
SETTLEMENT AGREEMENT

Fédération Internationale de Motocyclisme, 11 Route de Suisse, 1295 Mies, Switzerland
(the “**FIM**”)

and

Jeroni Fajardo, born on 5 April 1985, residing at Carre Montseny 5, Fornells de la Selva
17458, Spain (the “**Rider**”)



This Settlement Agreement (the “**Agreement**”) between the FIM and the Rider describes the terms upon which the parties are willing to settle the case of the Adverse Analytical Finding of Heptaminol in the Rider’s body.

The parties intend this Agreement to be a legally binding document.

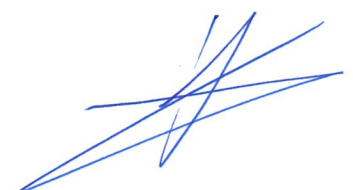
WHEREAS:

- (a) The Rider is a trial rider affiliated to the **Spanish Motorcycling Federation (REAL FEDERACIÓN MOTOCICLISTA ESPAÑOLA)**.
- (b) The Rider underwent an in-competition doping control on 16 September 2018 in Arco di Trento, Italy, during the FIM Trial World Championship.
- (c) The analysis of the A sample by the WADA-accredited laboratory in Kreischa, Germany, revealed the presence of heptaminol.
- (d) Heptaminol is a specified stimulant that is prohibited in-competition under S6b of the 2018 WADA Prohibited List (Stimulants).
- (e) The adverse analytical finding was notified to the Rider on 23 January 2019.
- (f) The Rider did not accept a voluntary Provisional Suspension.
- (g) By the letter dated 28 January 2019, the Rider informed the FIM that he wished to receive a copy of a laboratory documentation package (“LDP”) and the Rider also asked the FIM for the suspension of the time limit to request the opening and analysis of the B sample.
- (h) By the letter dated 30 January 2019, the FIM informed the Rider that the FIM agreed to delay the date for the possible analysis of the B sample after the receipt of the LDP and that he had to bear the costs of the LDP.
- (i) By the letter dated 31 January 2019, the Rider informed the FIM that he disagreed to the fact that the costs for the LDP had to be borne by the Rider.
- (j) By the letter dated 26 February 2019, the LDP was sent to the Rider. On page 15, the LDP contained an additional comment which read: *“The presence of heptaminol in a urine sample may also be the result of the ingestion of octodrine, a related substance which is no longer marketed as pharmaceutical product but could recently be found as*

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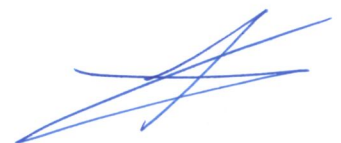


- (o) Pursuant to Art. 2.1.3 of the FIM ADC, excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Rider's Sample shall constitute an anti-doping rule violation.
- (p) Pursuant to Art. 3.1 of the FIM ADC, FIM shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether FIM 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, the standard of proof shall be by a balance of probability.
- (q) Pursuant to Art. 10.2.1 and 10.2.2 of the FIM ADC, The period of Ineligibility shall be four years where: 10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Rider or other Person can establish that the anti-doping rule violation was not intentional. 10.2.1.2 The anti-doping rule violation involves a Specified Substance and FIM can establish that the anti-doping rule violation was intentional. 10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.
- (r) Pursuant to Art. 10.5.1.2 of the FIM ADC, In cases where the Rider or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance 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 years Ineligibility, depending on the Rider's or other Person's degree of Fault.
- (s) Pursuant to Art. 7.10.1 of the FIM ADC, At any time during the results management process the Rider or other Person may agree with FIM Administration on the Consequences which are either mandated by the Code or which the FIM Administration considers appropriate where discretion as to Consequences exists under these Rules and the Code. The agreement shall state the full reasons for any period of Ineligibility agreed upon, including (if applicable) a justification for why the discretion as to Consequences was applied. Such agreement shall be deemed to be a decision made under these Anti-Doping Rules within the meaning of Article 13. The decision will be reported to the parties with a right to appeal under Article 13.2.3 as provided in Article 14.2.2 and shall be published in accordance with Article 14.3.2.
- (t) Following the circumstances of this case, explanations of the Rider, and evidence



ingredient of nutritional supplements. Heptaminol can be produced in body from octodrine by hydroxylation. The results of additional tests on sample...which are not required in the course of the confirmation procedure for heptaminol and therefore not part of this documentation package indicate that octodrine seems to be present in (Rider's) sample."

