

EUROPEAN ATHLETICS COURT

November 10, 2017

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INÊS HENRIQUES and MARIA DOLORES MARCOS VALERO,

**Claimants**

v.

EUROPEAN ATHLETIC ASSOCIATION (EAA)

**Respondent**

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**CLAIM**

**(Pursuant to Article 7.1.1 of the EAA Court Procedural Rules)**

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DOLORES MARCOS VALERO

## **I. THE CLAIMANTS AND THE RESPONDENT**

1. The Claimants in these proceedings are two women 50km race walkers:

a. Claimant INÊS HENRIQUES is a licensed athlete member of the Federação Portuguesa de Atletismo, which is a Member Federation of Respondent European Athletics Association (EAA) and the International Association of Athletics Federations (IAAF). (See Exhibit 1, Excerpt from the 2016-2017 European Athletics Directory, at 1-5; Exhibit 2, the IAAF List of Member Federations Excerpt, at 2-1, available at <https://www.iaaf.org/about-iaaf/structure/member-federations/europe>.) Claimant HENRIQUES is the reigning World Champion in the Women's 50km Race Walk Event (London 2017) and the current World Record holder at the distance, having set a time of 4:05:56 at the World Championships on August 13, 2017. (See attached Exhibit 3, Results of Women's 50km Race Walk Event at 2017 World Championships, at 3-1.) Claimant HENRIQUES participated in race walking at three Olympic Games (2004, 2012 and 2016), eight World Championships (2001, 2005, 2007, 2009, 2011, 2013, 2015, and 2017), and four European Championships (2002, 2006, 2010 and 2014).

b. Claimant MARÍA DOLORES MARCOS VALERO is a licensed athlete member of the Real Federación Española de Atletismo, which is a Member Federation of the European Athletics Association (EAA) and the International Association of Athletics Federations (IAAF). (See Exh. 1, at 1-6; Exh. 2, at 2-2.) On April 23, 2017, Claimant MARCOS VALERO set a time of 4:48:26 in the 50km

Race Walk Event at the International Race Walking Competition in Naumburg, Germany. (See Exhibit 4, Results of 50km Race Walk Event at Naumburg, Germany on April 23, 2017, at 4-1 and 4-2 [German version] and 4-4 [English translation from *Heel and Toe Online*, 2016/2017, no. 30, April 25, 2017, available at <http://www.vrwc.org.au/newsletters/heelandtoe-2017-num30.pdf>].)

2. Claimants INÊS HENRIQUES and MARIA DOLORES MARCOS VALERO are represented in this matter by attorney Paul F. DeMeester. Their Letters of Representation are attached as Exhibit 5.

3. Respondent in the present matter is the European Athletic Association (EAA). “The President, the vice-presidents and the CEO shall represent the EAA legally.” (EAA Constitution, Art.5; see Exhibit 6, at 6-5.) The President is Mr. Svein Arne Hansen; the First Vice President is Mr. Dobromir Karamarinov; Mr. Jean Gracia and Mr. Frank Hensel are the other Vice Presidents; Mr. Christian Milz is the Chief Executive Officer. (See Exh. 1, at 1-3 and 1-4.) The address and contact details for Respondent EAA are as follows:

European Athletics Office  
European Athletics Association  
Avenue Louis-Ruchonnet 16  
CH-1003 Lausanne  
Switzerland

Tel: 41 21 313 43 50  
Fax: 41 21 313 43 51

E-mail: [office@european-athletics.org](mailto:office@european-athletics.org) (Head Office)  
[EAAcourt@european-athletics.org](mailto:EAAcourt@european-athletics.org) (Court)

## II. EUROPEAN ATHLETICS ASSOCIATION COURT SUFFERS FROM JURISDICTIONAL DEFECT AS IT IS NEITHER IMPARTIAL NOR INDEPENDENT

4. The Claims asserted herein are being brought before this European Athletics Association Court (EAA Court) pursuant to Rule 7.1 of the EAA Court Procedural Rules (April 2017), attached as Exhibit 7. (See Exh. 7, at 7-4.) The Claimants cannot seek relief from the Court of Arbitration for Sport (CAS) unless their Claims are decided first by the EAA Court. (EAA Court Procedural Rules, Rule 13.3; see Exh. 7, at 7-7.)

