



# **FIVB**

# **Disciplinary Panel**

# **Decision**

In the matter of  
**Mr. Murilo Endres**  
(Brazil)

**3 November 2017**

## THE FIVB DISCIPLINARY PANEL

Constituted in accordance with Article 8.1.2  
of the FIVB Medical and Anti-Doping Regulations 2017  
and composed by

<b>Ms. Sabinah Clement, Chair</b>	(British Virgin Islands) Disciplinary Panel Chair
<b>Mr. Mounir Ben Slimane</b>	(Tunisia) Disciplinary Panel Member
<b>Dr. Annie Peytavin</b>	(France) Medical Commission President

at the hearing which took place at the FIVB headquarters in Lausanne, Switzerland  
on 5 July 2017, 11:30 am Swiss Time, heard the case identified as n. 3905985:

### FACTUAL BACKGROUND

1. On 4 May 2017, the FIVB was notified by the WADA-accredited Laboratory in Montreal, Canada (“Laboratory”) regarding an Adverse Analytical Finding for the A-sample 3905985, which contained the prohibited substance S.5 Diuretics and Masking Agents/ furosemide (“Furosemide”).
2. The abovementioned urine sample was taken out-of-competition on 10 April 2017 in Sao Paulo, Brazil and belongs to the athlete Mr. Murilo ENDRES (Brazil, born 03.05.1981; “Athlete”).
3. After having received notification from the Laboratory, the FIVB contacted the Confederação Brasileira de Voleibol (Confederation of Brazilian Volleyball, “CBV”) on 4 May 2017 to inform the Athlete of the adverse analytical finding and that he had the right to request the analysis of the B-sample and to attend the opening thereof.
4. On 4 May 2017, the Athlete responded to the letter submitting in essence the following:
  - The Athlete was surprised by the positive test and claimed to have never taken the substance and
  - The Athlete wished to proceed with the analysis of the B-sample.
5. By email on 5 May 2017, the FIVB:
  - acknowledged receipt of the Athlete’s email and

- requested that the Athlete submit the required form in order to conduct an analysis of the B Sample.
6. On 9 May 2017, the Athlete submitted the form for the B Sample analysis.
  7. On 10 May 2017, the FIVB acknowledged receipt of the abovementioned form and informed the Athlete that he would receive the results of the B Sample analysis once the Laboratory had provided them to the FIVB.
  8. On 14 May 2017, the Laboratory informed the FIVB of the results of the B Sample analysis, which confirmed the A Sample analysis.
  9. By letter dated 16 May 2017, the FIVB informed the Athlete of the result of the B sample analysis, requested that the Athlete inform the FIVB as to whether he wanted an in person hearing or a teleconference hearing on 6 June 2017 at 3 PM (Swiss time) and requested that he submit his position by no later than 23 May 2017.
  10. On 23 May 2017, the Athlete, through his attorney, submitted the following:
    - The Athlete was eager to prove his innocence and preferred to be heard in person. He would submit a witness list with the Defence Brief;
    - The Athlete expressed doubts about the FIVB's jurisdiction as he was tested during the National League period by a Brazilian anti-doping team;
    - The Athlete requested copies of the documentation packages for the A and B Sample as well as the concentration of Furosemide in the sample;
    - The Athlete accepted a voluntary provisional suspension according to Article 10.11.3.2 of the FIVB MADR; and
    - The Athlete was still investigating how the substance entered his body but believed it was due to contamination. However, he requested to submit his answer after he received the documentation packages and after concluding his investigation related to contamination.
  11. On 24 May 2017, the FIVB acknowledged receipt of the Athlete's email and the Athlete's preference to have an in-person hearing. The FIVB stated that it would forward the Athlete's request for the documentation packages for the A and B Sample to the Laboratory. It also noted the Athlete's objection related to jurisdiction and

stated that it would forward this objection to the Panel. Finally, it acknowledged the Athlete's request for a provisional suspension and granted that request.

12. On 8 June 2017, the FIVB provided the Athlete with the documentation packages for the A and B Sample as well as the concentrations of Furosemide in the Athlete's sample, which were approximately 4.6 µg/mL in the A Sample and 3.8 µg/mL in the B Sample.
13. On 19 June 2017, the FIVB sent a letter to the Athlete informing him of the date and time of the hearing, i.e. 5 July 2017 at 11:30 AM, requesting the names and functions of the persons participating in the hearing and established a deadline of 29 June 2017 for the Athlete to submit his defence brief.
14. On 20 June 2017, the CBV requested a report of all of the doping control tests that the Athlete had while serving for the Brazilian national team.
15. On the same date, the FIVB responded to the CBV asking the Athlete to send a request directly.
16. On 21 June 2017, the Athlete sent his request for a report of all of the doping control tests that he had while serving for the Brazilian national team. The FIVB sent the requested report to the Athlete on 22 June 2017.
17. On 22 June 2017, the Athlete requested the results of the blood examination conducted as part of the out-of-competition test on 10 April 2017.
18. On 23 June 2017, the FIVB provided the Athlete with the results of the blood examination from the out-of-competition test conducted on 10 April 2017.
19. On 26 June 2017, the Athlete requested an extension of the deadline to submit his defence brief to 5 July 2017 and to re-schedule the hearing for either 12, 19 or 26 July 2017.
20. On the same day, the Athlete requested jurisprudence involving other volleyball players in four national cases.
21. On the same day, the Athlete thanked the FIVB for the results of the blood examination referred to above and requested further information regarding the levels of testosterone, cholesterol and hormones found in the blood examination.
22. On 27 June 2017, the FIVB sent a letter to the Athlete in which 1) it declined the Athlete's request for an extension to file the defence brief and to postpone the

hearing based on the fact that the Athlete had almost two months from the date of notification to assemble his defence and on the fact that the travel arrangements had already been made for the FIVB Disciplinary Panel members; 2) it directed the Athlete to request for jurisprudence from national cases to the National Anti-Doping Organisation that conducted the results management for those cases and 3) that his request for additional information regarding the blood examination would be forwarded to the laboratory that conducted said examination.

23. On the same day, the laboratory that conducted the blood examination requested clarification regarding the specific information requested by the Athlete, and this correspondence from the laboratory was forwarded on to the Athlete.
24. On 28 June 2017, the Athlete acknowledged receipt of the FIVB's letter. He then requested an extension until midnight on 30 June 2017 to submit the defence brief and stated that he and his attorney would be present at the hearing. Additionally, an expert witness would be heard by telephone during the hearing.
25. On 29 June 2017, the FIVB sent a letter to the Athlete granting him an extension to file his defence brief until 23:59 on 30 June 2017. Additionally, the FIVB noted the people present and witnesses to be heard at the hearing.
26. On 30 June 2017 at 10:21 PM, the Athlete submitted his Defence Brief and accompanying exhibits. In his Defence Brief, the Athlete submitted, in essence, the following:
  - The Athlete has had an illustrious career having won many titles nationally and internationally and being involved in the FIVB Heroes Programme. The Athlete worked hard in achieving all that he had in his career and never resorted to cheating in order to succeed. As a successful athlete, the Athlete has an extensive history of negative doping tests.
  - At the end of 2016, the Athlete suffered an injury to his elbow, and the Athlete sought treatment with a team doctor, who had treated other athletes. This team doctor could verify that the Athlete's blood examinations were always normal.

