



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2024/A/10679 Vlad Dascalu v Union Cycliste Internationale (UCI)**

## **ARBITRAL AWARD**

**rendered by the**

### **COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President of the Panel: Mr James Drake, KC, Barrister, London, United Kingdom

Arbitrators: Mr Fabio Iudica, Attorney-at-Law, Milan, Italy  
Mr Mario Vigna, Attorney-at-Law, Rome, Italy

**in the arbitration between**

**Vlad Dascalu, Romania**

Represented by Ms Patrizia Diacci and Mr Jacopo Tommaso Bonisi, Attorneys-at-Law,  
Andersen Tax Legal Corporate Finance Italy, Venezia-Mestre, Italy

**Appellant**

**and**

**Union Cycliste Internationale (UCI), Switzerland**

Represented by Mr Antonio Rigozzi and Ms Marie-Christin Bareuther, Attorneys-at-Law, Lévy  
Kaufmann-Kohler, Geneva, Switzerland

**Respondent**

## **I. THE PARTIES**

1. The Appellant is Mr Vlad Dascalu (the “Rider” or the “Appellant”), a professional cross-country mountain bike rider of Romanian nationality affiliated to the Federația Română de Ciclism (“FRC”) in 2023 and to the Real Federación Española de Ciclismo (“RFEC”) in 2022. He was born in December 1997. Amongst other successes, he became European champion in 2023 and competed at the 2020 Olympic Games in Tokyo.
2. The Respondent is Union Cycliste Internationale (“UCI” or the “Respondent”), the governing body of cycling. It is an association under Articles 60 *et seq.* of the Swiss Civil Code (“SCC”) with its headquarters in Aigle, Switzerland. The UCI has implemented the UCI Anti-Doping Rules (dated 20 February 2023, the “UCI ADR”) based on the model rules for national anti-doping organisations developed by the World Anti-Doping Agency (“WADA”) in compliance with the World Anti-Doping Code 2021 (the “WADC”).
3. The parties shall be referred to collectively as the “Parties”.

## **II. OUTLINE OF THE APPEAL**

4. This is the Rider’s appeal to the Court of Arbitration for Sport (“CAS”) pursuant to the Code of Sports-related Arbitration (2023 edition) (the “CAS Code”) against a decision issued on 21 May 2024 by the UCI’s Anti-Doping Tribunal (the “UCI ADT”) by which the UCI ADT found that the Rider had committed an anti-doping rule violation (“ADRV”) under Article 2.4 of the UCI ADR for three whereabouts failures within a 12 month period and imposed a period of ineligibility on the Rider of 17 months starting from the date of the UCI ADT’s decision, i.e., 21 May 2024 (the “Challenged Decision”).

## **III. FACTUAL BACKGROUND**

5. Set out below is a summary of the relevant facts based on the Parties’ written submissions, pleadings and evidence adduced in these proceedings and from matters of public knowledge. While the Panel has considered all matters put forward by the Parties, reference is made in this Award only to those matters necessary to explain the Panel’s decision and reasoning.
6. The Rider was at all material times a UCI licence holder pursuant to the UCI ADR and a member of the UCI Registered Testing Pool (the “UCI RTP”), and as such was required to adhere to the whereabouts requirements set forth in the UCI ADR, the UCI Regulations for Testing and Investigations (the “UCI TIR”) and the UCI Regulations for Results Management (“UCI RMR”).
7. The UCI RTP has since January 2021 been managed for UCI by the International Testing Agency (“ITA”). Riders are required to provide whereabouts information via the Rider Central App or the Anti-Doping Administration Management System

(“ADAMS”) managed by WADA. Pursuant to Article 4.8.8.2 of the UCI TIR, riders (including the Rider) must make quarterly whereabouts filings by the 15<sup>th</sup> day of the month preceding the quarter; and pursuant to Article 4.8.8.3 of the UCI TIR, they must also provide for a 60-minute period each day between 5:00am and 11:00pm when they will be available and accessible for testing at a specified location.

8. This appeal concerns three alleged whereabouts failures as follows:
  - a) A missed test on 28 April 2022 (the “First Whereabouts Failure”).
  - b) A failure to submit whereabouts information by the deadline set for the fourth quarter 2022 (the “Second Whereabouts Failure”).
  - c) A missed test on 17 March 2023 (the “Third Whereabouts Failure”).

**A. The First Whereabouts Failure**

9. On 28 April 2022, a doping control officer (“DCO”) from Clearidium (a private company that provides anti-doping testing services) on behalf of ITA, attempted to conduct an out-of-competition test on the Rider at the location specified by him in Entrena, Spain during the 60-minute time slot that had been specified by the Rider.
10. The Rider was not at that location at that time. It is common ground that the Rider was in Andorra, and that he had failed to update his whereabouts information.
11. On 23 June 2022, the UCI notified the Rider of an apparent missed test on 28 April 2022 and invited the Rider to provide an explanation within seven days.
12. The Rider did not provide a response within that timeframe and the UCI granted the Rider two additional opportunities to do so (on 5 July 2022 and 15 July 2022). The Rider did not respond.
13. On 11 August 2022, the UCI recorded the missed test as a whereabouts failure and notified the Rider that it was satisfied that all the requirements of Article B.2.4 of Annex B to the UCI RMR to declare a missed test were met. In the same letter, the UCI informed the Rider that the missed test would be the first whereabouts failure recorded against him within the rolling period of 12 months referred to in Article B.1.2 of the Annex B to the UCI RMR. It also informed the Rider of his right to request an administrative review of that decision within 10 days and reminded him of the consequences that would apply in case of three recorded whereabouts failures.
14. The Rider did not exercise his right to ask for an administrative review within the set deadline or at all.
15. The First Whereabouts Failure was therefore recorded against the Rider.

**B. The Second Whereabouts Failure**

16. On 12 September 2022 and again on 15 September 2022, the ITA reminded the Rider of the deadline of 15 September 2022 for him to make his whereabouts filing for the fourth quarter of 2022 (commencing 1 October 2022). On 22 September 2022 and 30 September 2022, the ITA again prompted the Rider to provide his whereabouts information and warned him that failure to do so may constitute a filing failure.
17. On 3 October 2022:
  - a) The ITA confirmed to the UCI that the Rider had not submitted his whereabouts filings for the fourth quarter of 2022 by 1 October 2022.
  - b) The UCI notified the Rider that he had not complied with his obligation to provide the UCI with his whereabouts information for the fourth quarter of 2022 within the deadline.
  - c) The UCI invited the Rider: (i) to file his whereabouts information immediately and (ii) to provide his explanations regarding this potential filing failure by 10 October 2022. The UCI also informed the Rider that this filing failure could be the second whereabouts failure recorded against him within a period of 12 months and of the consequences that would apply in the event that three whereabouts failures were recorded in that 12-month period.
  - d) Following the UCI's letter, the Rider submitted his quarterly filing in ADAMS on the same day at 6.41pm.
18. On 21 October 2022 and 15 November 2022 respectively, the UCI granted the Rider two further opportunities to submit his explanation.
19. The Rider did not respond or provide any explanation.
20. On 22 December 2022, the UCI informed the Rider that: (a) a filing failure had been recorded; (b) this was the Rider's second whereabouts failure in a 12-month period; and (c) the Rider had a right to request an administrative review of the decision by 9 January 2023. The UCI also reminded the Rider of the consequences that would apply in case of three recorded whereabouts failures.
21. On 22 December 2022, the Rider asked whether he could still provide an explanation, which he did on 9 January 2023. The Rider, in summary, explained the following: (a) he was not aware that making late whereabouts filings would constitute a whereabouts failure; and (b) his medical condition prevented him from submitting his whereabouts information in a timely way.
22. On 28 March 2023, the UCI informed the Rider that, following a review of the Rider's explanation, the UCI did not consider that there were any new facts or evidence that caused it to modify its decision and confirmed its decision (as communicated on 22 December 2022) to record a filing failure.

23. This was therefore the Second Whereabouts Failure to be recorded against the Rider.

**C. The Third Whereabouts Failure**

24. On 17 March 2023, a DCO from Professional Worldwide Controls (“PWC”, a private company that provides anti-doping testing services) on behalf of ITA, attempted to test the Rider during his specified 60-minute time slot (8:00am – 9:00am) at the Rider’s specified location in Entrena, Spain.

25. The DCO could not locate the Rider in that period at that location and therefore lodged an ‘Unsuccessful Mission Report’ dated 17 March 2023 (the “UM Report”). The DCO recorded that the attempt took place on 17 March 2023 between 8:00am and 9:15am at the Rider’s address in Entrena. Under ‘actions and situation on site’, this was set forth:

*“Once in the whereabouts address, I started calls to 1<sup>st</sup> C, using the main gate intercom.*

*When a neighbor left the building I asked him about Vlad Dascalu, he told me that he knows him but he doesn’t know if he is at home.*

*I was able to enter the building and knock directly on door 1C every 2 minutes for the first 15 minutes.*

*Then I made calls every 15 minutes.*

*There was no response to calls.*

*At the end of one hour Time slot I proceeded to call the cyclist at his mobile phone number.*

*The automated voice system responds to the three calls informing that the dialed telephone is not available at that moment.*

*At 09:15 I leave the address of the whereabouts.”*

26. On 5 April 2023, the UCI notified the Rider of a potential missed test on 17 March 2023. The UCI: (a) invited the Rider to provide his explanations regarding the potential missed test; (b) informed the Rider that this missed test could be his third whereabouts failure within the period of 12 months; and (c) informed the Rider of the consequences if he had three whereabouts failures in 12 months.

