofar WADA and the IWF contend that the Athlete used a diuretic inasmuch as diuretics are prohibited as a category in WADA's Prohibited List, that contention must be dismissed. Indeed, if such argument would be followed to its logical conclusion, athletes drinking coffee or tea would be committing an Anti-Doping Rule Violation.

95. Although falling short of the Athlete's duties under the applicable anti-doping regime (a finding that is to be taken into account in sanctioning the Athlete), the Panel finds the Athlete's argument that she did not consider the Kiron Supplement to be a product the use of which had to be disclosed on the Doping Control to be compelling. The Kiron Supplement is not comparable to a product like Red Bull or Gatorade, as submitted by the Athlete, but it is true that not all products with diuretic effects, such as for example coffee, have to be disclosed on Doping Control Forms.

96. The Panel does not consider that the Athlete in her initial defence, besides referring to potential contamination of supplements used, also referred to other potential sources of hydrochlorothiazide, *i.e.*, via medicine used by her mother or via the herbal teas consumed by her mother, undermines the defence she put before the Panel. Indeed, at such an early stage, the Athlete may reasonably have considered various potential means of ingestion. Once the Athlete received confirmation from the laboratory that the Kiron Supplement she had provided for testing contained traces of hydrochlorothiazide, the Panel finds it equally reasonable for the Athlete to consider this to be the most likely source of the hydrochlorothiazide detected in her samples. Indeed, the Panel also finds that, on a balance of probability, ingestion by way of using the Kiron Supplement was the probable source of the hydrochlorothiazide found in the Athlete's samples.

97. The Panel was initially troubled by the fact that while the Athlete used various supplements, she chose to submit only the Kiron Supplement for analysis. But on reflection, while those doubts were not entirely eliminated, the Panel considers credible and accepts the Athlete's explanation that this was the only supplement that she had used consistently during the period when the OOC and IC Doping Controls took place, which is why she only submitted this supplement for examination. Moreover, the fact that the Athlete at that stage knew that hydrochlorothiazide (being a diuretic) was detected in her samples could reasonably have led her to realize that the source of the AAF could have been the Kiron Supplement, itself promoted as a diuretic.

98. Consequently, while the Panel considers that the Athlete should properly have listed the Kiron Supplement on the Doping Control Forms as those forms required, the Panel accepts for the reasons explained above that she did in fact use the Kiron Supplement prior to the OOC and IC Doping Controls.

c. Is Kiron Acqua Optimization a supplement in the sense of Article 10.6.1.2 IWF ADR?

99. As noted above already, the Kiron Supplement did not contain a product label listing the ingredients, but only a label with nutritional information and an informal reference to certain ingredients. While this should have set off alarm bells for the Athlete (another finding that is to be taken into account in sanctioning the Athlete), the Panel accepts that this contributed to the Athlete's understanding that the product did not contain any prohibited substances, which is further corroborated by the declarations of Dr Taveira, Mr Campião and Mr Dantas.

100. The Panel finds that the Kiron Supplement was prepared by "*some process of manufacturing*", within the meaning of the footnote to Article 10.6.1.2 IWF ADR in that it was not some sort of self-produced product, but a product generally sold through ordinary distribution channels. Against this background, the Panel finds that the Kiron Supplement is indeed to be considered as a supplement, with the consequences which under the IWF ADR flow from that.

d. Was the Kiron Acqua Optimization Supplement contaminated?

101. As to the question whether the Kiron Supplement was contaminated or not, the Panel considers it to be particularly significant that two WADA-accredited laboratories have tested closed tubs of the Kiron Supplement from different lot/batch numbers, resulting in the conclusion that one of the tubs contained hydrochlorothiazide and the other one not. This demonstrates that the Kiron Supplement did not always contain hydrochlorothiazide. As a consequence, there are basically two alternative scenarios: either the Kiron Supplement ordinarily contained hydrochlorothiazide, but batches (or at least one batch) of the supplement mistakenly lacked such substance, or that it ordinarily did not contain hydrochlorothiazide, but batches (or at least one batch) of the supplement mistakenly contained such substance.

102. If one batch mistakenly contained hydrochlorothiazide, this could probably just have easily occurred another time. In the Panel's view, the very fact that the Kiron Supplement sometimes contained hydrochlorothiazide and sometimes not is demonstrative of poor manufacturing, thereby increasing the probability of a contamination scenario.