- The Athlete's father owns a natural products store, and the Athlete has always used these products throughout his career without an issue, passing all previous doping control tests. At the end of March 2017, the Athlete's father gave the Athlete two bottles of natural pills, Unaro Pecan and Unaro Moringa. These products are natural products made from the bark of trees that help in the natural production of collagen, which was very important for the Athlete's recovery from injury. Additionally, the Athlete has always checked the label and searched the internet for any history of contamination. As these pills were natural, the Athlete did not consult a doctor but conducted internet research, which revealed that there was no history of contamination with these products.
- The Athlete did not declare these products on his Doping Control Form because these were not medications or supplements but, rather, all-natural products.
- The Athlete noted that several studies have revealed that contamination is a problem, especially with supplements. Moreover, the concentration of Furosemide found in the Athlete's sample was consistent with contamination. The Athlete confirmed through a laboratory report by ABC Medical University of São Paulo, which tested the bottles of Unaro Moringa and Unaro Pecan used by the Athlete, that both the Unaro Moringa and Unaro Pecan pills were contaminated with Furosemide. Additionally, medical evidence from the Athlete's doctor demonstrates that his blood profile was normal and that it was *"impossible to state that the athlete used the substance in question, furosemide, for doping and/or masking effect"* based on a report from the Athlete's medical expert.
- The Athlete's case is a very rare case as this case involved an all-natural product, which makes it different from supplement contamination cases or mislabelled products. Thus, WADA's warnings related to supplement contamination are not relevant in the present case. Hence, supplement contamination jurisprudence is also not of value.

- Additionally, Furosemide is not inherently performance-enhancing in volleyball but is only banned because of its potential to mask other performance-enhancing substances by diluting the urine. However, in the present case, Furosemide could not have a performance-enhancing effect because 1) the urine samples were not found to be diluted as the urine volume was normal; 2) Furosemide decreases the performance of volleyball athletes by causing fluid loss; 3) Furosemide remains in the human body for a shorter period of time than other performance enhancing substances, which would cause the other performance enhancing substance to appear in the urine sample. Thus, the Athlete did not intend to cheat.
- The Athlete did not act with any fault or negligence because 1) the Athlete consumed natural products for years without having a problem; 2) the Athlete could not have suspected that the all-natural pills could be contained with Furosemide and 3) the Athlete was never advised about the risks of consuming natural food. In support of this position, the Athlete submitted jurisprudence from the Court of Arbitration for Sport (“CAS”, CAS 2009/A/1926, 1930) and noted WADA’s guidance in this case to dietary and nutritional supplements, which he argued did not forewarn the Athlete because there was no discussion of natural products.
- Alternatively, the Athlete argued that he was, at least, subject to a reduced sanction, noting the provisions related to Specified Substances and Contaminated Products. He also stated that the old WADA Code required a harmonization of sanctions, i.e. that athletes from the same country who test positive for the same Prohibited Substance under similar sanctions should not receive different sanctions. The Athlete then highlighted jurisprudence of what he considered to be similar cases. The Athlete highlighted the case of CAS 2011/A/2495, in which Brazilian athletes involving contamination were sanctioned were a reprimand, the case of a Brazilian beach volleyball player who received a sanction of five months, the case of a Brazilian swimmer who received a sanction of six months, the case of a Brazilian swimmer who

received a sanction of six months and the case of Brazilian track and field athlete, who received a sanction of five months. Additionally, the Athlete noted four national cases in the sport of volleyball in which three were sanctioned for three months and one was sanctioned for six months. In two of those cases, the Athlete noted that the athletes in question used a medication to treat a condition but did not consult the WADA list nor asked for proper professional assistance and the banned substances were included on the label. Finally, the Athlete noted that the principle of proportionality had to be applied in the present case. Thus, the Athlete argued that no further sanctions should be applied to the two month provisional sanction that he had already served at the time of the submission.

- In his requests for relief, the Athlete requested the following:
  - “a. Since there was no fault or negligence of Murilo Endres, besides the provisional voluntary suspension already served, no further sanction should be applied to him;*
  - b. In case the panel considers that the athlete acted with any degree of fault or negligence, the sanction applied should be a warning, or alternatively should be considered the precedents of three months of maximum sanction of ineligibility;*
  - c. Once the positive test took place on 10 April 2017, and no delays can be attributable to the athlete (an extension of defense time limit was denied) any period of suspension should start from that date according do WADA Code article 10.11.1;*
  - d. In any case must be considered the period of ineligibility already served by Murilo Endres, that he had gone through many exams with any problems and that he has 36 years old with little career time left.”*

27. On 5 July 2017, the hearing at the FIVB headquarters was attended –aside from the FIVB Disciplinary Panel– by the FIVB Medical and Anti-Doping Manager Mrs. Nadège Veintimilla, the FIVB Legal Advisor Dr. Heiner Kahlert, the FIVB Legal Affairs Manager Mr. Stephen Bock, the Athlete, and his attorney. Additionally, the Athlete’s medical

experts, Dr. Ronaldo Abud and Dr. Sergio Xavier, were heard by telephone during the hearing.

28. During the hearing, the Athlete emphasized that he always fought for a clean sport and played clean himself. He mentioned that he had been with the national team for 12 years, playing in two Olympic Games and three World Championships. He always focused on having good health and habits. He was very surprised by the positive test. Originally, he did not know how the substance entered his body until he spoke with his attorney. He stated that he did not take anything to obtain a sporting advantage or mask any other substance. After the positive test, he thought about what happened all of the time, and it was hard on him because his friends and family asked him why he would take a prohibited substance but he did not know from where it came. His doctor, who knew him well, was convinced that it was caused by contamination and that they would find the source. It was difficult for the Athlete to find help. Regarding the substances that he was taking, he received natural products from his father, including a product called Moringa, which was known as the “Tree of Life”. He trusted his father because his father would not give him anything that would get him in trouble. Additionally, he researched the product after his father gave it to him. He never expected that this product would be contaminated. He just wants to be an example for kids, his son and his nephew.
29. Additionally, the Athlete’s attorney added that the present case was not a cheating case by highlighting that the Athlete had over 30 tests between the FIVB, the CBV and his club team. The Athlete had injured his right elbow and had switched positions to libero in order to avoid the end of his career. The Athlete’s attorney emphasized that the new 2015 World Anti-Doping Code was designed to be stricter on cheaters but flexible on non-cheaters. Thus, there were several reasons why the Athlete deserved to be treated leniently: 1) no reason to enhance performance as the test was conducted out-of-competition while the Athlete was recovering from his injury; 2) furosemide does not enhance performance in volleyball as it was clear that it was not used to mask any substances based on the fact that the sample was not more diluted and that other substances did not appear; 3) the Athlete searched through contamination cases and found that the concentration in his sample was similar to

the amounts found in articles on the internet, and the medical expert report calculation related to contamination based on his dosage and consumption was very similar to the concentration found in the Athlete's sample; 4) the combined reports from the Athlete's medical experts should meet the balance of probabilities standard of proof for contamination under the FIVB MADR; 5) the Athlete had no reason not to trust his father as he always had throughout his career related to products that he took and 6) there was no issue with the label as, unlike other supplements that have 100 ingredients in them, this label only contained a few ingredients and was not a medication from a doctor.