27. By letter dated 21 April 2023, the UCI reminded the Rider that he still had not sent any explanation regarding the circumstances that led to the potential missed test on 17 March 2023 and granted him an additional deadline to do so until 28 April 2023.

28. The Rider provided an explanation on 24 April 2023. The Rider stated that he was at home during the time slot and did not have any missed calls. He also stated that he had slept a bit longer that day after a hard day on the bike the day before.

29. On 15 May 2023, the UCI informed the Rider that the UCI had considered his explanation and determined that it was satisfied that all the requirements of Article B.2.4 of the Annex B to the UCI RMR to declare a missed test were met, such that a third whereabouts failure had been recorded against the Rider. The Rider was informed of his right to request an administrative review of the UCI's decision within 10 days and reminded of the consequences of three whereabouts failures. The UCI's letter was delivered to the Rider on 5 June 2023. The Rider did not request an administrative review within 10 days.
30. On 29 June 2023, the Rider sent an email in which he provided further explanation to the UCI. This included: (a) information about his family situation and a health issue; (b) that his parents had left earlier for work during the morning of the third missed test; and (c) that he sleeps with earplugs as he lives in a busy area, which was why he did not hear the ring at the door.
31. This was therefore the Third Whereabouts Failure to be recorded against the Rider.

#### **D. The UCI Results Management**

32. On 18 July 2023, the UCI notified the Rider that he may have committed an ADRV under Article 2.4 of the UCI ADR due to the three whereabouts failures within 12 months and he was invited to submit any additional explanation and supporting documents.
33. On 24 July 2023, the Rider once again provided further information and documents including: (a) an extract from his 'Whoop' app to show the time he woke up on the day of the third missed test (9:16am, this being 16 minutes after the end of the indicated 60-minute time slot); (b) a summary from his gym session at home that morning; (c) a photograph taken after the gym session at 12:02pm; and (d) a screenshot from his telephone showing his call history on the day of the third missed test to show he did not have any missed calls from the DCO. The Rider also explained that his parents had left one hour earlier for work that day and that he slept with earplugs and was still sleeping when the DCO arrived given that he had a hard training session the day before.
34. On 15 September 2023, the UCI confirmed the record of the three whereabouts failures and offered the Rider the following 'Acceptance of Consequences' pursuant to Article 8.2 of the UCI ADR as follows: (a) a 17-month period of ineligibility starting on 18 July 2023; (b) disqualification of all results obtained since the beginning of the period of ineligibility (i.e. 18 July 2023); and (c) reimbursement of the costs of the results management. The UCI also informed the Rider that he was not obliged to accept the proposed consequences and that, if he did not accept, the UCI would initiate disciplinary proceedings.
35. On 15 September 2023, the Rider declined the 'Acceptance of Consequences' and asked for his case to be referred to the UCI ADT (pursuant to the UCI Anti-Doping Tribunal Rules 2021 (the "UCI ADT Rules").

36. On 10 October 2023, the UCI confirmed to the Rider that the case would be referred to the UCI ADT and that he would be provided with the complete copy of the file.

37. On 13 December 2023, the UCI asked the DCO for clarification of his UM Report as follows:

*“The following details were provided by the Doping Control Officer (DCO) on the UA Report:*

*‘[...] I was able to enter the building **and knock directly on door 1C every 2 minutes for the first 15 minutes.***

*Then I made **calls every 15 minutes.***

*There was no response to calls.*

***At the end of one hour Time slot I proceeded to call the cyclist at his mobile phone number.***

*The automated voice system responds to the three calls informing that the dialed telephone is not available at that moment [...].’*

*We would be utmost grateful if the DCO, Mr. Moises Pulido Mendez, could provide the following clarification to the best of his recollection.*

i. *‘I was able to enter the building and **knock** directly on door 1C every 2 minutes for the first 15 minutes.’*

*Could he please confirm that he knocked on the rider’s door only? Or did he also ring a bell?*

ii. *‘Then I made calls every 15 minutes. There was no response to calls.’*

*Could he please clarify whether ‘calls’ refer to ‘phone calls’? Did he knock the door and/or ring of the main intercom again until the end of the attempt?*

iii. *‘Then I made calls **every 15 minutes.** There was no response to calls. **At the end of one hour Time slot I proceeded to call the cyclist at his mobile phone number.**’*

*Could he please clarify whether or not he phoned the rider before the end of the one-hour time slot?*

iv. *Number of attempted phone calls: according to the UA, 3 phone calls attempts took place. This is consistent with the phone records pictures according to which calls took place at 9.01, 9.03 and 9.05. However, according to the UA report the DCO mentioned he ‘[...] made calls every 15 minutes [...]’.*

*Could he i) confirm it, and ii) provide an extract from these attempted calls?*

- v. *Phone calls: based on the picture attached the following number was dialled '642 695 442' without the dialling code '+34'. We assume that the number was correct because the DCO has a phone operator in Spain. Is this correct?*
- vi. *Attached pictures: would it be possible to have them with a proven date and time? [...]” (emphasis added)*
38. On 15 December 2023, PWC replied with the following:
- “1. Only knock on the door identified IC of the whereabouts address.*
- 2. ‘Calls’ refers to the means allowed within the window time for the inside slot tests, meaning knocking on the door, ringing the doorbell and intercom at the main entrance to the building.*
- 3. I did not phoned [sic] the rider before the end of the one hour time slot.*
- 4. There were no “telephone calls” before one hour time slot finished.*
- 5. Yes. that is correct. It is not necessary to dial +34 since my telephone line is from Spain.*
- 6. To date, I have not been able to retrieve the calls made on March from the cell phone’s memory. The time of calls appears in the screenshot provided in the report.*
- I hope that helps. He asked his phone company for the call records and hopes to get them next monday. [...]”*
39. On 22 January 2024, the UCI initiated proceedings before the UCI ADT.
40. On 4 March 2024, the Rider submitted his Statement of Defense, accepting responsibility for the First and Second Whereabouts Failures, but contesting the Third Whereabouts Failure.
41. On 29 April 2024, a hearing took place before the Single Judge, at which the Parties appeared and were represented by their counsel.
42. By her judgment dated 21 May 2024, the Single Judge decided as follows:
- a) The Rider had committed an ADRV in violation of Article 2.4 of the UCI ADR.
- b) The Rider was suspended for a period of ineligibility of 17 months commencing on the day of her judgment.
- c) The Rider was ordered to pay an amount of costs to the UCI in respect of the results management.
43. This is the “Challenged Decision”.



**IV. PROCEEDINGS BEFORE THE CAS**

44. On 20 June 2024, the Rider filed his Statement of Appeal against the Challenged Decision with the CAS Court Office. In his Statement of Appeal, the Rider nominated Mr Fabio Iudica as arbitrator.
45. On 8 July 2024, the UCI nominated Mr Mario Vigna as arbitrator.
46. On 10 July 2024, the Rider filed his Appeal Brief against the Challenged Decision with the CAS Court Office. With his Appeal Brief, the Rider: (a) requested that UCI produce various documents in relation to the accreditation of the DCO and his education, skills and training; and (b) appended a witness statement (undated) from a clinical psychologist in relation to the Rider's medical condition.
47. On 24 July 2024, the CAS Court Office informed the Parties of the formation of the Panel in this appeal as follows: Mr Fabio Iudica; Mr Mario Vigna; and Mr James Drake KC as president.
48. On 15 August 2024, the UCI submitted its Answer. In its Answer, the UCI objected: (a) to the Rider's document requests but nevertheless produced the DCO's certificate of accreditation; and (b) to the admissibility of the witness statement of the clinical psychologist.
49. On 19 August 2024, the CAS Court Office invited the Parties to indicate whether they preferred to have a hearing in this matter or alternatively for the Panel to issue an award based solely on the Parties' written submissions.
50. On 22 August 2024, the UCI responded that its view was that a hearing was only necessary if the Rider wished once again to cross-examine the DCO.
51. On 25 August 2024, the Rider indicated that he did not "*deem it necessary a hearing to be held to cross-examine [the DCO] again*". At the same time, the Rider requested permission to answer to the UCI's objection to the witness statement of the clinical psychologist, to which request, on 2 September 2024, the UCI consented.
52. On 11 September 2024, the Rider filed his submissions in reply to the UCI's objection to the witness statement of the clinical psychologist.
53. On 25 September 2024, the UCI filed its rejoinder to the Rider's reply submissions in respect of the UCI's objection to the witness statement of the clinical psychologist.
54. On 13 and 18 November 2024, the Appellant and the Respondent respectively, signed and returned the Order of Procedure. As recorded in the Order of Procedure, the Parties agreed that the Panel may decide this matter based on the Parties' written submissions.

**V. THE SUBMISSIONS OF THE PARTIES**

55. The Panel has carefully considered the Parties' submissions and sets out below the essential nature of the principal submissions advanced by the Parties.