103. Furthermore, according to WADA and the IWF, the Athlete should have been alerted by the references to a diuretic effect on the product label of the Kiron Supplement. It appears that WADA and the IWF presume that the diuretic effect of the Kiron Supplement was caused by any hydrochlorothiazide in it, as opposed to any natural ingredients in it with diuretic effects. The Panel considers this to be inconsistent with the fact that at least one lot/batch of the Kiron Supplement did not contain any hydrochlorothiazide, which would have deprived the product of its prohibited diuretic effects if the presumption of WADA and the IWF were correct.

104. The Panel reiterates that the Kiron Supplement did not contain a product label with ingredients, but only a label with nutritional information. Neither the Kiron Supplement itself, nor any information available about the product on the internet,

indicated that the supplement contained hydrochlorothiazide. While the lack of a list of ingredients should have sparked the particular attention of the Athlete, the Panel finds at the same time that this contributed to a reasonable belief on the part of the Athlete that the Kiron Supplement did not contain any substances listed on the WADA Prohibited List. This is all the more so, because the product label does contain informal references to certain ingredients such as "*Hibísco*", "*Carqueja*", "*Capim Cideira*". The reference to these natural ingredients may well have comforted the Athlete in her innocent, if somewhat naïve, belief that the Kiron Supplement only contained natural ingredients.

105. More importantly, however, the Athlete's contention that the concentration of hydrochlorothiazide detected in her samples is consistent with her daily ingestion of one scoop of the Kiron Supplement at lunch time and that this supports a contamination scenario and is "*completely incompatible with an intentional ingestion*" remained undisputed by WADA and the IWF. Indeed, WADA and the IWF did not submit evidence with respect to the pharmacokinetics related to the ingestion and excretion of hydrochlorothiazide in the human body. The Panel acknowledges that hydrochlorothiazide is not a Prohibited Substance with a "*Decision Limit*", *i.e.*, as defined in the IWF ADR. Accordingly, if hydrochlorothiazide is detected in a sample, it is automatically an Adverse Analytical Finding, regardless of the concentration measured (Article 2.1. of the IWF ADR). However, if the Kiron Supplement was indeed a performance-related product with specific diuretic effects because of the presence of hydrochlorothiazide, as alleged by WADA and the IWF, the Panel would expect the supplement to contain a higher concentration of hydrochlorothiazide than a concentration that is merely consistent with contamination.

106. Consequently, in view of all the above, the Panel finds that the Athlete established to its comfortable satisfaction that the Kiron Supplement was not supposed to contain hydrochlorothiazide, albeit that batches of the supplement occasionally contained traces thereof.

e. Did the Athlete act with No Significant Fault or Negligence in using the Kiron Acqua Optimization Supplement?

107. The Panel notes that the Athlete provided evidence of having consulted three persons before administering the Kiron Supplement. The Panel considers the witness statements and testimony of these three persons corroborative of the Athlete's contention that she indeed consulted other people before commencing with the administration of the Kiron Supplement. Of course, it is trite law that the mere consulting other people does not abnegate the Athlete's own responsibility of due care, but it is demonstrative at least of a certain reluctance on her part to use new products, which redounds in some way to her credit.

108. The Panel finds it difficult to understand how these three persons (*i.e.*, Dr Taveira, Mr Campião and Mr Dantas) alleged to have cross-checked the ingredients of the Kiron Supplement against the WADA Prohibited List, when the product label of the Kiron Supplement did not contain any formal list of composite ingredients. The product label provides as follows:

CARACTERÍSTICAS

HIBÍSCO, CARQUEJA, CAPIM CIDREIRA
Ação diurética que aumenta a eliminação do excesso de líquidos, reduzindo o inchaço que mascara os músculos

CHÁ VERDE, ERVA-MATE
Efeito termogênico, auxilia na queima de gordura corporal e na redução das medidas corporais

GUARANÁ
Efeito estimulante e termogênico

PICOLINATO DE CROMO
Reduz o apetite e a vontade de comer doces

Informação Nutricional

Porção: 5 g (1 dosador)

Quantidade por porção		%VD (*)
Valor Energético	12 kcal/51 kJ	1%
Carboidratos	3 g	1%
Vitamina B3	16 mg	100%
Vitamina B7	30 mcg	100%
Vitamina B12	2,4 mcg	100%
Cromo	35 mcg	100%
Magnésio	78 mg	30%
Zinco	7 mg	100%

Não contém quantidade significativa de proteínas, gorduras totais, gorduras saturadas, gorduras trans, fibra alimentar e sódio.