30. Subsequently, the members of the FIVB Disciplinary Panel, the FIVB Legal Affairs Manager and the FIVB Legal Advisor asked the Athlete some questions, which revealed the following information:

- The Athlete's injury history was the following:
  - He had a knee issue in 2001.
  - He missed two months in 2008.
  - He had shoulder surgery in 2013, which sidelined him from May until December. He did not take any medication for this injury.
  - He had shoulder surgery in 2014, which sidelined him for a period of five or six months after the 2014 FIVB World Championships. He did not take any medication for this injury.
  - He injured his elbow and had surgery in December 2016.
- At Christmas, he talked to his father about his injury and his father subsequently sent bottles of Unaro Moringa and Unaro Pecan to him in March. The Athlete took one of each pill every day. These products were not produced by his father.
- Natural products had changed his father's life because he was in a great deal of pain from having worked on a construction site for several years. After consulting with several doctors, he stopped trusting them and decided to look for an alternative treatment, which he found in natural products. He had taken sucupira to help with his joint pain, and he felt so much better using

these products that he decided to open a natural products store around 1999 or 2000. The Athlete's father did not have any kind of scientific, pharmaceutical or medical training but did obtain a licence to sell natural products. The Athlete was not sure if his father researched suppliers but knew that he bought his products wholesale. He also thought that his father researched products on the internet and by talking to people that he knew. The Athlete's father only selected products that were natural and organic as he has issues with products that were mass produced or contained sugars and preservatives.

- Due to his elbow injury and to give his body more time, the Athlete stated that his club team had approached him about changing positions to libero in April or May 2016 as the injuries had affected his ability to spike and block but not receive. His recovery from his elbow injury was coming along well, and he was trying to maintain his shape on his own. He admitted that 2016 was a difficult year for him because he injured his calf three weeks before the World League Finals and was forced to miss the 2016 Olympics. The Athlete stated that he intended to play one more year with his club team.
- The Athlete had not had an out-of-competition doping control before in his career but had been the subject of several in-competition tests.
- The Athlete did some research on the products by searching them on Google. He examined a photo of the box and read the ingredients, not what conditions the product was designed to treat. He noted that the products contained 27 vitamins and minerals. He did not find anything that discussed contamination. He did not know how long he researched the products but it was a relatively short period of time, i.e. less than one hour.
- The products were pills containing what looked like bark and grass rather than a powder like most other products. He was confident that it contained natural ingredients.
- The Athlete did not disclose these products on his Doping Control Form. He thought that he did not have to disclose it because it was an all-natural

product. If he had to disclose these products, then he would also have to disclose all of the natural teas, acai, etc. that he was consuming as well. He considered these products to be similar.

- The Athlete stated that he had been informed by his attorney and his doctor about Furosemide, i.e. that it was a weight-loss supplement. The Athlete stated that he had always had a playing weight of 94-95 kg even with the injuries and could provide documentation confirming his playing weight.
- He did not discuss the products with his doctors even though he saw them every week. He knew that doctors had problems with natural remedies because they did not trust them.
- Regarding his anti-doping education, the Athlete stated that he went through annual discussions about doping. The national team watches videos from the FIVB. He thought that he had taken some courses through the “Play Clean” programme created by the FIVB. The national team doctors would inform him of all of the new rules related to doping. He also was subject to annual tests with his club team. He was also familiar with the doping control procedures from the national team doctors. The Athlete stated that he had spoken with the doctors about doing more education programmes, i.e. once every three months instead of once a year. The Athlete did not remember any videos discussing 100 percent natural products.
- The Athlete stated that he had the ABC Medical University of São Paulo only test the products that he had received from his father, not other products. He closed and hand sealed the bottle, took the sealed bottle to the laboratory in hand luggage, and personally delivered the bag to the laboratory in Brazil for the testing of the products. They both came back contaminated with Furosemide but Athlete’s attorney admitted that this laboratory was not WADA-accredited.
- The Athlete was not sure if the Unaro Moringa was produced in Brazil or elsewhere.

- He noted that the research provided in the defence brief conducted by his attorney regarding contamination of natural products was not easy to find and was related to the yerba mate tea, which the Athlete had also tested but came back negative.

31. The Disciplinary Panel then called the two expert witnesses for the Athlete and they revealed the following:

- Dr. Abud confirmed his statement that was filed in the defence brief. Dr. Abud stated that he was a cardiologist and general practitioner in his practice. Additionally, he had worked with pharmacies for more than 30 years researching drugs.
- Dr. Abud also stated that he had appeared as a witness in approximately nine doping cases over the last 7-8 years. He has only appeared as a witness for athletes, not sporting bodies or national federations. He also stated that he loves sports but does not like doping so he only represents athletes that he thinks are innocent.
- He also stated that he could not find anything that linked the Athlete to any kind of drug that would enhance his performance. He found that there were no traces of any substances in the bloodwork that he examined. He noted that Furosemide was not a good drug to take for volleyball because it dehydrates players and causes them to lose major minerals which would inhibit good performance. Moreover, it was not a good drug for masking because the other drug would be found in an athlete's system. He confirmed that this was a case of cross-contamination but stated that it was impossible to say whether the Athlete used Furosemide for doping or masking purposes.
- Dr. Abud also explained his method of his analysis related to the concentration in the Athlete's sample being consistent with the concentration of Furosemide found in the analysis of the products that the Athlete was taking. In particular, he clarified the calculations in his report regarding the amount of Furosemide in the products that were tested and how he examined it based on the dosage. He confirmed that the concentration found in the

Athlete's sample was compatible with the amounts found in the capsules of the product based on a balance of probabilities.

- Dr. Abud also asserted that it was likely that the raw materials were from China and, thus, got contaminated there.
- Dr. Xavier informed the Panel that he was the doctor for the Athlete's club team and that he also was treating him regarding the Athlete's elbow injury. He confirmed the statement that he presented in the defence brief. Dr. Xavier stated that he was not aware that the Athlete was taking natural products. He stated that he usually told players not to buy anything outside of the club in order to avoid issues. He noted that, by contract, players were not allowed to use anything that was not provided by the club.
- Dr. Xavier informed the Panel that the Athlete had a sprained MCL in his elbow. They decided to treat him with a conservative treatment plan of painkillers and physical therapy over 2-3 months.
- Dr. Xavier noted that the Athlete received periodic blood tests, at least one annually in accordance with Brazilian law, and never had an abnormality. However, he stated that these annual blood tests were not designed to look for doping. He also noted that these tests would not be able to detect steroid use but would provide metabolic information, which could hint at a doping issue.
- Regarding anti-doping education, Dr. Xavier stated that the club had an anti-doping education program and did conduct practice doping controls in order to educate the players.

32. The Athlete and his attorney concluded the hearing by providing a final statement that they had prepared for the FIVB Disciplinary Panel. In the statement, the Athlete:

- Indicated that he did not have much further information but was willing to provide any information needed;
- stated that he never said no to a test and never used masking agents or prohibited substances;
- emphasized that his word was very important to him;

- spoke with every former player that he played with and they were all shocked;
- hoped to enjoy playing for the rest of his career; and
- re-emphasized that he did not take any prohibited substances.