5. Even though Claimants are fulfilling their procedural prerequisite by bringing their claims in this Court first, both Claimants object to this Court's jurisdiction over the Claims herein asserted because the EAA Court suffers a fundamental jurisdictional defect in that it lacks impartiality and independence. The history of the first Court of Arbitration for Sport (CAS) and a 1993 judgement by the Swiss Federal Tribunal are instructive on the subjects of the lack of impartiality and independence.

6. In his second compilation of awards by CAS, the Secretary General of the CAS, Mr. Matthieu Reeb, described the history of the CAS and how it was reformed in 1994 after issuance of the *Gundel* decision by the Swiss Federal Tribunal in 1993:

*However, in its judgement the F[ederal] T[ribunal] drew attention to the numerous links which existed between the CAS and the IOC [International Olympic Committee]: the fact that the CAS was financed almost exclusively by the IOC; the fact that the IOC was competent to modify the CAS Statute; and the considerable power given to the IOC and its President to appoint the members of the CAS. In the view of the F[ederal] T[ribunal], such links would have been sufficient seriously to call into question the independence of the CAS in the event of the IOC's being a party to proceedings before it. The F[ederal] T[ribunal]'s message was thus perfectly clear: the CAS had to be made more independent of the IOC both organizationally and financially.*

*This Gundel judgement led to a major reform of the Court of Arbitration for Sport.*

(M. Reeb, ed., *Digest of CAS Awards II 1998-2000* (2002 Kluwer), at xxvi; excerpt attached as Exhibit 8, see 8-7.)

7. The *Gundel* decision was excerpted by Secretary General Reeb in the first Digest of CAS Awards. (*Extract of the judgement of March 15, 1993, delivered by the 1st Civil Division of the Swiss Federal Tribunal in the case G. versus Fédération Equestre Internationale and Court of Arbitration for Sport (CAS) (public law appeal) (translation)* [original judgement published in the *Recueil Officiel des Arrêts du Tribunal Fédéral* [Official Digest of Federal Tribunal Judgements] 119 II 271], in M. Reeb, ed., *Digest of CAS Awards 1986-1998* (Stämpfli Editions SA Berne 2001), at 561-575; which excerpt (*Gundel*) is attached as Exhibit 9.)

The Swiss Federal Tribunal stated that according to its judicial practice, “*a true award, ranking with the judgement of a state court, presupposes that the arbitral tribunal pronouncing it offers sufficient guarantees of impartiality and independence ...*” (*Gundel*, at 565; see Exh. 9, at 9-8.) Citing another precedent, the Swiss Court wrote:

*In this latter judgment, the Federal Tribunal, applying these principles, considered that an arbitral tribunal which was the body of an association having the quality of party to the action did not offer sufficient guarantees of independence. The decisions taken by such bodies indeed constitute only a simple expression of will by the association concerned; such decisions are acts falling within the scope of administration and are not judicial acts.*

(*Gundel*, at 565; see Exh. 9, at 9-8.)

8. The EAA Court is neither impartial nor independent. Claims are not submitted to the Court but to the Head Office of the Association. (EAA Court Procedural

Rules, Rule 7.1.1; see Exh. 7, at 7-4.) The Head Office then notifies the Chairperson of the EAA Court. (EAA Court Procedural Rules, Rule 7.1.3; see Exh. 7, at 7-4.) “*All communication to the EAA Court shall be sent to the EAA Head Office which shall also act as court secretariat ....*” (EAA Court Procedural Rules, Rule 8.1; see Exh. 7, at 7-5.) “*The Head Office shall carry out all the operational and administrative work of the EAA under the direction of the CEO.*” (EAA Const., Art. 31; see Exh. 6, at 6-16.)