* % Valores Diários de referência com base em uma dieta de 2.000 kcal ou 8.400 kJ. Seus valores diários podem ser maiores ou menores, dependendo de suas necessidades energéticas.

109. The product label contains informal references to certain ingredients such as "*Hibísco*", "*Carqueja*", "*Capim Cideira*", but, materially, no reference is made to hydrochlorothiazide. The product label further contains nutritional information, which refers to certain vitamins, magnesium and zinc.

110. The Panel finds that none of these references should have alarmed the Athlete or her entourage of the risk that the Kiron Supplement might contain any substances featured on WADA's Prohibited List.

111. At the same time, the Panel notes that, contrary to the Athlete's submissions, the product label does not indicate that the Kiron Supplement is 100% natural.

112. Moreover, the product label refers to the diuretic effect of the product, through use of the words ("*Ação diurética*", "*eliminação do excesso de liquidos*", which can be freely translated as "*diuretic action*" and "*elimination of excess fluid*") as well as by display of a picture of a smaller waist on the front of the tub. The Panel finds that in assessing whether the product was suitable to be used by the Athlete this should have alarmed the Athlete and her entourage. Accordingly, in the Panel's view, further investigation was required before these persons could legitimately conclude that the Kiron Supplement was safe for use by the Athlete.

113. As argued by WADA, the Panel agrees that, given the uncertainty of the components and the repeated references to diuretic effects, a cautious athlete fully satisfying the duty of care would have submitted the Kiron Supplement for testing by a laboratory before taking it and asked for a list of its ingredients from the manufacturer. These precautionary actions the Athlete failed to undertake.

114. The Athlete alleges that she also searched the internet for information about the Kiron Supplement, but that she did not find any information that should have deterred her from using the supplement. The Panel has no reason to question the Athlete's testimony and finds that doing so may contribute to, if it does not adequately, of itself satisfy, her duty of care.

115. Despite having provided copies of the Kiron Supplement webpage from January 2021 as well as at the moment of submitting its Appeal Brief, WADA (or the IWF) has not submitted any evidence that any publicly available information on the internet would have suggested that the Kiron Supplement contained hydrochlorothiazide, although both webpages do refer to the diuretic effect of the Kiron Supplement.

116. In any event, the Panel finds that any search on the internet would not have yielded any results that should reasonably have deterred the Athlete from using the supplement. It was rather the absence of information that should have alarmed the Athlete.

117. All things considered, in the Panel's view, the Athlete certainly could have done more to ensure that the Kiron Supplement was safe before administering it. The mere fact that the Kiron Supplement did not contain a formal detailed list of composite ingredients should have set off alarm bells. Also, the reference to diuretic effects should have caused the Athlete to inquire what components of the supplement caused any such diuretic effect to exclude the possibility that such diuretic effect was caused by any prohibited substances.

118. WADA also maintains that the Athlete appears to have done nothing to check that (i) the manufacturer; (ii) the distributor; and (iii) the competition organiser, was a reliable source. Since the Panel finds that the Athlete's testimony that Ms Oliveira offered the Athlete a sponsorship in the form of supplements reliable, WADA's argument that the Athlete should have verified the organiser of the competition through which she "won" the subscription, i.e., category (iii) is based on a false premise. The Panel accepts the submission as to categories (i) and (ii).

119. Finally, the Panel finds that the risks related to ingesting the Kiron Supplement are reinforced by the fact that the Athlete chose to only provide that supplement for

examination by a WADA-accredited laboratory upon having tested positive. Due to the link between hydrochlorothiazide detected in her samples and the diuretic effects referred to on the product label of the Kiron Supplement, the Athlete apparently realised that the Kiron Supplement was a possible or likely source of the hydrochlorothiazide detected in her samples. Such concerns of her part are retrospective, but are nonetheless significant indicators that should have alerted the Athlete already before taking the Kiron Supplement.

120. Consequently, evaluating and balancing out all the above considerations, while the Panel finds that whereas the Athlete was certainly at fault in using the Kiron Supplement, she had No Significant Fault.

f. What period of ineligibility is to be imposed on the Athlete in light of her No Significant Fault?