His attorney then added that:

- this was not a cheating case on the balance of probabilities but, rather, a No Fault or Negligence case;
- the Athlete never received any education on 100 percent natural products and has suffered a lot because of this;
- if there was fault, the fault was limited as Articles 10.5.1.1 and 10.5.1.2 were applicable as the present case involved both a specified substance and contamination;
- there was a need to have a harmonized result as the present case was similar to the Cielo case, in which the athletes in question received a reprimand, or the Fabiola case, in which the athlete bought a product at a supplement store and the prohibited substance was on the label and he received 6 months;
- additionally, there were three cases within the FIVB in which the athletes in question received three months even though they conducted no research and the substance was listed on the label;
- also, the case involving Gasquet found that you could not hold an athlete to unrealistic expectations;
- anti-doping rule violations have to be examined on a case-by-case basis balancing the flexibility of sanctions with the principle of proportionality;
- the Athlete was having issues keeping fit because he could not train;
- likewise, a long sanction could end his career and
- finally, the Athlete stated that he was open to any tests needed regarding his case.

33. During the hearing, the Athlete presented the FIVB with a sealed bottle of Moringa Unaro “Lote [English translation is “lot”, which is understood by the FIVB Disciplinary Panel to mean batch] 3” in the event that the FIVB wished to test for contamination. The Athlete stated that this bottle was from the same batch as the Moringa Unaro

that the Athlete took before the Adverse Analytical Finding. The Athlete stated that he could not find a bottle of the Moringa Pecan from the same batch that he took but would continue to look.

34. On 6 July 2017, the Athlete's attorney sent a letter to the FIVB requesting that the FIVB keep a chain of custody regarding the bottle and that it not unseal it unless sent to a WADA-accredited laboratory for testing as discussed at the hearing.
35. On 11 July 2017, the FIVB informed the Athlete of the chain of custody of the bottle of Moringa Unaro provided by the Athlete at the hearing and that the bottle had been sent to the WADA-accredited laboratory in Cologne, Germany for analysis.
36. On 2 August 2017, the Athlete sent a request for an update regarding whether the pills provided by the Athlete had been tested and, if not, what was the reason for the delay.
37. On 3 August 2017, the FIVB asked whether the Athlete could send a bottle of the Unaro Pecan to the laboratory in Cologne for analysis as well.
38. On 7 August 2017, the Athlete again requested the test results for the Moringa Unaro product provided and stated that he could not purchase a new bottle of the Unaro Pecan from the same batch.
39. On 9 August 2017, the FIVB provided the results of the test of the Moringa Unaro bottle provided by the Athlete. In that test, the WADA-accredited laboratory in Cologne, Germany found that the Moringa Unaro pills contained in the bottle provided by the Athlete were contaminated with furosemide in the amount of approximately 10 mg/g.
40. On 10 August 2017, the Athlete's attorney sent an email stating that it was now undisputed that the Athlete was a victim of contamination. He also re-emphasized the "FIVB jurisprudence" in which the athletes were suspended for a period of three months. Additionally, he stated that the Athlete had tried to locate a bottle of Moringa Pecan from the same batch but could not do so.

## **LEGAL CONSIDERATIONS**

41. According to the WADA 2017 Prohibited List, the substance Furosemide is included in the category S.5 (Diuretics and Masking Agents) and is prohibited in- and out-of-competition.
42. According to Article 2.1 of the FIVB Medical & Anti-Doping Regulations 2017 (“FIVB MADR”), the presence of a prohibited substance in an athlete’s bodily specimen constitutes an anti-doping rule violation, sanctioned as per Article 10 of the FIVB MADR.
43. The abovementioned sample (Nr. 3905985) belongs to the Athlete.
44. No Therapeutic Use Exemption exists in this case, as per Article 4.4 of the FIVB MADR.
45. The Athlete has not contested that an anti-doping rule violation has occurred. Rather, he requests that no sanction be imposed on him because he claims that he bears No Fault or Negligence, or that at least a sanction significantly lower than the standard sanction be imposed on him because he claims he bears No Significant Faults or Negligence.
46. According to Article 4.2.2 of the FIVB MADR, all prohibited substances are deemed Specified Substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Category S5 is the category for diuretics, which are not identified as non-specified, and, consequently, the prohibited substance in the case at hand (Furosemide) is considered a Specified Substance.
47. The FIVB Disciplinary Panel notes that the period of ineligibility for a violation of Article 2.1 FIVB MADR concerning a Specified Substance shall be as follows:
- four (4) years when the anti-doping rule violation involves a Specified Substance and the FIVB can establish that the anti-doping rule violation was intentional (Article 10.2.1.2 FIVB MADR);
  - two (2) years if the FIVB cannot establish that the anti-doping violation was intentional (Article 10.2.2 FIVB MADR).
48. Additionally, Article 10.2.3 FIVB MADR defines the term “intentional” as follows:
- “As used in Articles 10.2 and 10.3, the term “intentional” is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person*

*engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”*

49. Article 10.4 of the FIVB MADR allows for the elimination of a period of ineligibility if an athlete can establish that he or she bore No Fault or Negligence. Under the FIVB MADR, “No Fault or Negligence” is defined as follows:

*“The Athlete or Other Person’s establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must establish how the Prohibited Substance entered his or her system.”*

50. The FIVB MADR further provide for a potential reduction for an anti-doping rule violation involving a Specified Substance in Article 10.5.1.1 or in the case of a contaminated product as follows:

*“10.5.1.1 Specified Substances*

*Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete’s or other Person’s degree of Fault.*

#### 10.5.1.2 Contaminated Products

*In cases where the Athlete 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 Athlete's or other Person's degree of Fault."*

51. Under the FIVB MADR, "No Significant Fault or Negligence" is defined as follows:

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

52. With this framework in mind, the FIVB Disciplinary Panel will first examine whether or not the anti-doping rule violation was intentional in order to determine whether a four-year or two-year standard sanction should apply to the present case.

53. The Athlete contends that he did not take Furosemide intentionally. Instead, he contends that the Moringa Unaro and Moringa Pecan were contaminated and, thus, the presence of Furosemide in his sample was unintentional. The Athlete's argument is supported by an analysis conducted by the ABC Medical Laboratory in São Paulo, Brazil, of both the bottles of Moringa Unaro and Moringa Pecan that the Athlete used. Additionally, the WADA-accredited laboratory in Cologne conducted an examination of a sealed bottle of Moringa Unaro and found that it was also contaminated with Furosemide. No additional analysis of the Moringa Pecan was conducted during the present proceedings.

54. The FIVB Disciplinary Panel notes that the FIVB, which bears the burden of proof in this regard, has not asserted any evidence contradicting the Athlete's claim that he ingested Furosemide unintentionally. Consequently, the FIVB Disciplinary Panel finds that the Athlete's ingestion was unintentional and the standard sanction for this case is two years.