**A. The Rider's Submissions**

56. The Rider does not challenge, at least with respect to liability, the First or Second Whereabouts Failures. The Rider's overarching position with respect to the Third Whereabouts Failure is that the UCI did not discharge its burden of proof in that, in particular, the UCI did not establish that, during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Rider, short of giving the Rider any advance notice of the test.

*a. Jurisdiction*

57. The CAS has jurisdiction to hear this appeal pursuant to: (a) Article 31.2 of the ADT Rules which, *inter alia*, provides that "*Judgments are subject to appeals lodged with the Court of Arbitration for Sport, in accordance with Article 13 ADR*"; (b) Article 74 of the UCI Constitution which is headed 'Final Instance' and provides that "*The Court of Arbitration for Sport makes a ruling in the last instance*"; and (c) pursuant to the Challenged Decision which stated (at para. 113) that "*This Judgment may be appealed before the CAS pursuant to Article 31.2 of the ADT Rules and Article 74 of the UCI Constitution. The time limit to file the appeal is governed by the provisions in Article 13.2.5 of the UCI ADR*".

*b. Admissibility*

58. The time limit to file the appeal is governed by Article 13.2.5 of the UCI ADR which provides for a period of 30 days from notice of the decision appealed.

59. The Challenged Decision was notified to the Rider on 21 May 2024 (the Rider's Appeal Brief put this date at 2021 but that is plainly a slip of the pen). The Rider lodged his Statement of Appeal with CAS on 20 June 2024, "*thus complying with the 30-day deadline*".

*c. Applicable Law*

60. Pursuant to Article 187.1 of the Swiss Federal Act on Private International Law ("PILA"), Article R58 of the CAS Code, and Article 75 of the UCI Constitution, and given that the Rider filed his petition with the UCI ADT on 22 January 2024, the applicable law for this appeal is that set forth in the UCI ADR.

*d. The First Whereabouts Failure*

61. On 28 April 2022, a DCO went to the Rider's house in Entrena, Spain in order to conduct an out-of-competition test on the Rider at the location specified by him in Entrena, Spain. The DCO did not find the Rider but his sister. As the Rider explained

to the DCO at the time when the DCO telephoned the Rider, the Rider was training in Andorra and had forgotten to update his whereabouts information.

*e. The Second Whereabouts Failure*

62. On 22 September 2022, the ITA reminded the Rider of the deadline of 1 October 2022 for the Rider to file his whereabouts information for the coming quarter.
63. On 3 October 2022:
  - a) The UCI notified the Rider that he had not filed his whereabouts information for the coming quarter before the deadline. He was asked to provide an explanation.
  - b) Immediately after that notification, the Rider filed his whereabouts information for the fourth quarter of 2022.
64. This deadline was set on a date that the Rider was taking part in a race in Spain, the ‘MEN ELITE – CROSS-COUNTRY MARATHON Tierra Estella Epic’.
65. The Rider was only two days late to file his whereabouts information.
66. The UCI informed the Rider that a filing failure would be recorded; this despite the fact that the deadline was on a day when the Rider was competing, the Rider was only two days late, and the Rider was suffering from a medical condition (bulimia).

*f. The Third Whereabouts Failure*

67. On 17 March 2023, a DCO (Mr Pulido Mendez) from PWC “*allegedly attempted*” to test the Rider during the Rider’s 60-minute time slot at the Rider’s home in Entrena, Spain. The Rider’s 60-minute time slot was from 8:00am to 9:00am. The declarations made by Mr Pulido Mendez are unreliable for the following reasons.
  - a) On his UM Report, the DCO said:
    - i. He arrived at 7:55am and “started calls to 1<sup>st</sup> C, using the main gate intercom”.
    - ii. Between 8:05am and 8:10am he entered the building when a neighbour left; and that he “was able to enter the building and knock directly on door 1C every 2 minutes for the first 15 minutes”.
    - iii. At the end of the one-hour time slot the DCO “proceeded to call the cyclist at his mobile phone number. The automated voice system responds to the three calls informing that the dialed telephone is not available at that moment”.
  - b) These declarations are “*particularly confused*”.
  - c) The UCI asked the DCO for clarification of his UM Report and the DCO “firstly clarified that he only knocked on the [Rider’s] door and, in the following answer, he stated that he also rang the doorbell and the main intercom”.

- d) The DCO's statements are "really confused". It "seems unlikely that [the DCO] could have rang at the intercom while he was inside the building. Either he kept ringing at the doorbell or at the intercom, because of the distance between the two doors".
- e) The DCO changed his version of events in his witness statement. In that statement he said that "*I rang the doorbell and, since there was no answer, I also knocked on the door*".
- f) Therefore, the DCO has given three different versions.
- g) Whether or not the DCO stayed at the location for the full 60 minutes is "*left only to his own declarations*".
- h) There is no proof supporting what the DCO did, only a photograph of the Rider's door.
- i) The DCO said that he tried to call the Rider three times after the end of the 60-minute time slot at 9:01, 9:03, and 9:05am. But there is no proof of the date that the DCO made these calls, as confirmed by the DCO in his witness statement. It is "*strange*" that the DCO did not keep trace of these "*alleged calls*", given his obligations under Article B.2.4(c) of the UCI RMR.
- j) In addition, the Rider did not receive any message from his telephone operator that the DCO had tried to call him; and there was no record of any missed calls. "*Therefore, [the DCO] pretended to have called the [Rider] by cancelling the call immediately, i.e., before the first ring, so that in the DCO's phone the call did appear, but it did not in the [Rider's] phone ...*"
- k) The Rider knows that calls to an athlete are not mandatory as per the UCI regulations. "However, should the DCO decide to call the athlete, he shall also prove that those calls were effectively made and shall not use these alleged attempted calls, which were clearly never made, with the sole purpose to create proofs against the [Rider]."
- l) The DCO lives close to Madrid, four hours by car away from Entrena. That means the DCO must have left home before 4:00am and "*woke up even earlier*". Therefore, "*out of tiredness, he chose to quickly end the matter and go back home, probably before the end of the one-hour time slot*".
- m) The DCO said that he left the Rider's location at 9:15am, but there is no record of what took place between 9:05am and 9:15am.
- n) The Rider was at home on 17 March 2023, which is accepted by the UCI. The Rider woke up at 9:16am, according to his Whoop App. It therefore "*seems strange*" that the Rider did not notice the DCO.
- o) The Rider uses earplugs and a sleep mask to ensure uninterrupted sleep, which means that the Rider could not have heard the DCO knocking or ringing. But should

the DCO have maintained his knocking and ringing “*it would be very unlikely that the [Rider] continued not hearing him*”, as he has done in the past for other tests.

68. It therefore “*cannot be considered that [the DCO] have put all the reasonable efforts in place in order to locate the [Rider]*”. The UCI has not demonstrated, to the comfortable satisfaction standard, that “*the DCO has done all that was necessary, under reasonable circumstances in order to try to locate the [Rider] and, therefore, the Third Whereabouts Failure cannot be considered as a missed test*”.

*g. Consequences*

69. The Rider’s primary position is that there is no ADRV. If the Panel decides that the Rider did commit an ADRV, the Rider “*bears a low degree of fault and, therefore, the minimum sanction has to be applied*”.

70. The Single Judge decided that the Rider’s degree of fault was high with respect to the First Whereabouts Failure, high with respect to the Second Whereabouts Failure, and “*fairly low*” with respect to the Third Whereabouts Failure. The Rider does not share the Single Judge’s opinion with respect to his degree of fault for the First and Second Whereabouts Failures. Overall, the Rider bears a low degree of fault and therefore the minimum sanction should be applied.

*h. Relief*

71. The Rider, by his Appeal Brief, sought the following relief:

*“159. The Appellant hereby respectfully requests the Panel to:*

- a. Admit the Appeal filed by Mr. Vlad Dascalu.*
- b. Uphold the Appeal filed by Mr. Vlad Dascalu and set aside the decision rendered by the UCI Anti-doping Tribunal on 21.05.2024, regarding the case ADT 01.2024.*
- c. Declare that Mr. Vlad Dascalu did not commit an ADRV under Article 2.4 of the UCI ADR and that he shall not bear any period of ineligibility.*
- d. In the alternative, should the Panel deem that Mr. Vlad Dascalu committed an ADRV under Article 2.4 of the UCI ADR, declare that Mr. Vlad Dascalu acted with a low degree of fault and, therefore, the minimum period of ineligibility of 12 months, starting from the Appealed Decision, shall be borne by Mr. Vlad Dascalu.*
- e. Order the Respondent to bear the costs for the results management amounting to CHF 2,500.00.*
- f. Order the Respondent to bear all the costs of the proceeding before CAS.*
- g. Order the Respondent to pay to the Appellant a contribution for the legal fees sustained for the proceeding before CAS.”*

**B. The UCI's Submissions**

72. The UCI "*position in a nutshell*" is that, having heard the evidence including in particular the examination and cross-examination of the DCO, the UCI ADT concluded that, with respect to the Third Whereabouts Failure, the DCO did what was reasonable in the circumstances to try to locate the Rider, and that the Panel should confirm the Challenged Decision.

*a. Jurisdiction*

73. The UCI does not challenge jurisdiction.

*b. Admissibility*

74. The UCI does not challenge admissibility.

*c. Applicable Law*

75. The Panel should decide this appeal according to the UCI ADR, and any associated regulations including any relevant WADA International Standards and, subsidiarily, Swiss law.