The EAA Court was created by the EAA Constitution. (EAA Const., Arts. 33 & 34; see Exh. 6, at 6-16 and 6-17.) The EAA Congress is empowered to amend the Constitution. (EAA Const., Art. 15(h); see Exh. 6, at 6-9.) The Congress also decides who serves on the Council. (EAA Const., Art. 17; see Exh. 6, at 6-10.) The Council appoints the Chairperson and the Members of the EAA Court. (EAA Const., Art. 22(1); see Exh. 6, at 6-12.) It is logical to assume that the EAA Court depends on the Respondent Association for its operating costs, as no provision is made in any EAA source documents for independent court funding. Also, the absence of a challenge procedure against EAA Court Members constitutes a defect. (*Gundel*, at 566; see Exh. 9, at 9-9.) Therefore, the EAA Court is organically and economically dependent on the Association and is part of its administrative machinery. *Gundel* is instructive in that the Swiss Federal Tribunal requires greater independence from a court. (*Gundel*, at 570; see Exh. 9, at 9-13.) Furthermore, as an arm of the EAA, the EAA Court cannot be impartial in a case such as this wherein the EAA is the Respondent, that is to say a party to the legal action.

9. The Swiss Federal Tribunal said in its *Gundel* decision: “... *the contested decision must be open to free and independent juridical control, control which may be entrusted to an arbitral tribunal on condition that such tribunal constitutes a true judicial authority and not the simple body of the association interested in the outcome of the dispute.*” (*Gundel*, at 566; see Exh. 9, at 9-9.) In the words of the *Gundel* Court, the EAA Court in this case is “the simple body of the association interested in the outcome of the dispute.” This flaunts a principal rule established by the Swiss courts: “*In fact, to pronounce an award in one’s own case is quite simply not compatible with the guarantee of independence.*” (*Gundel*, at 566; see Exh. 9, at 9-9.) The EAA Court does not pass the exacting requirements of Swiss Federal Law on Private International Law, which matters in this case because the EAA was established under Swiss civil law, has its seat located in Switzerland and is subject to the laws of Switzerland. (EAA Const., Arts. 1 and 43; see Exh. 6, at 6-4 and 6-20.)

10. A proceeding in the EAA Court cannot advance unless the registration fee of CHF 1,500 has been paid into the EAA bank account. Payment must be received within 30 days of a claimant obtaining knowledge of the fact or decision giving rise to the claim. (EAA Court Procedural Rules, Rules 7.1.1 and 7.1.2; see Exh. 7, at 7-4.) But unlike the CAS, the EAA Court does not make its bank account information publicly available. EAA Head Office staff told counsel for the Claimants to file the Claim first, and only then would EAA provide the bank information necessary to perfect the registration payment. (See Declaration of Counsel, attached as Exhibit 10.)

By conditioning the provision of payment information on filing a claim first, EAA Head Office staff have essentially shortened the 30-day window within which a claim must be brought. First, claimants must file the claim, then wait for EAA staff to be kind enough to provide payment information. If EAA staff does not provide the information, or does not provide the information in a timely fashion, the claim may be considered untimely and be ruled inadmissible. Claimants were unable to transact payment of the registration fee concurrently with the electronic filing of the Claim by e-mail. In essence, this gives control over the justiciability of the claim to staff members of a party to the proceeding. The shortening of the time window within which a claim must be filed results in a *de facto* amendment by EAA Head Office staff of the EAA Court Procedural Rules without input of the EAA Council, the EAA Congress or the EAA Executive Board.

11. The lack of impartiality and independence and the impropriety of how registration payment information is handled by Respondent EAA, result in violations of rights guaranteed by the EAA Court Procedural Rules in Rule 6: “*Throughout the proceedings before the EAA Court, the due process rights and the right of equal treatment of the parties shall be respected.*” (EAA Court Procedural Rules, Rule 6.1; see Exh. 7, at 7-3.) The lack of impartiality and independence and the existence of an improper payment system result in these proceedings falling well short of due process requirements. The fact that Respondent EAA controls the appointment process of the EAA Court as well as its financing, and the lack of any challenge procedure, and control by Respondent’s staff members of the claimants’ registration fee payment timing, result in the unequal treatment