55. The FIVB Disciplinary Panel now must examine whether the Athlete is entitled to either an elimination of the sanction because the facts and circumstances demonstrate that the Athlete bears No Fault or Negligence or, at minimum, a further reduction from two years for an unintentional anti-doping rule violation because the facts and circumstances of this case demonstrate that the Athlete bears No Significant Fault or Negligence.
56. The FIVB Disciplinary Panel notes that the Athlete bears the burden of proving how the prohibited substance entered his body in order to obtain any kind of reduction (see the definition of “No Fault or Negligence” and “No Significant Fault or Negligence”). Based on the analyses of both the supplements used by the Athlete, and the analysis of the bottle of Unaro Moringa by the Cologne Laboratory, the FIVB Disciplinary Panel finds that the Athlete has satisfied this burden of proof by demonstrating that Furosemide entered the Athlete’s system through the products Unaro Moringa and Unaro Pecan.
57. The FIVB Disciplinary Panel notes that the definition of “*No Fault or Negligence*” in the FIVB MADR sets a very high threshold for the Athlete to meet in order for the FIVB Disciplinary Panel to find No Fault or Negligence. The Athlete must demonstrate that he could not have known or suspected or reasonably known or suspected that he would have committed an anti-doping rule violation even with the exercise of utmost caution. In essence, therefore, there are two elements that must be examined by the FIVB Disciplinary Panel: 1) whether or not the Athlete could have reasonably known or suspected that he would have committed an anti-doping rule violation and 2) the level of caution exercised by the Athlete. This interpretation is confirmed by the 2015 World Anti-Doping Code, which contains the following comment related to Article 10.4:

*“This Article and Article 10.5.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example, where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor...”* (emphasis added)

58. In support of his assertion, the Athlete attempts to create a distinction between a supplement and all-natural products by stating that the known risks associated with supplements related to contamination cannot be attributed to products containing all-natural ingredients because these ingredients are supposed to be not chemically created or treated but, instead, appear organically in the natural world. Thus, the Athlete asserts that he could not have reasonably suspected that an all-natural product would be contaminated with other ingredients.
59. In examining this argument, the FIVB Disciplinary Panel has examined the full contents of the submission made by the Athlete as well as relevant CAS jurisprudence related to contamination and No Fault or Negligence findings. In particular, the Athlete admitted that contamination of supplements is a well-known problem in Brazil. He also stated that the contents of the pills that he took appeared to be green and brown, looking like leaves and bark, in a pill casing. While the Athlete claimed that this made these products appear to be less suspicious as compared to a traditional supplement pill with white powder, the FIVB Disciplinary Panel is not convinced that this is, in fact, the case. The Athlete was not consuming leaves and bark directly from a Moringa tree but, rather, was consuming a pill that had been manufactured and produced for consumption. In this way, the FIVB Disciplinary Panel finds that whether a pill contains contents that are a different color than what one would be normally seen in a pill does not impact whether or not an Athlete could have reasonably suspected contamination. Presently, pills vary in terms of their contents, whether they contain solids or liquids of various colors, but the fact remains that the products consumed by the Athlete were pills that were manufactured.
60. Regarding the distinction between supplements and all-natural products, the FIVB Disciplinary Panel must examine whether such a distinction exists in the language of the FIVB MADR or the World Anti-Doping Code as well as how other panels have interpreted such provisions. For example, the FIVB Disciplinary Panel reviewed the definition of “*Contaminated Product*” in the FIVB MADR, which states the following:
- “Contaminated Product: A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.”*

61. While the FIVB Disciplinary Panel notes that the above definition was mainly tailored to specifically address contaminated supplements, the FIVB Disciplinary Panel finds that the plain language of the definition (referring to a “product”) has a broader application than merely contaminated supplement. Consequently, the FIVB Disciplinary Panel holds that the “product” described in the definition of Contaminated Product encompasses not merely supplements but other consumable products, including food. If WADA had wished to limit the definition of Contaminated Product to supplements, it could have done so by using the word “supplement” instead of “product”. The FIVB Disciplinary Panel also notes that the above is in line with the interpretation of experts in the anti-doping field.<sup>1</sup>

62. Additionally, the FIVB Disciplinary Panel notes the comment to Article 10.4 of the 2015 World Anti-Doping Code regarding the situations in which No Fault or Negligence is not applicable, which states the following:

*“Conversely, No Fault or Negligence would not apply in the following circumstances: [a] a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they have ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); [b] the Administration of Prohibited Substance by the Athlete’s personal physician or trainer without disclosure to the Athlete (Athletes are responsible for advising medical personnel that they cannot be given any Prohibited Substance); and [c] sabotage of the Athlete’s food or drink by a spouse, coach or other Person within the Athlete’s circle of associates ((Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of particular case, any of the referenced illustrations could result in a reduced sanction under Article 10.5 based on No Significant Fault or Negligence.”*  
(emphasis added)

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<sup>1</sup> See Does the World Anti-Doping Code Live up to its Promises?: A Preliminary Survey of the Main Changes in the Final Draft of the 2015 WADA Code, Rigozzi, Prof. Dr. Antonio, Viret, Marjolaine and Wisnosky, Emily, JusLetter, Weblaw AG, [www.jusletter.com](http://www.jusletter.com) (11 November 2013 edition), p. 24, para. 134.

63. The FIVB Disciplinary Panel has reviewed the decision in CAS 2011/A/2495-2498, which was provided by the Athlete. In that case, the athletes argued that medication, i.e. “pure” caffeine pills, should be treated differently from supplements in examining the applicability of No Fault or Negligence under the 2011 World Anti-Doping Code so as to circumvent the applicability of the abovementioned comment, which was also present in the previous edition of the World Anti-Doping Code. In that case, the CAS Panel held that pure caffeine was considered to be a vitamin or nutritional supplement for purposes of the World Anti-Doping Code because caffeine was not regularly prescribed by medical practitioners to treat a diagnosable medical condition and was readily available without a prescription (*see* CAS 2011/A/2495-2498, paras. 8.24-26). The “pure” caffeine pills described in this case meant pills that “*was not mixed with other substances*” (*see* CAS 2011/A/2495-2498, para. 3.4).
64. Examining the product used by the Athlete in the present case, the Athlete was consuming a substance in a pill that is – similar to caffeine – naturally occurring. The justification for why the product, whether a caffeine pill or a Moringa pill, is considered a Contaminated Product, is the same in both CAS 2011/A/2495-2498 and the present case, i.e. that the Athlete thought that he was ingesting a natural substance that was pure and not mixed with chemically engineered ingredients, while, in fact, said natural substance was contaminated with a prohibited substance. Thus, whether classified as a medication or an all-natural product, both substances involved in these cases were supposed to be pure products in pill form. Additionally, the Athlete took a substance that was readily available without a prescription to improve his general health rather than to treat a specific medical condition.
65. Based on the above, the FIVB Disciplinary Panel holds that the rationale found in CAS 2011/A/2495-2498 can be applied to the present case, and, thus, the Unaro Moringa and Unaro Pecan products should be treated as “vitamin or nutritional supplement[s]”. Thus, the comment to Article 10.4 of the 2015 World Anti-Doping Code is applicable in the present case.
66. The FIVB Disciplinary Panel would like to also emphasize that the caution exercised by the Athlete also falls short of the “*utmost caution*” requirement found in Article 10.4 of the FIVB MADR. The FIVB Disciplinary Panel compared the caution exercised

by the athletes in CAS 2011/A/2495-2498 to the caution exercised by the Athlete in the present case. The athletes in CAS 2011/A/2495-2498 showed extreme caution before taking the contaminated product in question in that case. The athletes obtained a prescription for the products that they were consuming and had them produced in a compounding pharmacy recommended by the Health Secretary of Brazil, who was responsible for inspecting pharmacies. Additionally, the athletes in that case also consulted their doctor before using the caffeine pills and obtained a certificate from the compounding pharmacy attesting that the caffeine pills were 100 percent pure caffeine. Despite these steps, the CAS Panel did not find that No Fault or Negligence was applicable in that case.