*d. The First Whereabouts Failure*

76. The First Whereabouts Failure is accepted by the Rider.

*e. The Second Whereabouts Failure*

77. The Second Whereabouts Failure is accepted by the Rider.

*f. The Third Whereabouts Failure*

78. On 17 March 2023, the DCO from PWC attempted to test the Rider at his home in Entrena, Spain during the Rider's designated one-hour time slot from 8:00am to 9:00am. As to what took place on that date and time, the Rider does not dispute that, if the Rider did what he testified he did, then the DCO did what was reasonable in order to locate the Rider. By his witness statement, the DCO testified that: (a) he called the intercom at the entrance of the building when he arrived but there was no response; (b) once at the door of Apartment 1C, the DCO rang the doorbell and knocked on the door; (c) the DCO rang the doorbell and knocked on the door every two minutes for the first 15 minutes and then every 15 minutes until the end of the hour; and (d) he made three telephone calls to the number provided by the Rider in his whereabouts information, with no answer.

79. There is no evidence to the contrary. The only verifiable evidence is that the Rider woke up at 9:16am, which is entirely consistent with the DCO's evidence.

80. The Rider's case is based on the DCO's "*unreliability*" in three ways but each is "*untenable*".

- a) It is said that there is a contradiction between the DCO's UM Report and his evidence but they do not contradict each other, certainly not to such an extent that the DCO is to be regarded as unreliable.
  - b) It is said that the DCO lied about calling the Rider but the DCO's evidence that he called the Rider at 9:01am, 9:03am, and 9:05am is not contradicted by any evidence on the record.
  - c) It is said that the DCO was tired because he left home early that morning for the four-hour drive to the location but that is both speculative and wrong. In fact, the DCO stayed overnight at a location only about a 15-minute drive away from the Rider's residence.
81. The Panel should have regard to the following "*key actions and observations of the DCO*" during his attempt to locate and test the Rider on 17 March 2023:
- a) The DCO is a doctor, who also conducts anti-doping controls in Spain upon instruction by PWC. PWC instructed the DCO to test the Rider on 17 March 2023 during his 60-minute time slot (from 8:00am to 9:00am) at the Rider's home.
  - b) The DCO arrived at or before 8:00am.
  - c) The DCO pressed the intercom several times at the main entrance of the building but the Rider did not answer.
  - d) At that time a neighbour left the building. When asked by the DCO, the neighbour told the DCO that he knew the Rider but that he was unaware whether he was home.
  - e) After being given access into the building by the neighbour, the DCO proceeded to the Rider's apartment (1C). The DCO took a picture of the doors of the Rider's apartment.
  - f) The DCO first rang the doorbell and, since the Rider did not answer, he also knocked on the door.
  - g) The DCO alternated between ringing the doorbell and knocking on the door every two minutes for the 15 first minutes and then every 15 minutes.
  - h) The DCO remained at the door of the Rider's apartment until the end of the Rider's one-hour time slot, i.e. until 9:00 am.
  - i) Very shortly thereafter, namely at 9:01am, 9:03am and 9:05 am, the DCO made three phone calls to the Rider. All three calls received an automatically generated message that the number was not available.
  - j) The DCO then left the site at 9:15am and prepared the UM Report in the afternoon of that same day.

82. Taking all these facts into account, the UCI has demonstrated, to the comfortable satisfaction standard, that the DCO did all that was necessary in order to try to locate the Rider and, therefore, the Third Whereabouts Failure should be considered as a missed test, with the consequence that, with the First and Second Whereabouts Failures, the Rider committed a violation of Article 2.4 of the UCI ADR.

*g. Consequences*

83. The relevant provision to determine the sanctions to be imposed for violations of Article 2.4 of the UCI ADR is Article 10.3.2. In relevant part, it provides that *“the period of ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the Rider’s degree of Fault”*.

84. The UCI contends that the Rider’s level of fault is high with respect to the First Whereabouts Failure, at least relatively high with respect to the Second Whereabouts Failure, and “significantly higher” than fairly low (contrary to the finding of the Single Judge) with respect to the Third Whereabouts Failure, such that his overall level of fault is medium.

85. The sanction of 17 months imposed by the Single Judge is at the lower end of the scale for medium fault *“which is already a conservative assessment, and can thus only be confirmed”*.

*h. Relief*

86. The UCI, by its Answer, sought the following relief:

*“143. Based on the foregoing developments, the UCI respectfully requests the CAS to issue an award:*

- 1. Dismissing Mr. Dascalu’s appeal and rejecting all of the prayers for relief put forward in his Appeal Brief dated 30 July 2024.*
- 2. Confirming the Decision of the UCI Anti-Doping Tribunal in Mr. Dascalu’s anti-doping proceedings, that is:*
  - a. Holding that Mr. Dascalu has committed an Anti-Doping Rule Violation under Article 2.4 UCI ADR.*
  - b. Holding that Mr. Dascalu is suspended for a period of ineligibility of 17 months and that the period of Ineligibility shall commence on the date of the Decision under Appeal, i.e. 21 May 2024.*
  - c. Ordering Mr. Dascalu to pay to the UCI the amount of CHF 2’500.00 for the costs of the results management.*
- 3. Ordering Mr. Dascalu to pay a contribution towards UCI’s legal fees and other expenses.”*



## **VI. JURISDICTION**

87. Article R47.1 of the 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”.*

88. In this case, Article 13.2.1 of the UCI ADR provides as follows: *“In cases arising from participation in an International Event or in cases involving International-Level Riders, the decision may be appealed exclusively to CAS”*. This is complemented by Article 31 of the ADT Rules which provides in relevant part that *“Judgments are subject to appeals lodged with the Court of Arbitration for Sport, in accordance with Article 13 ADR”*.

89. The Parties do not dispute the jurisdiction of the CAS and confirmed it by signing the Order of Procedure.

90. It follows that the CAS has jurisdiction to decide the appeal, and the Panel so confirms.

## **VII. ADMISSIBILITY**

91. Article R49 of the 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. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document”.*

92. According to Article 13.2.5.1 of the UCI ADR:

*“13.2.5.1 Appeals by Parties to Prior Proceedings*

*Unless otherwise specified in these Anti-Doping Rules, appeals under Article 13.2.1 and 13.2.2 from decisions made by the UCI Anti-Doping Tribunal ... shall be filed before CAS within thirty (30) days from the day the appealing party receives notice of the decision being appealed.”*

93. The Challenged Decision was notified to the Rider on 21 May 2024. The Rider lodged his Statement of Appeal with CAS on 20 June 2024 such that it was submitted before the close of the deadline. The appeal therefore complied with the requirements of Article R48 of the CAS Code.

94. The UCI do not dispute the admissibility of this Appeal.

95. In the circumstances, the Panel confirms that the appeal is admissible.

### VIII. APPLICABLE LAW

96. Article R58 of the 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

97. It is common ground that the applicable regulations in these appeals are the UCI ADR. It is also common ground that the UCI ADR expressly incorporate the UCI TIR and the UCI RMR. The Panel will therefore apply those regulations primarily, and the laws of Switzerland (Switzerland being the country in which the UCI is domiciled) shall be applied subsidiarily.

98. The Panel notes that the UCI ADR came into effect on 28 February 2023 and as such were not in place for the First and Second Whereabouts Failures, which occurred before that date, but were for the Third Whereabouts Failure which took place on 17 March 2023. Nonetheless, the Parties proceeded on the basis that the applicable rules were those of the UCI ADR 2023, presumably because there was no substantive difference, and the Panel shall do likewise.

### IX. PROCEDURAL MATTERS

99. As noted above, two procedural matters arose on the submissions: (a) the Rider’s request for documents relating to the DCO’s accreditation, education, skills and experience; and (b) the admissibility of the witness statement of the clinical psychologist appended to his Appeal Brief by the Rider, both of which met objection by the UCI.

100. As to the former, the UCI objected to the request but, nevertheless, produced the DCO’s certificate of accreditation. The Rider did not press the request any further.

101. As to the latter, in its Answer (supplemented by rejoinder submissions), the UCI objected to the report from the Rider’s clinical psychologist. The objection was on the basis that such a report could have and should have been produced during the course of the UCI ADT proceedings but was not, and should therefore be excluded pursuant to Article R57.3 of the CAS Code. In response, the Rider argued that Article R57.3 is not applicable here because it is trumped by the *lex specialis* that is the UCI ADR which provides, in its Article 13, that the scope of the CAS review is not limited to those issues before the first instance body and that CAS should not defer to the decisions of such body.

102. The Panel takes the view that it is unnecessary on this occasion to grapple with the tension between the provisions of Article 13 of the UCI ADR and Article R57.3 of the CAS Code. It is enough for present purposes to say that the discretion to exclude

evidence pursuant to Article R57.3 of the CAS Code is, as the UCI fairly recognised, to be exercised sparingly and with some degree of caution, being the rationale of the relevant provision to avoid evidence being submitted in an abusive way or retained in bad faith by the parties. On this occasion, the Panel considers that the fairest course is to allow the Rider to rely upon the report of the Rider’s clinical psychologist as it relates to the Rider’s eating disorder i.e. bulimia, subject always to whatever weight the Panel decides should be attributed to the report.