of one party (the Claimants) by the staff members of the other party, Respondent EAA. These Rule 6.1 due process and equal treatment violations and the lack of adherence to impartiality, independence and the requirements of the *Gundel* case, deprive the EAA Court of any jurisdiction. Claimants request that the EAA Court declare itself unlawful and refer this matter to the Court of Arbitration for Sport, with all costs to be borne by Respondent EAA, including any filing fee due to the CAS. Claimants should only be responsible for the EAA non-refundable registration fee. As a general rule, the EAA Court assesses costs against a party only when the claim is of an economic nature. (EAA Court Procedural Rules, Rule 14.1; see Exh. 7, at 7-7.) This dispute is not of an economic nature but instead involves fundamental constitutional questions of gender equity, equal treatment, due process and an individual athlete's right to participate in athletics without discrimination.

### **III. COURT HAS JURISDICTION OVER THE PARTIES PURSUANT TO THE EAA CONSTITUTION AND THE EAA COURT PROCEDURAL RULES**

12. If this Court denies the request by Claimants to rule itself as unlawful and to refer this matter to the CAS instead of deciding this matter on the substantive merits, Claimants acknowledge that the EAA Court has jurisdiction over "*the EAA*," Respondent to this Claim, and "*licensed athletes*," which is the status of both Claimants. (EAA Const., Art. 34(1)(a)-(e); see Exh. 6, at 6-17; see also EAA Court Procedural Rules, Rule 2.1(a)-(e); see Exh. 7, at 7-2.) This acknowledgement is made without prejudice to the above-cited claim that the EAA Court suffers from a fatal jurisdictional defect.

**IV. COURT HAS JURISDICTION OVER THE ISSUES RAISED HEREIN PURSUANT TO THE EAA CONSTITUTION AND THE EAA COURT PROCEDURAL RULES**

13. If this Court denies the request by Claimants to rule itself as unlawful and to refer this matter to the CAS instead of deciding this matter on the substantive merits, Claimants acknowledge that the EAA Court has subject matter jurisdiction pursuant to the EAA Constitution and the EAA Court's Procedural Rules. *"The EAA Court shall decide in application of the Procedural Rules of the EAA Court on the following issues : a) violations of this Constitution ...; ... c) disputes concerning the admission of athletes to EAA competitions."* (EAA Const., Art. 34(2)(a)-(c); see Exh. 6, at 6-17; see also Exh. 7, EAA Court Procedural Rules, Rule 2.1(a)-(c), at 7-2.) These Claims raise constitutional issues and issues relating to the exclusion of women athletes in the 50km Race Walk Event at the 2018 European Athletics Championships. This acknowledgement is made without prejudice to the above-cited claim that the EAA Court suffers from a fatal jurisdictional defect.

14. The two constitutional provisions at the center of this Claim are :

*The Purposes of the EAA are to :*

...

(h) *preserve the right of every individual in Europe to participate in Athletics as a sport in the spirit of friendship, solidarity and fair play and without unlawful discrimination;*

...

- l) *promote gender equity throughout the sport, including all bodies of the EAA, the EAA officials, the EAA staff and among the Members.*

(EAA Const., Art. 2(1)(h)-(l); see Exh. 6, at 6-4.)

## V. THIS CLAIM IS TIMELY

15. A claim may be submitted not later than 30 days after the claimant “*has obtained knowledge of the fact or decision which gives rise to the claim.*” (EAA Court Procedural Rules, Rule 7.1.1; see Exh. 7, at 7-4.) The above-cited constitutional provisions regarding gender equity and an individual’s right to participate in athletics without unlawful discrimination were added to the Constitution on October 14, 2017, and went into effect on October 15, 2017, as provided for by Article 48 of the EAA Constitution. (See Exh. 6, at 6-21.)

16. The previous version of the EAA Constitution (2015) did not contain the two cited provisions. (See Exhibit 11, 2015 EAA Constitution (superseded), specifically then-Art. 2 [Objects of the EAA], at 11-4.)