121. WADA refers in its submissions to a systemic method to determine the appropriate period of ineligibility to be imposed on an athlete within the range of a reprimand and a two-year period of ineligibility, as set forth in CAS 2017/A/5301-5302 (updating CAS 2013/A/3327 & 3335 to apply to the post-2015 World Anti-Doping Code regime). WADA refers to the following considerations as the "Errani Principles":

> "*Therefore, the Cilic principles are to be accommodated accordingly. The time span of 24 months which is still available now covers only two instead of three categories of fault:*
>
> - *normal degree of fault: over 12 months and up to 24 months with a standard normal degree leading to an 18-month period of ineligibility; and*
>
> - *light degree of fault: 0-12 months with a standard light degree leading to a 6-month period of ineligibility.*
>
> *The other guiding principles identified in Cilic in order to determine the degree of fault in an individual case continue to be applicable.*"

122. While these so-called *Errani* principles are not binding on the Panel as they are not codified in the IWF ADR, the Panel sees no reason to deviate from them (nor did the Athlete argue that the *Errani* principles should not be applied) and finds it to be a useful framework for determining the appropriate period of ineligibility to be imposed on the Athlete within the range of a reprimand as a minimum up to a period of ineligibility of 24 months.

123. In distinguishing between a normal degree of fault and a light degree of fault, reference is made in the afore-mentioned jurisprudence to objective and subjective factors:

> "*The objective level of fault or negligence points to 'what standard of care could have been expected from a reasonable person in the athlete's situation' and the subjective level consists in 'what could have been expected from that particular athlete, in the light of his particular capacities'*." (CAS

2017/A/5301-5302, para. 188, with reference to CAS 2013/A/3327 & 3335)

124. As to the objective level of fault, the Panel finds that an elevated level of care applies for products not containing a list of ingredients. This should have alarmed the Athlete and encouraged her to investigate deeper rather than merely checking publicly available information about the product on the internet and asking people from her entourage whether the Kiron Supplement was safe to use, whose investigation also remained limited to checking the product label. Based on this fact alone, the Panel finds that the Athlete's degree of fault was not light, but normal.

125. Accordingly, the Panel considers it appropriate to impose a period of ineligibility within the range of 12 months up to 24 months.

126. The Panel finds also that the Athlete's degree of culpability is slightly lower than what could be considered as a "*standard normal degree*", warranting according to the *Errani* principles an 18-month period of ineligibility. Firstly, the Athlete did ask three different persons to check the product before she started using the Kiron Supplement. Secondly, she did check publicly available information on the internet. Thirdly, and in any event, the Panel finds that no matter how thorough the Athlete or someone from her entourage would have investigated the Kiron Supplement, they would not have found anything in the public domain suggesting that the supplement might contain hydrochlorothiazide or other prohibited substances. Indeed, based on the material considered, the Panel finds that the Kiron Supplement itself was not supposed to contain hydrochlorothiazide, although it was occasionally contaminated with traces thereof (a fact no athlete could have discovered absent having tested every lot of the Kiron Supplement ever made).

127. In view of the above, the Panel considers it to be reasonable and fair that a period of ineligibility of 16 months is to be imposed on the Athlete.

g. Commencement of the period of ineligibility

128. Pursuant to Article 10.13 IWF ADR, the period of ineligibility shall, in principle, start on the date of the final hearing decision providing for ineligibility, which is the date of issuance of the Operative part of the present arbitral Award.

129. Article 10.13.1 IWF ADR provides that the period of ineligibility may start earlier if there have been substantial delays in the hearing process if the athlete can establish that such delays are not attributable to the athlete.

130. In the matter at hand, the Panel finds that there were no such substantial delays and, in any event, the main delay was caused by the 9-month suspension of the present appeal arbitration proceedings between 22 September 2021 and 13 May 2022. On 13 May 2022, WADA informed the CAS Court Office that "*settlement discussions have recently become unproductive*". The Panel finds that the Athlete failed to establish that such delay was not in any way attributable to her. Indeed, had the Athlete wished to speed up the proceedings she could have informed the CAS Court Office long before 13 May 2022 that she wanted to terminate any settlement discussions. She is

therefore, at least in part, responsible for the delays.

131. Furthermore, in accordance with Article 10.13.2.1 IWF ADR, if a provisional suspension is respected by the Athlete, then the Athlete shall receive a credit for such period of provisional suspension against any period of ineligibility which may ultimately be imposed.