67. Turning to the caution exercised by the Athlete in the present case, he did not even consult a doctor before taking the Unaro Moringa or Unaro Pecan pills but, rather, took these products based on the recommendation of his father, who was not medically trained. Moreover, he did not seek to have the products specially manufactured at a compounding pharmacy or tested before taking them. He also never consulted a doctor about the Unaro Moringa or Unaro Pecan pills that he was taking. Lastly, and quite strikingly for an athlete of such caliber and experience, he did not even consult with the club doctor prior to using the products. In this setting, the fact that the products were sourced from the Athlete's father store does not lower the level of caution that he was obliged under the FIVB MADR to exercise.

68. Based on the above, the FIVB Disciplinary Panel finds that the Athlete has not demonstrated that Article 10.4 of the FIVB MADR is applicable in the present case.

69. Consequently, the FIVB Disciplinary Panel must now determine whether the Athlete is entitled to a reduction from the standard sanction of two years, and, if so, what the appropriate sanction is under the FIVB MADR. As the Athlete has asserted that he consumed a contaminated product, the FIVB Disciplinary Panel will analyze the present case in accordance with Article 10.5.1.2 (Contaminated Products) of the FIVB MADR. For the sake of completeness, and since this case involves contamination of a product with a specified substance, the FIVB Disciplinary Panel notes that the below analysis applies also when considering Article 10.5.1.1 (Specified Substances) of the FIVB MADR.

70. First, the FIVB Disciplinary Panel must analyze whether the two criteria are satisfied in order to apply Article 10.5.1.2 if the FIVB MADR: 1) the Athlete bears No Significant Fault or Negligence and 2) the Prohibited Substance came from a Contaminated Product. The FIVB Disciplinary Panel already noted in paras. 53 and 54 above that a test of the Unaro Moringa and Unaro Pecan pills used by the Athlete found that the pills were contaminated with Furosemide. Additionally, a WADA-accredited laboratory tested a sealed bottle of Unaro Moringa which, according to the Athlete, is from the same batch as the one consumed by the Athlete. The laboratory found that that this sealed bottle was, likewise, contaminated with Furosemide. Thus, the FIVB Disciplinary Panel is satisfied that Furosemide entered the Athlete's system through a Contaminated Product. Moreover, the FIVB Disciplinary Panel highlights that the Unaro Moringa and Unaro Pecan products taken by the Athlete were supposed to be all-natural products that listed no Prohibited Substances on either of its labels.
71. Taking into account the totality of the circumstances as detailed below, the FIVB Disciplinary Panel finds that the Athlete's anti-doping rule violation was committed with No Significant Fault or Negligence. Thus, Article 10.5.1.2 of the FIVB MADR is applicable to the present case, and the Athlete is entitled to a reduction of his sanction.
72. Based on the above determination, the FIVB Disciplinary Panel must now determine what the sanction should be. As described in Article 10.5.1.2 of the FIVB MADR, the sanction for an anti-doping rule violation can range from a reprimand with no period of ineligibility and a two (2) year period of ineligibility based on the Athlete's degree of fault.
73. Before beginning its examination, the FIVB Disciplinary Panel would first like to address the principle of harmonization and the value of examining jurisprudence in determining the relevant sanction based on the Athlete's degree of fault as the Athlete has referenced the comment to Article 10.2 of the former World Anti-Doping Code as well as several cases in order to justify a sanction towards the lower end of the sanction range allowed, i.e. less than three months.

74. The full comment to Article 10 of the 2015 World Anti-Doping Code states the following:

*“Harmonization of sanctions has been one of the most discussed and debated areas of anti-doping. Harmonization means that the same rules and criteria are applied to assess the unique facts of each case. Arguments against requiring harmonization of sanctions are based on the differences between sports including, for example, the following: in some sports the Athletes are professionals making a sizable income from the sport and in others the Athletes are true amateurs; in those sports where an Athlete’s career is short, a standard period of ineligibility has a much more significant effect on the Athlete than in sports where careers are traditionally much longer. A primary argument in favour of harmonization is that it is simply not right that two Athletes from the same country who test positive for the same Prohibited Substance under similar circumstances should receive different sanctions only because they participate in different sports. In addition, flexibility in sanctioning has often been viewed as an unacceptable opportunity for some sporting organizations to be more lenient with dopers. The lack of harmonization of sanctions has also frequently been the source of jurisdictional conflicts between International Federations and National Anti-Doping Organizations.”*

75. The FIVB Disciplinary Panel gleans a few key principles from this comment. First, the principle of harmonization of sanctions is highly debated and has been the source of conflicts with arguments both in favor and against harmonization. The comment does not purport to be in favor on one side or the other of this argument but merely presents the arguments for and against harmonization. Second, the principle of harmonization of sanctions does not require to strictly examine the final sanction but is more about the rationale as to how that sanction was reached. The important principle from the comment is that *“Harmonization means that the same rules and criteria are applied to assess the unique facts of each case.”* CAS has addressed this particular discussion in CAS 2014/A/3572 by holding the following:

*“The critical exercise for this Panel is to find such facts as are relevant to fault or lack thereof, and then to evaluate those facts. Counsel for Simpson has*

*emphasized the reference in the WADA Code to the need for harmonization of sanctions. But this must, in the Panel's view, not given an exaggerated meaning. The reference in the commentary to Article 10.2 bears repeating "Harmonization means that the same rules and criteria are applied to assess the unique facts." (see CAS 2014/A/3572, para. 10.25)*

76. In application of this principle of applying the same rules and criteria, CAS has emphasized that the role of examining previous jurisprudence to compare sanctions is limited unless the facts are *"identical, or at least extremely similar"* to the facts of the case before a judicial body (see CAS 2011/A/2495-2498, para. 8.2). Rather, it is the rationale of how a decision-making body reached its decision and the principles taken from the decision that are the material value of examining anti-doping jurisprudence (see CAS 2014/A/3572, para. 10.22). Therefore, the FIVB Disciplinary Panel will examine the rules and criteria gleaned from past anti-doping jurisprudence in order to examine the factors considered when examining the Athlete's degree of fault.

77. In looking at the Athlete's degree of fault, the FIVB Disciplinary Panel finds that it should focus on circumstances that influence an Athlete's duty of care, such as the sporting level of the Athlete, age of the Athlete, anti-doping education, organized versus unorganized volleyball environment, whether or not the Athlete researched the product, etc. when looking at an Athlete's degree of fault for purposes of a reduction of sanction (see FIVB Disciplinary Panel Decision In the matter of Ms. Lucia Paz LOZANO LORENZINI, para. 19)

78. Regarding this duty of care, CAS has noted the following:

*"Nevertheless, the Panel considers that the arguments exposed by the Appellant to require the reduction of the period of ineligibility must be analysed in the light of the normative standard of "duty of care" which is claimable of all athletes regarding substances that they freely decide to ingest. In this regard, as one of the main principles in the context of anti-doping control in sport, it is abundantly clear that all athletes must be extremely careful with the food contents, fluids, and in general, with any products that he or he may ingest, either for nutrition or therapeutic purposes, as they may contain some substance identified on the*

*WADA Prohibited List. As has been expressly established by CAS jurisprudence: “In each case, the Athlete’s fault is measured against the fundamental duty which he or he owes under the Program and the WADC to do everything in his or his power to avoid ingesting a Prohibited Substance. (CAS 2011/A/2518)” (CAS 2013/A/3431, para. 59).*