## **X. THE MERITS**

103. As noted above:

- a) The Rider contends that the Panel should set aside the Challenged Decision, arguing that the Third Whereabouts Failure should not be brought to account because the essential elements of the missed test were not satisfied and that, accordingly, no ADRV has been committed. In the alternative, the Rider submits that, should the Panel find that he did commit an ADRV, then the Panel should assess the Rider’s degree of fault as low and impose the minimum period of ineligibility of 12 months.
- b) The UCI submits that the Single Judge was right to conclude that there was a missed test on 17 March 2023 and therefore right to conclude that the Rider committed the ADRV as alleged. As to consequences, the UCI contends that the Rider’s overall level of fault was medium and that the 17-month sanction imposed by the Single Judge was at the lower end of the scale for such level and should therefore be confirmed.

104. The Panel must therefore determine whether the Rider is liable for a breach of Article 2.4 of the UCI ADR and, if so, the appropriate consequences.

### **A. The Legal Framework**

105. The Rider has been charged with an ADRV under Article 2.4 of the UCI ADR for three whereabouts failures within 12 months. The Rider does not contest the two (earlier) failures but does contend that there was no missed test on 17 March 2023. It is common ground between the Parties that, if the Panel finds that there was no missed test on 17 March 2023, then no ADRV has been committed by the Rider in that there have not been three whereabouts failures within the required 12 months. What follows therefore, at least with respect to liability, relates to the question of whether or not the requisite elements of a missed test have been made out with respect to events on 17 March 2023.

106. There is no debate amongst the Parties as to who bears the burden of proof of showing that the elements of the ADRV have been satisfied here, nor as to the standard, which undoubtedly is to “*the comfortable satisfaction of the hearing panel*” for UCI, and “*by a balance of probability*” for the Rider, as made plain by Article 3.1 of the UCI ADR, which provides as follows:

*“The UCI shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the UCI has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Rider or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.3 and 3.2.4, the standard of proof shall be by a balance of probability”.*

107. It is therefore for the UCI to prove the necessary elements of the alleged ADRV and to do so to the comfortable satisfaction of the Panel. If the UCI discharges its burden of proof, the Rider will be presumed to have been negligent and he has the burden of rebutting that presumption by establishing, on a balance of probabilities, that he was not negligent (see *infra* at para. 119).

108. The starting point is Article 2.4 of the UCI ADR.

a. *The UCI ADR*

109. Article 2.4 of the UCI ADR provides in relevant part as follows:

**“2. ANTI-DOPING RULE VIOLATIONS**

*The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules have been violated.*

*Riders ... shall be responsible for knowing what constitutes an anti-doping rule violations [sic] and the substances and methods which have been included in the Prohibited List.*

*The following constitute anti-doping rule violations:*

*[...]*

**2.4. Whereabouts Failures by a Rider**

*Any combination of three (3) missed tests and/or filing failures, as defined in the UCI Results Management Regulations, within a 12-month period by a Rider in a Registered Testing Pool”.*

110. It is therefore necessary to look at the definition of “Missed Test” in the UCI RMR.

b. *The UCI RMR*

111. The UCI RMR are based on a mandatory international standard issued by WADA, the International Standard on Results Management. The stated purpose of the UCI RMR is

to set out the core responsibilities of the UCI with respect to results management and to describe certain general principles of results management.

112. The UCI RMR define “Missed Test” (per Article 3.6 entitled ‘*Defined Terms Specific to the UCI Results Management Regulations*’) as follows:

*“Missed Test: A failure by the Rider to be available for Testing at the location and time specified in the 60-minute time slot identified in their Whereabouts Filing for the day in question, in accordance with Article 4.8 of the UCI Testing and Investigations Regulations and Annex B.2 of the UCI Results Management Regulations.”*

113. It is therefore necessary to look further at Article 4.8 of the UCI TIR (below) and Annex B.2 to the UCI RMR (following).

114. Annex B to the UCI RMR is headed “*Results Management for Whereabouts Failures*” and Article B2 “*Requirements for a Potential Filing Failure or Missed Test*”. The stated requirements applicable to a missed test are set forth in Article B.2.4 as follows:

*“B.2.4 A Rider may only be declared to have committed a Missed Test where the Results Management Authority can establish each of the following:*

- a) That when the Rider was given notice that they had been designated for inclusion in a Registered Testing Pool, they were advised that they would be liable for a Missed Test if they were unavailable for Testing during the 60-minute time slot specified in their Whereabouts Filing at the location specified for that time slot;*
- b) That a DCO attempted to test the Rider on a given day in the quarter, during the 60-minute time slot specified in the Rider’s Whereabouts Filing for that day, by visiting the location specified for that time slot;*
- c) That during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Rider, short of giving the Athlete any advance notice of the test;*

*[Comment to Article B.2.4(c): Due to the fact that the making of a telephone call is discretionary rather than mandatory, and is left entirely to the absolute discretion of the Sample Collection Authority, proof that a telephone call was made is not a requisite element of a Missed Test, and the lack of a telephone call does not give the Athlete a defense to the assertion of a Missed Test.]*

- d) That Article B.2.3 does not apply or (if it applies) was complied with; and*
- e) That the Rider’s non-availability for Testing at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the Rider will be presumed to have been negligent upon proof of the matters set out at sub-Articles B.2.4 (a) to (d). That presumption may only be rebutted by the Rider establishing that no negligent behavior on their part caused or contributed to their failure (i) to be available for Testing at such location during such time slot, and (ii)*

*to update their most recent Whereabouts Filing to give notice of a different location where they would instead be available for Testing during a specified 60-minute time slot on the relevant day”.*

115. Article B.2.3 provides as follows:

*“To ensure fairness to the Rider, where an unsuccessful attempt has been made to test a Rider during one of the 60-minute time slots specified in their Whereabouts Filing, any subsequent unsuccessful attempt to test that Rider (by the same or any other Anti-Doping Organization) during one of the 60-minute time slots specified in their Whereabouts Filing may only be counted as a Missed Test (or, if the unsuccessful attempt was because the information filed was insufficient to find the Athlete during the time slot, as a Filing Failure) against that Rider if that subsequent attempt takes place after the Rider has received notice, in accordance with Article B.3.2(d), of the original unsuccessful attempt”.*

c. *The UCI TIR*

116. The UCI TIR is also based on a mandatory international standard issued by WADA called the International Standard for Testing and Investigations. The principal purpose of the UCI TIR, according to the introduction therein, is this:

*“The first purpose of the [UCI TIR] is to plan for intelligent and effective Testing, both In-Competition and Out-of-Competition, and to maintain the integrity, identity and security of the Samples collected from the point the Rider is notified of his/her selection for Testing, to the point the Samples are delivered to the Laboratory for analysis. To that end, the [UCI TIR] (including its Annexes) establishes mandatory standards for Test distribution planning (including collection and use of Rider whereabouts information), notification of Riders, preparing for and conducting Sample collection, security/post-Test administration of Samples and documentation, and transport of Samples to Laboratories for analysis.”*

117. As noted, the definition of missed test as set forth in the UCI RMR cross-refers to Article 4.8 of the UCI TIR. Article 4.8 of the UCI TIR is headed “*Collecting Whereabouts Information*”. In relevant part, it provides as follows:

*“4.8.6 UCI Registered Testing Pool ...*

*4.8.6.2 A Rider who is in a Registered Testing Pool shall:*

a) *Make quarterly Whereabouts Filings that provide accurate and complete information about the Rider’s whereabouts during the forthcoming quarter, including identifying where they will be living, training and competing during that quarter, and to update those Whereabouts Filings where necessary, so that they can be located for Testing during that quarter at the times and locations specified in the relevant Whereabouts Filing, as specified in Article 4.8.8. A failure to do so may be declared a Filing Failure; and*

b) *Specify in their Whereabouts Filings, for each day in the forthcoming quarter, one specific 60-minute time slot where they will be available at a specific location for Testing, as specified in Article 4.8.8.3. This does not limit in any way the Rider's UCI ADR Article 5.2 obligation to submit to Testing at any time and place upon request by an Anti-Doping Organization with authority to conduct Testing on them. Nor does it limit their obligation to provide the information specified in Article 4.8.8.2 as to their whereabouts outside that 60-minute time slot. However, if the Athlete is not available for Testing at such location during the 60-minute time slot specified for that day in their Whereabouts Filing, that failure may be declared a Missed Test.*

*[Comment to 4.8.6.2 (b): The purpose of the 60-minute time slot is to strike a balance between the need to locate the Athlete for Testing and the impracticality and unfairness of making Riders potentially accountable for a Missed Test every time they depart from their previously-declared routine.]”*

[...]

#### *4.8.8 Whereabouts Filing for Riders in a Registered Testing Pool*

[...]

*4.8.8.2 Riders in the UCI Registered Testing Pool shall file, by the 15th of the month preceding the quarter (i.e. 15 December, 15 March, 15 June, 15 September), a Whereabouts Filing that contains at least the following information:*

*[Comment to 4.8.8.2: To facilitate planning and readiness for Testing on the first day of the quarter (as countenanced in Article 4.8.8.2), Anti-Doping Organizations may require that whereabouts information is submitted on a date which is the 15th of the month preceding the quarter. However, no Consequences for a failure to submit prior to the first day of the quarter shall apply.]*

*4.8.8.3 ... the Whereabouts Filing must also include, for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. each day where the Rider will be available and accessible for Testing at a specific location.*

[...]