132. Since the Athlete served a provisional suspension between 7 May 2021 until 1 July 2021 (of which period one month already turned into a definite suspension by means of the Appealed Decision), such period is to be credited against the 16-month period of ineligibility imposed.

h. Disqualification of the Athlete's results

133. Article 10.10 IWF ADR provides as follows:

> "*In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.*"

134. WADA and the IWF request the Panel to disqualify all competitive results obtained by the Athlete between the date of the OOC Doping Control on 31 March 2021 until the date of issuance of the present arbitral Award, with all resulting consequences (including forfeiture of medals, points and prizes).

135. As indicated above, the Athlete was provisionally suspended from 7 May 2021 until 1 July 2021, *i.e.*, the date of issuance of the Appealed Decision, as from which date she reacquired her eligibility to compete.

136. The Panel notes that, by referring to "*unless fairness requires otherwise*", Article 10.10 IWF ADR affords discretion to hearing panels in deciding whether and to what extent an athlete's results are to be disqualified.

137. The Panel finds that fairness would indeed be impaired if, besides imposing a period of ineligibility of 14 months (16 months with approximately 2 months credit for the provisional suspension already served), the Athlete's competitive results since 31 March 2021 (a period of approximately 23 months until the issuance of the Operative part of the present arbitral Award) were also to be disqualified. This would *de facto* result in sanctions spanning a period of 37 months in a situation where the Athlete established to have No Significant Fault or Negligence. The Panel finds this hypothetical consequence excessive, and therefore, unfair.

138. This less stringent approach has also been followed, to the comfort of the Panel, in earlier CAS jurisprudence:

> "*Since the [CAS] Panel has found that Appellant bears No Significant Fault or Negligence, the [CAS] Panel deems that fairness dictates that other than with respect to the [Mexican] Tournament, none of Appellant's results shall be disqualified.*" (MANNINEN/NOWICKI, "Unless Fairness Requires Otherwise", A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offences, CAS Bulletin, 2017/2, p. 12, with reference to CAS 2005/A/951, paras. 9.8-9.9)

139. The Panel finds that it should also take into account the fact that the IWF voluntarily terminated the provisional suspension imposed on the Athlete on 1 July 2021, *i.e.*, before the Appealed Decision was issued. Furthermore, on 22 July 2021, the CAS ADD cleared the Athlete to compete again upon issuing the Appealed Decision, as a consequence of which she was also eligible to compete at the Tokyo Olympic Games in 2021.

140. Such temporary regaining of eligibility has been identified by authoritative commentators as a special situation:

> "*One of the special situations in which Panels must carefully consider the fairness exception is a scenario in which an athlete has fully served an ineligibility period imposed by the first instance, has regained eligibility and then is subjected to a longer ban at the appellate level.*" (MANNINEN/NOWICKI, "Unless Fairness Requires Otherwise", A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offences, CAS Bulletin, 2017/2, p. 17, with reference to David, p. 312-313 (referring to *Agence Mondiale Antidopage (AMA) c. ASBL Royale Ligue Vélocipédique Belge (RLVB) & Iljo Keisse*, CAS 2009/A/2014, without analysing the case)

141. While acknowledging that at least one CAS panel nonetheless disqualified results of an athlete in such circumstances (see CAS 2008/A/1470), the same authors indicate that other CAS panels refrained from disqualifying results based on the "fairness exception":

> "*Other Panels have emphasized, in particular, the responsibility of the first-instance tribunal as the culprit of the gap between two bans. In Keisse, the athlete was subjected to a provisional suspension in December 2008. 11 months later, the athlete was acquitted of an ADRV by the first-instance tribunal. At the same time, the provisional suspension became void. WADA took the matter to the CAS. The Panel upheld the appeal and imposed the standard two-year ineligibility period. However, the Panel deemed that it would have been unfair to disqualify the athlete's results because he was able to compete due to the erroneous decision by the first-instance tribunal.*
>
> *The anti-doping organisation's responsibility was highlighted in Alvarez as well. In addition to the athlete's legal right to compete, the Panel paid attention to the language of Art. 10.8 by noting that it entitles disqualifying results "through the commencement of any Provisional Suspension or Ineligibility period". According to the Panel, it was ambiguous whether the language of Art. 10.8 contemplates the gap in the athlete's suspension. The Panel added that disqualifying results "would work an injustice, effectively increasing the four years effect of her suspension in a manner not expressly*