79. Examining these circumstances in the present case, the FIVB first notes that the Athlete has had an extremely impressive career as a professional athlete, having won silver medals at two Olympic Games, was named “Most Valuable Player” at the 2012 Olympic Games and having been a FIVB World Champion on two occasions while representing the Brazilian national team. He also was one of the “faces” of the “FIVB Heroes” campaign, a public relations campaign designed to promote volleyball by focusing on its top players. Additionally, the Athlete stated that he was subject to annual discussions related to doping with his club team, talked to team doctors about the new rules related to doping and watched videos from the FIVB related to doping when he was with the national team. The FIVB has confirmed that the videos referred to by the Athlete, which the Athlete thought were part of the “Play Clean” online doping education programme, were, in fact, modules from that programme and that he received a certificate for completing several modules of the “Play Clean” programme, including a module related to “Dietary Supplements” that warned about the possible dangers of contamination. Additionally, Dr. Xavier, the Athlete’s club doctor, testified that the club conducted practice doping controls and told athletes not to buy any products outside of the club. Based on this information, the FIVB finds that the Athlete was very experienced and was educated about the danger of contamination. In fact, the Athlete himself accepted that contamination of supplements in Brazil is a well-known problem (and, as explained above, the products consumed by the Athlete are to be regarded as supplements, irrespective of them purporting to be “all natural”). Consequently, the Athlete should have been well aware of his duty of care when consuming products, especially after receiving a warning from the club’s doctor not to consume products outside of the ones given to him by the club.

80. Despite this, the Athlete consumed Unaro Moringa and Unaro Pecan without consulting with either a doctor, national anti-doping authority or the manufacturer before consuming the product. He also did not inform either his national team doctor or his club team doctor about his consumption of the Unaro Moringa and Unaro Pecan. Instead, he trusted a product in pill form from his father, who owned a natural products store in Brazil but had no formal training in medicine, nutritional supplements or anti-doping rules. Thus, with these actions, the Athlete was subjecting himself to a substantial risk that he could consume a contaminated product despite his extensive experience and anti-doping education. In other words, the Athlete cannot be said to have exercised the requisite caution that could be expected from an athlete of his experience. Furthermore, he failed to disclose his use of either product on the Doping Control Form.
81. However, the FIVB Disciplinary Panel notes that there are a few factors that work to the benefit of the Athlete, which would justify a reduction from the standard sanction under the FIVB MADR. The Athlete submitted that he had previously and, for years, used similar all-natural products received from his father without issue (even though he did not claim to have used previously the same products or similar products containing Moringa or Pecan). The Athlete further stated that he did conduct basic research on Google and examined the ingredients of the Unaro Moringa and Unaro Pecan. Neither product's label stated that the product included Furosemide. Additionally, more extensive research might not have revealed contamination issues related specifically to the Unaro Moringa and Unaro Pecan products.
82. Still, the FIVB Disciplinary Panel notes that more extensive research could have led to him finding that there had been contamination issues in products similar to the one he was consuming, specifically products that had led to doping cases before CAS involving products from the Moringa tree (CAS 2011/A/2518, publicly available) and products from an all-natural products store (CAS 2010/A/2229, publicly available).
83. Additionally, the FIVB Disciplinary Panel has taken note of the jurisprudence cited by the Athlete's attorney regarding allegedly comparable cases to the present case. The FIVB Disciplinary Panel first highlights the rationale described in paras. 75 and 76 that

it is more about the process than the final result and that only those cases that were “*identical, or at least extremely similar*” are useful for the present analysis.

84. Turning to the cases cited by the Athlete, the FIVB Disciplinary Panel has already examined the differences when comparing the degree of fault committed by the athletes in CAS 2011/A/2495-2498 (*compare* paras. 66 to 67). Consequently, that case is not nearly identical to the present case as asserted by the Athlete when examining the degree of fault committed on the one hand by the Brazilian swimmers in CAS 2011/A/2495-2498 and the Athlete in the present case because the Brazilian swimmers took several additional steps to ensure that they did not consume a Prohibited Substance, such as receiving their pills from a compounding pharmacy specifically recommended by the Health Secretary in charge of inspections of pharmacies as well as receiving periodic certifications from the pharmacy that the product that it produced was 100 percent pure caffeine.
85. Moreover, the Athlete referred to a case in which the FIVB apparently settled before CAS for a six month suspension with a Brazilian beach volleyball player. The Athlete failed to explain how that case was similar to the present case in terms of degree of fault.
86. Regarding CAS 2011/A/2515, in which a sanction of six months was imposed, the Athlete provided a two paragraph summary of the decision, but not the full decision. The FIVB Disciplinary Panel could not find the full decision in the CAS database or anywhere else in the public domain. In order to properly compare both the facts considered relevant for purposes of duty of care as well as the rationale used in determining that a six month sanction was appropriate, the FIVB Disciplinary Panel must be able to fully analyse the facts and rationale of the decision in order to truly be able to determine whether this case is, in fact, comparable. However, the FIVB Disciplinary Panel notes that even based on the summary of the decision, there are important differences between that case and the present one: In particular, the label of the product in CAS 2011/A/2515 included the name of the prohibited substance (although in an associated name). Also, the Athlete in that case declared the supplement in question on her Doping Control Form. Furthermore, the relevant international federation in that case appealed a suspension of two months issued by

the Brazilian Swimming Federation by asking for a sanction of six months at minimum. This minimum sanction indicated in the request might well have had an influence on the sanction eventually imposed by the CAS, given the deference that CAS Panels give to the determination of sanctions by sports associations. Based on those differences apparent from the case summary, the FIVB Disciplinary Panel does not agree with the Athlete's argument that his sanction must be similar to that imposed in CAS 2011/A/2515.

87. The Disciplinary Panel finds that its assessment of the present case is supported by more recent CAS jurisprudence involving an Olympic level athlete. In particular, the FIVB Disciplinary Panel highlights the decision in CAS 2014/A/3572. In that case, a Jamaican track and field athlete who had won the gold medal at the 2004 Olympics and silver medals at the 2008 and 2012 Olympics tested positive due to contamination. The Jamaican track and field athlete sent her physical therapist, who had recommended the product that she was taking and who was recommended by her agent after consultation with a trusted doctor, from Jamaica to Canada to personally purchase the product from a store that the physical therapist trusted. Additionally, the Athlete had conducted over 14 hours of research by comparing each ingredient to the WADA Prohibited List, conducting Google research of each ingredient and extensively researching the manufacturer's website. Moreover, the Athlete had never received any formal anti-doping education, in stark contrast to the Athlete in the present case. In that case, CAS held that the Jamaican track and field athlete should be subject to a period of ineligibility of six months. When comparing the degree of fault of a similarly experienced (although not as well educated) athlete, the FIVB Disciplinary Panel notes that the degree of fault of the Jamaican track and field athlete is substantially lower than the Athlete in the present case when comparing the respective steps taken by the two athletes. The FIVB Disciplinary Panel also notes that there have been several cases in which CAS has found based on degree of fault analysis involving an athlete that inadvertently consumed a Prohibited Substance that a period of ineligibility longer than six months was justified (see CAS 2011/A/2518 (an experienced but not Olympic level American tennis player who consumed contaminated Moringa tree product received an 8 month period of

ineligibility); CAS 2010/A/2229 (an experienced but not Olympic level Puerto Rican volleyball player who consumed a contaminated natural product received a one year period of ineligibility); CAS 2008/A/1588 & 1629 (an amateur football player who consumed a contaminated nutrition supplement received a one year period of ineligibility); CAS 2005/A/847 (an experienced, world class Austrian skier who consumed a contaminated supplement receive an eighteen month period of ineligibility)).