*[Comment to 4.8.8.3: The Rider can choose which 60-minute time slot between 5 a.m. and 11 p.m. to use for this purpose, provided that during the time slot in question they are somewhere accessible by the DCO. It could be the Rider's place of residence, training or Competition, or it could be another location (e.g., work or school). A Rider is entitled to specify a 60-minute time slot during which they will be at a hotel, apartment building, gated community or other location where access to the Rider is obtained via a front desk, or security guard. It is up to the Rider to ensure accessibility to their selected 60-minute location with no advance warning to the Athlete. In addition, a Rider may specify a time slot when they are taking part in a Team Activity. In either case,*

*however, any failure to be accessible and available for Testing at the specified location during the specified time slot shall be pursued as a Missed Test.].*

[...]

*4.8.8.4 It is the Rider’s responsibility to ensure that they provide all of the information required in a Whereabouts Filing [...] accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Rider for Testing on any given day in the quarter at the times and locations specified by the Rider in their Whereabouts Filing for that day, including but not limited to during the 60-minute time slot specified for that day in the Whereabouts Filing.*

- (a) *More specifically, the Rider shall provide sufficient information to enable the DCO to find the location, to gain access to the location, and to find the Rider at the location with no advance notice to the Rider. A failure to do so may be pursued as a Filing Failure and/or (if the circumstances so warrant) as evasion of Sample collection under UCI ADR Article 2.3, and/or Tampering or Attempted Tampering with Doping Control under UCI ADR Article 2.5. In any event, the Anti-Doping Organization shall consider Target Testing of the Rider.*

*[Comment to 4.8.8.4 (a): For example, declarations such as “riding in the Black Forest” are insufficient and are likely to result in a Filing Failure. Similarly, specifying a location that the DCO cannot access (e.g., a “restricted-access” building or area) is likely to result in a Filing Failure. The Anti-Doping Organization may be able to determine the insufficiency of the information from the Whereabouts Filing itself, or alternatively it may only discover the insufficiency of the information when it attempts to test the Rider and is unable to locate them. In either case, the matter should be pursued as an apparent Filing Failure, and/or (where the circumstances warrant) as an evasion of Sample collection under UCI ADR Article 2.3, and/or as Tampering or Attempting to Tamper with Doping Control under UCI ADR Article 2.5. Further information on Whereabouts Filing requirements can be found in WADA’s Guidelines for Implementing an Effective Testing Program. Where a Rider does not know precisely what their whereabouts will be at all times during the forthcoming quarter, they must provide their best information, based on where they expect to be at the relevant times, and then update that information as necessary in accordance with Article 4.8.8.5.]*

- b) *If the Rider is tested during the 60-minute time slot, the Athlete must remain with the DCO until the Sample collection has been completed, even if this takes longer than the 60-minute time slot. A failure to do so shall be pursued as an apparent violation of UCI ADR Article 2.3 (refusal or failure to submit to Sample collection).*
- c) *If the Rider is not available for Testing at the beginning of the 60-minute time slot but becomes available for Testing later on in the 60-minute time slot, the DCO should collect the Sample and should not process the attempt as an unsuccessful attempt to test but should report the details of the delay in availability of the Rider. Any pattern of behaviour of this type should be investigated as a possible anti-doping rule violation of evading Sample collection under UCI ADR Article 2.3 or*



*UCI ADR Article 2.5. It may also prompt Target Testing of the Athlete. If a Rider is not available for Testing during their specified 60-minute time slot at the location specified for that time slot for that day, they will be liable for a Missed Test even if they are located later that day and a Sample is successfully collected from them.*

- d) *Once the DCO has arrived at the location specified for the 60-minute time slot, if the Rider cannot be located immediately, then the DCO should remain at that location for whatever time is left of the 60-minute time slot and during that remaining time they should do what is reasonable in the circumstances to try to locate the Rider.*

*[Comment to 4.8.8.4 (d): Where a Rider has not been located despite the DCO's reasonable efforts, and there are only five (5) minutes left within the 60-minute time slot, then as a last resort the DCO may (but does not have to) telephone the Rider (assuming they have provided their telephone number in their Whereabouts Filing) to see if they are at the specified location. If the Rider answers the DCO's call and is available at (or in the immediate vicinity of) the location for immediate Testing (i.e., within the 60-minute time slot), then the DCO should wait for the Rider and should collect the Sample from them as normal. However, the DCO should also make a careful note of all the circumstances, so that it can be decided if any further investigation should be conducted. In particular, the DCO should make a note of any facts suggesting that there could have been Tampering or manipulation of the Rider's urine or blood in the time that elapsed between the phone call and the Sample collection. If the Rider answers the DCO's call and is not at the specified location or in the immediate vicinity, and so cannot make himself/herself available for Testing within the 60-minute time slot, the DCO should file an Unsuccessful Attempt Report.]*

[...]

#### *4.8.9 Availability for Testing*

*4.8.9.1 Every Rider must submit to Testing at any time and place upon request by an Anti-Doping Organization with authority to conduct Testing. In addition, a Rider in a Registered Testing Pool must specifically be present and available for Testing on any given day during the 60-minute time slot specified for that day in their Whereabouts Filing, at the location that the Rider has specified for that time slot.*

*[Comment to 4.8.9.1: For Testing to be effective in deterring and detecting cheating, it should be as unpredictable as possible. Therefore, the intent behind the 60-minute time slot is not to limit Testing to that period, or to create a 'default' period for Testing, but rather:*

- a) *To make it very clear when an unsuccessful attempt to test a Rider will count as a Missed Test;*

- b) *To guarantee that the Rider can be found, and a Sample can be collected, at least once per day (which should deter doping, or, as a minimum, make it far more difficult);*
- c) *To increase the reliability of the rest of the whereabouts information provided by the Rider, and so to assist the Anti-Doping Organization in locating the Rider for Testing outside the 60-minute time slot. The 60-minute time slot “anchors” the Rider to a certain location for a particular day. Combined with the information that the Rider must provide as to where they are staying overnight, training, competing and conducting other ‘regular’ activities during that day, the Anti-Doping Organization should be able to locate the Rider for Testing outside the 60-minute time slot; and*
- d) *To generate useful anti-doping intelligence, e.g., if the Rider regularly specifies time slots with large gaps between them, and/or changes his time slot and/or location at the last minute. Such intelligence can be relied upon as a basis for the Target Testing of such Rider.]”*

118. The Panel also notes the following definition of ‘Unsuccessful Attempt Report’ set forth in the UCI TIR:

*“Unsuccessful Attempt Report: A detailed report of an unsuccessful attempt to collect a Sample from a Rider in a Registered Testing Pool or Testing pool setting out the date of the attempt, the location visited, the exact arrival and departure times at the location, the steps taken at the location to try to find the Rider (including details of any contact made with third parties), and any other relevant details about the attempt.”*

## **B. The Issues**

119. It follows from the language of Article B.2.4 of Annex B to the UCI RMR (set forth above) that a missed test may only be confirmed if the UCI can establish, to the comfortable satisfaction of the Panel, the following cumulative requirements with respect to the events of 17 March 2023:
- a) One, when placed in the RTP, the Rider was informed that his unavailability for testing during the 60-minute time slot and at the specified location would constitute a missed test.
  - b) Two, that a DCO attempted to test the Rider during the 60-minute time slot at the specified location.
  - c) Three, that during that specified 60-minute time slot the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Rider, short of giving the Rider any advance notice of the test.
  - d) Four, that the Rider was notified previously of the earlier unsuccessful attempts.

- e) Five, the Rider's failure to be available for testing was at least negligent (as to which a rebuttable presumption of negligence on the part of the Rider will arise if UCI is able to establish (a) through (d)).
120. In this appeal there is no issue in relation to those requirements at sub-paragraphs (a), (b), (d) or (e). The only element in issue is that at (c). As a consequence, it is for the Panel to decide the following question: During that specified 60-minute time slot between 8:00am and 9:00am, did the DCO do what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Rider, short of giving the Rider any advance notice of the test?
121. The resolution of this question turns upon: (a) as a matter of fact, a determination of what took place at the Rider's place of residence on 17 March 2023 which, of course, is based upon the evidence before the Panel; and (b) as a matter of law, whether what the DCO did at the Rider's place of residence on that date was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Rider, short of giving the Rider any advance notice of the test.

***B.1 As to the facts:***

122. The evidence adduced by the Parties in these proceedings is comprised of the following elements:
- a) The UM Report prepared by the DCO. It is dated 17 March 2023, i.e., the day of the test attempt, together with the clarification provided by the DCO upon PWC's request.
- b) The photographs taken by the DCO of the entrance to the Rider's building and the doorway to his apartment, together with a screenshot of the DCO's mobile telephone showing the three calls made by him to the Rider at 9:01am, 9:03am and 9:05am on 17 March 2023.
- c) The DCO provided a witness statement dated 9 April 2024.
- d) At the hearing before the UCI ADT, the DCO gave evidence and was cross-examined.