> *contemplated" in the applicable rules and left the results undisturbed.*" (MANNINEN/NOWICKI, "Unless Fairness Requires Otherwise", A Review of Exceptions to Retroactive Disqualification of Competitive Results for Doping Offences, CAS Bulletin, 2017/2, p. 17, with reference to CAS 2009/A/2014 and CAS 2016/A/4377)

142. The Panel generally agrees with the view expressed in the "*Keisse*" decision. The Panel however wishes the clarify that the "culprit" of the gap between the two bans of the Athlete in the present proceedings is not the Sole Arbitrator who issued the Appealed Decision or the CAS ADD, but rather the IWF, because it, *inter alia*, accepted at the time of the hearing before the CAS ADD that the Athlete had established the source of the hydrochlorothiazide (the Kiron Supplement) and, although requesting for a period of ineligibility between 8 and 16 months to be imposed, did not request any results to be disqualified besides those obtained during the 2020 Pan-American Championships in Santo Domingo (Dominican Republic). This was a position the Sole Arbitrator was bound to adopt as he could not in principle impose more severe sanctions than the ones requested.

143. Against this background, the Panel indeed considers it unfair to disqualify any additional results of the Athlete. Accordingly, any competitive results obtained by the Athlete between the date of issuance of the Appealed Decision and the issuance of the Operative part of the present arbitral Award will not be disqualified.

144. Furthermore, the Panel does not consider it appropriate to disqualify results obtained by the Athlete between 31 March 2021, the date of the OOC Doping Control, and the commencement of her provisional suspension on 7 May 2021, with the exception of the results obtained during the 2020 Pan-American Championships in Santo Domingo (Dominican Republic), at which event the IC Doping Control took place and where hydrochlorothiazide was detected in the Athlete's sample. According to the Appealed Decision, the Athlete also did not register any competitive results between the OOC Doping Control and the IC Doping Control.

B. Conclusion

145. Based on the foregoing, the Panel holds that:

i) The Athlete committed an Anti-Doping Rule Violation pursuant to Article 2.1 IWF ADR.

ii) The Athlete established No Significant Fault and that the source of the hydrochlorothiazide was a Contaminated Product.

iii) The Athlete is to be sanctioned with a 16-month period of ineligibility, commencing on the date of issuance of the Operative part of the present arbitral Award. The provisional suspension imposed on the Athlete from 7 May until 1 July 2021 shall be credited against the total period of ineligibility.

iv) All competitive results of the Athlete from 1 July 2021 until the date of issuance of the Operative part of the present arbitral Award are not to be disqualified. The results of the Athlete between 31 March 2021 and 7 May 2021 are also not to be disqualified, with the exception of the results obtained

during the 2020 Pan-American Championships in Santo Domingo (Dominican Republic), which are disqualified with all resulting consequences, including forfeiture of any medals, points and prizes.

X. COSTS

(…).

* * * * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed on 12 and 26 August 2021 respectively by the International Weightlifting Federation and the World Anti-Doping Agency against the decision issued on 22 July 2021 by the Anti-Doping Division of the Court of Arbitration for Sport are partially upheld.

2. The decision issued on 22 July 2021 by the Anti-Doping Division of the Court of Arbitration for Sport is set aside.

3. Ms Natasha Rosa Figueiredo committed an Anti-Doping Rule Violation pursuant to Article 2.1 of the International Weightlifting Federation Anti-Doping Rules.

4. Ms Natasha Rosa Figueiredo is sanctioned with a period of ineligibility of 16 (sixteen) months, commencing on the date of the present arbitral Award. The provisional suspension imposed on Ms Natasha Rosa Figueiredo from 7 May 2021 until 1 July 2021 shall be credited against the total period of ineligibility.

5. All competitive results of Ms Natasha Figueiredo from 1 July 2021 until the date of the present Award shall not be disqualified. The results of Ms Figueiredo between 31 March 2021 and 7 May 2021 are not disqualified, with the exception of the results obtained during the 2020 Pan-American Championships in Santo Domingo (Dominican Republic), which are disqualified with all resulting consequences, including forfeiture of any medals, points and prizes.

6. (…).

7. (…).

8. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Operative part issued: 27 February 2023
Reasoned Award issued: 9 November 2023

THE COURT OF ARBITRATION FOR SPORT

Prof. Luigi **Fumagalli**
President of the Panel

The Hon. Michael J. **Beloff** KC
Arbitrator

Jeffrey G. **Benz**
Arbitrator

Dennis **Koolaard**
Ad hoc Clerk