88. Regarding the case from the Brazilian Superior Tribunal de Justiça Desportiva (“STJD”) involving Ms. Lemos, in which the athlete received a five month sanction, the FIVB Disciplinary Panel highlights several differences between that case and the present case. In particular, Ms. Lemos appeared to consult a doctor before obtaining the collagen supplement that was contaminated in that case, obtained the collagen supplement specially ordered from a compounding pharmacy rather than buying a generally manufactured supplement, prepared lists of the supplements that she was taking for doping controls and had consumed this collagen supplement for some time without issue. All of these factors point to the fact that the Ms. Lemos acted with a lower degree of fault than the Athlete in the present case.

89. Additionally, the Athlete raised four national doping dispute cases involving volleyball players. The FIVB Disciplinary Panel first emphasises that these cases were decided by National Anti-Doping Organisations, and, thus, cannot be considered “FIVB precedent”. Additionally, the Athlete only considers one fact relevant in each case related to degree of fault without providing the full decisions in all of these cases. It is impossible for the FIVB Disciplinary Panel to examine the totality of circumstances required in order to properly analyse the relevant factors considered by each of those National Anti-Doping Organisations without these decisions. The FIVB Disciplinary Panel notes that the Athlete only included two of these decisions, the decision involving Mr. Barak and the decision involving Ms. Imamura, and that both are of limited value as they conduct a limited analysis of the degree of fault. First, in the decision involving Mr. Barak, the Disciplinary Commission of the Czech Volleyball Federation highlighted that Mr. Barak was using medication based on a diagnosis for hypertension, that he presumably obtained through a prescription from a doctor

(although it is unclear from the decision) and that he had very limited education related to anti-doping regulations and experience in doping. Thus, the level of experience and the fact that the Athlete was taking medication for a diagnosed condition make the Barak case substantially different from the case at hand. Likewise, Ms. Imamura was 20 years old at the time of the decision and taking a medication prescribed to her by a doctor to treat a skin disease, not related to her performance on the field. Consequently, given the substantial difference in the Athlete's experience as well as his failure to consult a medical professional before taking the products, the Athlete's degree of fault in the present case is not comparable to the athletes in the Barak or Imamura cases.

90. The FIVB Disciplinary Panel actually finds that the FIVB jurisprudence relevant to the present case is CAS 2010/A/2229, which involved a Puerto Rican volleyball player. In that case, the Puerto Rican volleyball player purchased what he thought was a product with all natural ingredients from a store that was the *"first supermarket fully dedicated to natural products"* in Puerto Rico. The product that he purchased was contaminated with sibutramine metabolites. Originally, the FIVB sanctioned the Puerto Rican volleyball player with a period of ineligibility of three months (which the FIVB Disciplinary Panel notes is similar to the request related to the period of ineligibility from the Athlete in the present case in the event of a finding of "No Significant Fault or Negligence"). The World Anti-Doping Agency appealed the decision to CAS, and the CAS Panel held that the Puerto Rican volleyball player should be subject to a period of ineligibility of one year. In making its decision, the CAS Panel highlighted that the Puerto Rican volleyball player was a very experienced international athlete, who failed to consult a doctor before consuming the natural product that was contaminated. Additionally, the Puerto Rican volleyball player relied on the assurances of the natural store employee that the product was risk-free. Moreover, while the Puerto Rican volleyball player conducted some internet research, such as searching the list of ingredients of the product, the CAS Panel noted that had he researched further with the help of a doctor he would have found that the United States Food and Drug Administration had issued a warning related to this

specific product stating that it could include unlisted ingredients, including sibutramine.

91. When comparing this case to the present case, the FIVB Disciplinary Panel notes that several of the similar factual elements exist in the present case. The Athlete in the present case received a product purported to contain only all natural ingredients from a store known to only offer those kind of ingredients. The Athlete did not consult a doctor but, instead, relied on the recommendation of the store's owner. Additionally, the Athlete conducted preliminary research, including looking at the ingredients listed, but had he conducted further research, he could have found that there had been anti-doping cases, involving contamination involving similar natural products. Thus, the FIVB Disciplinary Panel finds that the facts in CAS 2010/A/2229 are sufficiently similar so that this case can provide guidance as to the period of ineligibility. The FIVB Disciplinary Panel emphasizes that when comparing these two cases there are differences that are relevant and justify a lower sanction than the sanction received by Mr. Berrios: 1) Mr. Berrios was taking a product for weight loss, which are more notorious for having contamination issues, than the product that the Athlete took in the present case and 2) there were specific warnings related to contamination of sibutramine with the product that Mr. Berrios was taking, which could have been discovered with a more thorough internet search, whereas there were only general issues of contamination related to natural products (*inter alia* with Moringa products) in the present case if the Athlete had conducted a more thorough internet search.
92. Balancing these various factors which determine the Athlete's degree of fault, the FIVB Disciplinary Panel holds that the period of ineligibility shall be eight (8) months in application of Article 10.5.1.2 FIVB MADR.
93. Regarding the start date of the sanction, the FIVB Disciplinary Panel notes that this process has been delayed for three months between the hearing and the decision based on a delay not attributable to the Athlete. The FIVB Disciplinary Panel also notes that the Athlete was provisionally suspended on 24 May 2017, well before the date of the hearing. Consequently, the Panel finds that the period of ineligibility shall start on the date of the sample collection on 10 April 2017. All competitive results

achieve by the Athlete alone from the period of 10 April 2017 until the date of his last competition shall be disqualified, as required by Article 10.11.1 of the FIVB MADR.

**Taking all the above into consideration**

**THE FIVB DISCIPLINARY PANEL**

**Concludes and Decides**

1. The athlete Mr. Murilo ENDRES (Brazil) has committed an anti-doping rule violation (presence of the prohibited substance S.5 Diuretics and Masking Agents/ furosemide in his bodily specimen) according to Article 2.1 of the FIVB MADR.
2. A sanction of eight (8) months of ineligibility shall be imposed on the athlete Mr. Murilo ENDRES, according to Article 10.5.1.2 of the FIVB MADR.
3. The period of ineligibility shall start on 10 April 2017 and end on 9 December 2017, as per Article 10.11 of the FIVB MADR.
4. All individual competitive results achieved by the athlete Mr. Murilo ENDRES between 10 April 2017 and the date of his last competition shall be disqualified as per Article 10.11.1 of the FIVB MADR.
5. This decision may be appealed in accordance with the attached Notice of Appeals.

Decided in Lausanne, on 3 November 2017

**For the FIVB DISCIPLINARY PANEL**



Ms. Sabinah Clement

Chair

## **NOTICE OF APPEALS**

### **(doping cases)**

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with Article 13 of the FIVB Medical and Anti-Doping Regulations 2017 (FIVB MADR) and with the provisions of the Code of Sports-Related Arbitration (see [www.tas-cas.org](http://www.tas-cas.org)).

The time-limit to file an appeal to CAS shall be twenty-one (21) days from the date of receipt of this decision by the appealing party.

In accordance with Article 14.7 of the FIVB MADR: “Notice to an Athlete or other Person who is a member of a National Federation may be accomplished by delivery of the notice to the National Federation.”

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.

The address and contact details of the CAS are the following:

Court of Arbitration for Sport  
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Tel: +41 21 613 50 00  
Fax: +41 21 613 50 01  
e-mail: [info@tas-cas.org](mailto:info@tas-cas.org)  
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