***The UM Report***

123. The UM Report was prepared by the DCO on 17 March 2023. It is set out in detail above (see *supra* at para. 25). The Panel notes the following:
- a) The address specified by the Rider was his flat, Apartment 1C, Plaza del Coso, 11B, Entrena, 26375, La Rioja, Spain.
- b) The DCO's attempt to locate the Rider took place within the 60-minute time slot at the Rider's specified location. Indeed, the DCO recorded that he remained at the location until 9:15am.

- c) When the DCO arrived at the location, he “*started calls to 1<sup>st</sup> C, using the main gate intercom.*” It is clear from this that the DCO pressed the intercom button for Apartment 1C situated at the main door to the apartment building.
- d) The DCO was then able to enter the apartment building itself when a neighbour left via the main door to the building. The DCO asked the person about the Rider and the person told him that he did not know whether he was at home.
- e) Once inside the apartment building, the DCO knocked directly on the door to Apartment 1C “*every 2 minutes for the first 15 minutes*”.
- f) The DCO then “*made calls*” every 15 minutes, by which he meant (as clarified) knocking on the door and ringing the doorbell of Apartment 1C every 15 minutes for the remainder of the hour. In this regard, the overall evidence suggests (as also accepted by the Single Judge) that on seeing the doorbell next to the door, he rang it as he would normally do when arriving at a door and seeking to make contact with a rider to locate them for a test.
- g) There was no response on the part of the Rider.
- h) At the end of the 60-minute time slot, the DCO made three telephone calls to the Rider (to the telephone number provided by the Rider in his whereabouts information). There was no response to the calls by the Rider; instead, the DCO received an automated recording saying that the person being called was not available.
- i) The DCO left the Rider’s specified location at 9:15am.
- j) The DCO completed the UM Report the same day.

### ***The Photographs and Screenshot***

- 124. Either appended to the UA Report or provided subsequently (it is not clear which, though it is not material), were: (a) photographs taken by the DCO of the entrance to the Rider’s building and the doorway of Apartment 1C; and (b) a screenshot of his mobile telephone showing the three calls made by him to the Rider at 9:01am, 9:03am and 9:05am on 17 March 2023.
- 125. The photographs illustrate: (a) the main door to the apartment building and the bank of intercom buzzers to the various apartments within, and (b) the single door to the Rider’s apartment. It is common ground that these photographs were taken at 7.55am on 17 March 2023 and that they are of the Rider’s building and apartment. It is enough to say that they corroborate the DCO’s evidence of what he did on the day and when he did it.
- 126. As for the screenshot, this indeed shows the three calls from the DCO’s mobile telephone to the Rider’s number, thereby also providing corroborative evidence of the steps taken by the DCO on 17 March 2023.

***The DCO's Witness Statement***

127. The DCO gave a witness statement for the purposes of the UCI ADT hearing, which was relied upon before the Panel. It is dated 9 April 2024. The Panel notes the following salient points:
- a) The DCO is a medical doctor and cardiologist. He is 66 years old and lives in Aranjuez, Spain. He has been working as a doping control officer since 2015 and has conducted around 3,200 doping controls.
  - b) On 17 March 2023, the DCO arrived at the Rider's specified address, an apartment building, at 8:00am. He attempted to contact the Rider via the intercom at the main entrance, pressing the button for Apartment 1C. He pressed the button several times; there was no answer.
  - c) While he was waiting at the main entrance, a neighbour came out of the building. The DCO asked the neighbour if he knew the Rider. The neighbour said that he did "*but was not sure if he was at home*". The neighbour held the main door open for the DCO so that he could enter the building.
  - d) The DCO then made his way to Apartment 1C on the first floor. He put the time at 8:05am or 8:10am. The DCO then rang the doorbell. There was no answer. He then knocked on the door. Throughout the one-hour window, the DCO "*alternated between ringing the doorbell and knocking on the door. I did so every 2 minutes for the first 15 minutes and then every 15 minutes*".
  - e) At the end of the 60-minute window, "*very shortly after 9 am*", the DCO made three telephone calls to the Rider to the number identified by the Rider in his whereabouts information. He called at 9:01am, 9:03am and at 9:05am. "*All three calls received an automatically generated message indicated [sic] something to the effect that the dialled telephone number was not available at the moment.*"
  - f) The DCO left at 9:15am and he prepared the UM Report that afternoon.

***The DCO's Testimony***

128. The DCO also gave evidence and was cross-examined at the hearing before the UCI ADT. The Panel has listened to his evidence and notes the following salient elements:
- a) He has been accredited since 2015, which accreditation has been renewed approximately every two years.
  - b) He has done training with the Spanish doping agency and with PWC (at an annual meeting and on one other occasion throughout the year).
  - c) He is accredited by the Spanish agency, by PWC and by the ITA.

- d) He does both in- and out-of-competition controls. He conducts doping tests “*almost every day*”. He gets paid for his work and gets paid a premium if the test is successful.
- e) On 17 March 2023, he arrived at the address before 8:00am and was at the main door to the apartment building at 8:00am.
- f) He took photographs of the location, time-stamped at 7:55am.
- g) At the main door of the apartment building, the DCO pressed the intercom button for Apartment 1C several times but does not recall how many; there was no answer. A few minutes later, he encountered a neighbour leaving the building and asked him if he knew the Rider. The neighbour said that he did, but he was not sure whether the Rider was at home. He let the DCO inside the building.
- h) When he first arrived at the door of Apartment 1C, the DCO rang the doorbell. He did not write that in the report but he did so. He said that he made “*calls*” by which he meant both ringing the doorbell and knocking on the door. There was no answer to the doorbell, so he knocked on the door or rang the doorbell every two minutes, though he was not sure how many times. That was for the first 15 minutes.
- i) For the remainder of the hour, he rang the doorbell and/or knocked every 15 minutes. This is what he meant in his UM Report by saying “*then I made calls every 15 minutes*”.
- j) He accepted that he did not provide the precise time for each knock or ring when he completed the UM Report. He thought that the information was sufficient to describe his mission. He also accepted that in his witness statement he used the word ‘doorbell’ three times while he did not use it at all in the UM Report. He rang the doorbell “*so many times*”. He could not say how often he did so but “*many times*”.

### ***The Rider’s Evidence***

- 129. The Rider provided explanations in relation to the events of 17 March 2023 (see *supra* at paras 30 and 33). The Rider said that he was at home, sleeping with earplugs and an eye mask, in order to allow him to get a good night’s sleep. Also, the slot chosen coincides with a time when his parents were at home but, for that week, their work schedule had changed and they were required to leave the apartment earlier.
- 130. The Rider also provided a witness statement dated 25 March 2024 wherein he stated as follows:

*“During the one-hour window established in ADAMS, no one rang the doorbell placed on the left side of the 1C door, which I can hear from my room.*

*Initially, I thought that I did not hear the doorbell because I usually sleep with earplugs for having an effective rest, although this habit has never prevented me from hearing Doping Control Officers when ringing my doorbell for no advance notice testing.*

*After having access to the complete UCI's File, I was able to notice that in this case (alleged missed test on 17 March 2023), the Doping Control Officer was actually asked by the UCI on 13 December 2023 if 'could he please confirm that he knocked on the rider's door only? Or did he also ring a bell?', when he confirmed that he did 'only knock on the door identified 1C of the whereabouts address', the reason why I did not hear anyone ringing my doorbell between 08:00 and 09:00 am.*

*As a direct witness of the events occurred on 17 March 2023 between 08:00 and 09:00 am, I can confirm in front of the Single Judge that Mr. Moisés Pulido (DCO) did not ring the doorbell, so the test commissioned by the UCI was not carried out despite of me being available and accessible to him." (emphasis in original)*

### ***The Panel's Findings***

131. The Panel has carefully considered the evidence. The Panel agrees with the criticism levelled at the DCO (and the UCI) with respect to the lack of detail included in the UM Report. It is obvious that it is of crucial importance to all concerned – the federation, the rider / athlete, the disciplinary panels, but most of all to the rider / athlete whose fate is in the balance – that the facts, matters and circumstances surrounding a missed test are recorded carefully and in adequate detail. Here they were not and it took subsequent clarification in correspondence and by way of witness statement from the DCO to understand what happened on the day in question. The whereabouts regime places heavy obligations on the rider / athlete, with dire consequences if those obligations are not complied with in any way. It is only right that the governing bodies and testing agencies should be held to a high standard in this respect, with the knowledge that, if their officers fail to provide a clear and detailed account of the events surrounding a missed test, the rider / athlete will be entitled to the benefit of the burden of proof.
132. Having said all of that, and having considered the UM Report, its clarification, the DCO's witness statement, and his evidence before the UCI ADT, the Panel is satisfied that the following represents a fair account of what took place on the morning of 17 March 2023:
  - a) The DCO arrived at the specified location shortly before the beginning of the 60-minute time slot, and before 7:55am, that being the time he took the photographs of the location.
  - b) At 8:00am, the DCO pressed the intercom buzzer for Apartment 1C at the main door to the apartment building. He did so for a few minutes but received no answer. He then encountered a neighbour leaving the building, of whom he asked whether he knew the Rider. In response, the neighbour told him that he did, and that he was not sure whether the Rider was home. The neighbour held the door of the apartment building ajar for the DCO, who then entered the building.
  - c) The DCO made his way to Apartment 1C on the first floor. He arrived there between 8:05am and 8:10am. As soon as he arrived there, he pressed the doorbell. There was no answer. He then knocked on the door and followed, for the next 15 minutes or

so, by knocking on the door and/or ringing the doorbell multiple times. There was no answer.