- (k) By the letter dated 1 March 2019, the Rider waived his right to the B sample analysis.
- (l) By the letter dated 22 March 2019, the Rider filed his written explanation. In this explanation, the Rider asserts that he was tested more than 15 times and results were always negative. He would never use any prohibited substance or method. The Rider claims that the source of the prohibited substance was a nutritional supplement called Nox Pump which was prescribed to him by his physical trainer (it is corroborated by a witness testimony of Mr. Alejandro Quesada Peinado). The package leaflet of the Nox Pump did not contain any prohibited substance. The Rider purchased the supplement online at www.powerbody.co.uk on 1 August 2018 (it is corroborated by a purchase order and the proof of payment). The Rider again consulted the leaflet but did not find any prohibited substance. The Rider further asserted that, after a consultation with various experts, he found that the Nox Pump contains extract of *Kigelia Africana* which is a genus of flowering plants in the family Bignoniaceae (however, it is included in the list of the Nox Pump's ingredients as the "Sausage Tree Plant extract"). The recent scientific articles (in particular Catalani et al., Octodrine: New Questions and Challenges in Sport Supplements, 2018) have revealed that the natural version of octodrine can be found in extracts of...*Kigelia Africana*. Thus, the Rider is of the opinion that the presence of heptaminol in the A sample was the result of the use of the nutritional supplement drink Nox Pump, which contains the *Kigelia Africana* extract, a plant that contains the natural version of octodrine, and the subsequent metabolic process in body from octodrine by hydroxylation.
- (m) By the letter dated 28 June 2019, the Rider sent to the FIM the result of a laboratory analysis of the Nox Pump product. This analysis (carried out by the Laboratorio Control, Microbiológico y Químico, Madrid, dated 28 June 2019) revealed the presence of octodrine in the Nox Pump product (4.56 g/kg, 0.456%).
- (n) Pursuant to Art. 2.1.1 of the FIM Anti-Doping Code ("FIM ADC"), it is each Rider's personal duty to ensure that no Prohibited Substance enters his or her body. Riders 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 Rider's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.



- (x) Concerning the commencement of the period of ineligibility, the FIM concedes that there have been substantial delays in the course of the process not attributable to the Rider (particularly delays between the date of sample collection, i.e. 16 September 2018 up to approx. February 2019); therefore, the FIM accepts application of Art. 10.11.1 of the FIM ADC. Accordingly, the period of ineligibility shall start from the date of sample collection, i.e. from 16 September 2018.

NOW THEREFORE, in consideration of the mutual agreements and promises stated herein, **IT IS AGREED AS FOLLOWS:**

1. The Parties agree as follows:
 - (a) The Rider acknowledges that he committed an anti-doping rule violation as per Art. 2.1 of the FIM Anti-Doping Code.
 - (b) The Rider will be sanctioned with a 1 year period of ineligibility in respect of his anti-doping rule violation.
 - (c) The period of ineligibility starts from the date of sample collection, i.e. from 16 September 2018 (and ends on 16 September 2019).
 - (d) Any competitive results of the Rider from and including 16 September 2018 through the end of the period of ineligibility, including any medal points and prizes, shall be disqualified.
 - (e) Each party bears their own legal costs and other expenses in connection with this case, except for the costs of the Laboratory Documentation Package (EUR 600), which shall be borne by the Rider and shall be paid within 7 days after the entering of this Agreement into force
2. The parties acknowledge that this Agreement constitutes the decision in this case pursuant to Art. 7.10.1 of the FIM ADC.
3. This Agreement can be appealed to the CAS by WADA or the Spanish Anti-Doping Agency (Art. 7.10.1 in connection with Art. 13.2.3 of the FIM ADC).
4. The Public Disclosure of this Agreement will be made in accordance with Art. 14.3.2 of



presented, the FIM accepts that the adverse analytical finding in this case was caused by using the nutritional supplement Nox Pump prescribed to the Rider by his physical trainer and purchased by the Rider. Furthermore, the FIM accepts that there was no intention on the part of Rider to cheat. The FIM also accepts that there was no intention on the part of the Rider to enhance his sporting performance. Thus, the default sanction should be 2 years.

- (u) In order to benefit from possible reductions of the period of ineligibility, the Rider has to demonstrate that he bears No Fault or Negligence or No Significant Fault or Negligence. In the FIM ADC, the Fault is defined as follows: "The Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Rider 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 Minor, 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 behaviour".
- (v) The FIM is of the view that the Rider bears some fault in the present case, as he breached to some extent his duty of care. Pursuant to Art. 2.1 of the FIM ADC, it is each Rider's personal duty to ensure that no prohibited substance enters his body. In the doping control form, the Rider did not disclose that he had used the Nox Pump supplement (Although, the doping control form clearly states: "List any...supplements...taken over past 7 days). Furthermore, the Rider is a professional and the long term FIM events participant, so he should be aware that the use of supplements is risky and could result in the adverse analytical finding. The Rider could have consulted, e.g. the following website: <https://www.nsf-sport.com/> (the website recommended, e.g. by the U.S. Anti-Doping Agency that helps athletes to reduce a risk of taking supplements and that contains a list of "Certified Supplements"). A high degree of caution regarding the use of nutritional supplements is also recognized by the Court of Arbitration for Sport case-law. Moreover, it has to be emphasized that it is always the Rider's responsibility when a prohibited substance is found in his body (subject to specific cases of sabotage by a competitor or other extraordinary circumstances, which is not a case here) and this responsibility cannot be passed on the coach, physician etc.
- (w) Therefore, for the reasons stated above, the FIM identifies some – moderate degree (lower part of moderate degree) of the fault on the part of the Rider. Accordingly, an appropriate sanction in this case is a 1 year period of ineligibility.



the FIM ADC.

5. The parties acknowledge that they have had the terms of this Agreement explained to them by a legal counsel, thereby knowingly understand and agree to all provisions contained herein.
6. For the convenience of the parties and to facilitate execution and signing, this Agreement may be executed and signed in counterparts.
7. The parties agree that any dispute related to this Agreement should be exclusively governed by Swiss law and shall be submitted to the Court of Arbitration for Sport.

IN WITNESS WHEREOF, the FIM and the Rider sign this Agreement, which is legally binding on the parties as of the date on which the last party signs the same.

DATED: 19/09/2019


Fédération Internationale de Motocyclisme 

DATED: 09/09/2019


Mr. Jeroni Fajardo