- d) For the remainder of the 60-minute slot, he knocked on the door and/or rang the doorbell every 15 minutes.
- e) He remained at the premises until after the conclusion of the hour, leaving at 9:05am. In the last five minutes of that time, he placed three calls to the Rider, each of which was met with an automated message saying that the Rider was not available.
- f) There is nothing in what is said by the Rider to displace any of this evidence; all that the Rider says is that he was at home asleep, wearing an eye-mask and earplugs. But he does not and cannot contest the DCO's evidence as to what the DCO did on the day.

***B.2 As to the law:***

- 133. The question therefore becomes, as a matter of law, by those attempts did the DCO do what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Rider, short of giving him any advance notice of the test?
- 134. The Panel was taken to various cases including in particular CAS 2020/A/7526 & 7559 that speak to the issue of reasonable attempts by DCOs, but none, of course, was faced with the same factual circumstances as in this appeal. Having said that, what the cases do establish is that the reasonableness of the actions of the DCO are to be assessed objectively, without reference to the particular situation of the rider/ athlete. See, e.g., CAS 2020/A/7526 & 7559 at paras 127-128 (citations omitted):

*“127. In the Panel’s view, the whole system hinges on the premise that athletes have the duty to be diligent at filing Whereabouts Information that is accurate enough to allow DCOs to find them without any particular effort. In this respect, Article I.3.4 ISTI is unequivocal: ‘It is the Athlete’s responsibility to ensure that he/she provides all of the information required in a Whereabouts Filing accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in his/her Whereabouts Filing for that day, including but not limited to during the 60-minute time slot specified for that day in the Whereabouts Filing. More specifically, the Athlete must provide sufficient information to enable the DCO to find the location, to gain access to the location, and to find the Athlete at the location’.*

*128. With that in mind, the Panel is of the opinion that the evaluation of the reasonableness of a DCO’s attempt must be made looking objectively at the steps taken by the DCO in the specific location chosen by the athlete, in light of the information provided by the athlete and in connection with said athlete’s duty of diligence in foreseeing and reducing potential difficulties. In this respect, the personal situation of the concerned athlete and/or the actual presence and availability at the specified location is irrelevant”.*



135. Looking at the matter objectively then, the Panel is unhesitatingly of the view that the facts and matters set forth above as to what took place on 17 March 2023 (as to which there is no real dispute) demonstrate that the DCO did indeed make a reasonable attempt in the circumstances to try to locate the Rider, short of giving him any advance notice of the test. Quite what else the DCO was expected to do, the Panel does not know.
136. The calls made after 9.00am (i.e. after the 60-minute time slot) were last-ditch attempts to contact the Rider. The Rider argued that he never received the 3 phone calls, which is also consistent with the fact that the calls did not connect and the DCO heard an automatic message to the effect that the number was not available. Consequently, the reference to “calls” during the 60-minute time slot in the UM Report clearly referred to the appropriate methods (intercom, knocking and ringing the doorbell), to try to locate the Rider. In any case, the Comment to Article B.2.4(c) of Annex B to the UCI RMR is clear that the making of a phone call is not mandatory (see also CAS 2014/A/2, at para. 86; CAS 2020/A/7528, at paras. 158 and 163).
137. Moreover, the Rider’s submission that the DCO, out of tiredness caused by his early start, might have chosen to end the attempt quickly and go home (see *supra* at para. 67), is, in the Panel’s view, entirely speculative and contradicted by the evidence that the DCO stayed overnight at a location about a 15-minute drive away from the Rider’s residence.
138. Accordingly, the Panel is of the view that the DCO did do what was reasonable in the circumstances to try to locate the Rider during the specified 60-minute time slot, with the consequence that the UCI has established the requirement set forth at Article B.2.4(c) of Annex B to the UCI RMR in respect of the events of 17 March 2023.
139. It must follow therefore that in circumstances where the Rider does not contest either the First or the Second Whereabouts Failure, the UCI has established to the comfortable satisfaction of the Panel, that the Rider has committed a violation of Article 2.4 of the UCI ADR by reason of a combination of three missed tests and/or filing failures, as defined in the UCI RMR, within a 12-month period by the Rider (he being in the UCI RTP).

### **C. The Consequences**

140. What consequences follow?
141. As to the appropriate period of ineligibility, the relevant provision is Article 5.5.1.2 of the UCI ADR, which states that “*Riders included in the UCI Registered Testing Pool shall be subject to Consequences for Article 2.4 violations (Whereabouts Failure by a Rider) as provided in Article 10.3.2.*”.
142. In turn, the relevant part in Article 10.3.2 of the UCI ADR provides that “*the period of ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the Rider’s degree of Fault*”.
143. The Panel is therefore required to form an assessment of the Rider’s degree of fault.

144. Fault is defined in Appendix 1 to the UCI ADR as follows:

*“Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Rider’s or other Person’s degree of Fault include, for example, the Rider’s or other Person’s experience, whether the Rider or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Rider and the level of care and investigation exercised by the Rider in relation to what should have been the perceived level of risk. In assessing the Rider’s or other Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Rider’s or other Person’s departure from the expected standard of behavior. Thus, for example, the fact that a Rider would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Rider only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.*

*[Comment to Fault: The criteria for assessing a Rider’s degree of Fault is the same under all Articles where Fault is to be considered. However, under Article 10.6.2, no reduction of sanction is appropriate unless, when the degree of Fault is assessed, the conclusion is that No Significant Fault or Negligence on the part of the Rider or other Person was involved.]”*

145. In light of the various submissions and evidence on file, with respect to the Rider’s degree of fault the Panel observes as follows: (a) the obligation is on the Rider to be present and available. The Rider himself chose the timing of the 60-minute time slot and elected to specify a time early in the morning; (b) considering the Rider was part of the UCI RTP for over two years, he was reasonably experienced and cognizant of the stringent requirements to be met by an athlete of his level; (c) the Rider’s own evidence that he slept with earplugs and an eye mask demonstrates a lack of care on his part; (d) the Rider did not take any steps to ensure that he would hear the DCO (particularly in light of the fact that his parents, who could wake him, were not at home), such as setting an alarm at the start of the 60-minute time slot or asking his parents to wake him before they left; and finally; (e) given that he already had committed two whereabouts failure and was aware that a third could result in an ADRV, the Rider should have been on high alert and taken appropriate steps to avoid a missed test (CAS 2020/A/7528; at para. 184; CAS 2022/A/9033, at para. 149).

146. Lastly, the Panel notes that, pursuant to Articles 21.1.1 and 21.1.2 of the UCI ADR, the Rider is deemed to be aware of and to comply with the UCI ADR, the UCI TIR, and UCI RMR, as well as to be available for sample collection at all times. In any event, the fact that the Rider’s parents were not at home does not absolve him of liability, as the responsibility is always on the Rider (CAS 2022/A/9033, at para. 148; CAS 2015/A/4210, at para. 5.8).

147. In order to evaluate how much weight should be accorded to the Rider’s degree of fault in terms of sanctions, the Panel recalls the guidelines set in CAS 2020/A/7528 – which were also applied in CAS 2021/A/8529 and SR/092/2020 – which considered how the levels of fault and appropriate periods of ineligibility should be adapted to cases

involving ADRVs based on whereabouts failures. The levels of fault were categorized as follows: (a) “high” (20-24 months, with a midpoint of 22 months); (b) “medium” (16-20 months, with a midpoint of 18 months); and (c) “low” (12-16 months, with a midpoint of 14 months).

148. In this regard, the Panel notes that the Single Judge took the view that the level of fault for the First Whereabouts Failure was “high” (given that the Rider forgot to update his ADAMS) and “relatively high” for the Second Whereabouts Failure (considering that the Rider had been provided with several reminders). In contrast, the level of fault for the Third Whereabouts Failure was assessed as “low” (given that the Rider was in the specified location but simply did not hear the DCO at his door). Accordingly, the Single Judge saw fit to overall concluded that the Rider bears a level of fault across the First, Second and Third Whereabouts Failures that may be characterised as “medium” which, bearing in mind the scale described in CAS 2020/A/7528, generated a range of between 16 and 20 months with a mid-point of 18 months.
149. The Panel regards that both a sensible and fair calibration of the Rider’s degree of fault in this matter and that the imposition of a 17-month period of ineligibility is appropriate in consideration of all the facts and circumstances. The Panel therefore takes the view that this period of ineligibility should be confirmed.
150. As to further sanctions, the UCI seeks none.

## **XI. COSTS**

(...).

## **ON THESE GROUNDS**

**The Court of Arbitration for Sport hereby rules that:**

1. The Appeal filed by Vlad Dascalu on 20 June 2024 against the decision issued on 21 May 2024 by the Anti-Doping Tribunal of Union Cycliste Internationale (UCI) is denied.
2. The decision issued on 21 May 2024 by the Anti-Doping Tribunal of Union Cycliste Internationale (UCI) is confirmed.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland  
Date: 13 March 2025

## **THE COURT OF ARBITRATION FOR SPORT**

James Drake  
President of the Panel

Fabio Iudica  
Arbitrator

Mario Vigna  
Arbitrator