17. A media release by European Athletics issued on October 14, 2017, stated the Respondent’s motive in enacting the constitutional changes :

*European Athletics’ Member Federations unanimously approved all eight proposed amendments to the continental governing body’s Constitution during the European Athletics Congress in Vilnius, Lithuania on Saturday (14).*

*General alignment with the changes made by the International Association of Athletics Federations (IAAF) last year was one of the eight proposals tabled on Saturday and its approval means the European Athletics Constitution will share the same set of fundamental principles as the IAAF on topics ranging from gender equity, transparency, eligibility criteria, term limits, athletes’ voice and a vote at the Council.*

(“European Athletics Member Federations vote unanimously for constitutional change,” 14 October 2017, available at <http://www.european-athletics.org/news/article=european-athletics-member-federations-vote-unanimously-for-constitutional-change-vilnius/index.html>; see attached Exhibit 12, at 12-2.)

18. In light of the effective date of the new constitutional provisions on which these Claims are based, October 15, 2017, these Claims are brought within thirty days of those provisions going into effect and is therefore timely within the meaning of Rule 7.1.1 of the EAA Court Procedural Rules. (See Exh. 7, at 7-4.)

#### **VI. APPOINTMENT OF A 3-MEMBER PANEL**

19. Claimants request that this dispute be heard by a 3-member panel consisting of the Chairperson of the EAA Court and two members appointed by the Chairperson on a rotational basis. (EAA Court Procedural Rules, Rules 4.1 and 7.1.4(b); see Exh. 7, at 7-3 and 7-4.)

#### **VII. ENGLISH SHOULD BE THE LANGUAGE USED IN THIS PROCEEDING**

20. *“The working language of the EAA Court shall be English.”* (EAA Court Procedural Rules, Rule 5.1; see Exh. 7, at 7-3.) Claimants request that all proceedings be conducted in English.

#### **VIII. STATEMENT OF THE CLAIMS AND APPLICABLE LAW**

21. Respondent European Athletics Association (EAA) will be conducting the European Athletics Championships in 2018 pursuant to its Regulations governing the European Championships. (See Exhibit 13, European Athletics Championships Regulations - April 2017 [EAA Championships Regulations].) The European

Championships are held every two years, in even years. (EAA Championships Regulations, Reg. 101.1; see Exh. 13, at 13-1.) In years that the Summer Olympics are held, race walking is not on the program. (EAA Championships Regulations, Reg. 102.2.1; see Exh. 13, at 13-2.)

22. Because no Summer Olympics are held in 2018, race walking events are part of the 2018 European Championships competition program. Men contest the 20km and 50km Race Walk Events but women contest the 20km Race Walk Event only. (EAA Championships Regulations, Reg. 102.2; see Exh. 13, at 13-2.) The Time Table for the 2018 European Athletics Championships shows that the Men's 50km Race Walk Event will be conducted on Day 1 of the 6-day Championships but does not show any Women's 50km Race Walk Event. (See Exhibit 14, 2018 European Athletics Championships Time Table, at 14-1.)<sup>1</sup>

23. The decision by Respondent European Athletics Association to conduct a Men's 50km Race Walk Event at its 2018 European Athletics Championships but not a Women's 50km Race Walk Event constitutes gender discrimination and deprives those individuals in Europe who are women of their right to participate in Athletics as a sport.

24. The decision by Respondent EAA not to include a Women's 50km Race Walk Event at the 2018 European Athletics Championships violates two new fundamental purposes of the EAA Constitution that went into effect on October 15, 2017: "... *the right*

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<sup>1</sup> Please note that the electronic copy of Exhibit 14 takes a few moments to load onto the computer screen.

*of every individual in Europe to participate in Athletics as a sport ... without unlawful discrimination*”; and *“promote gender equity throughout the sport ....”* (EAA Const., Art. 2(10(h)-(l)); see Exh. 6, at 6-4.) From October 15, 2017 onward, the absence of a Women’s 50km Race Walk Event is unconstitutional under Respondent’s own EAA Constitution.

25. Not conducting a Women’s 50km Race Walk Event at the 2018 European Athletics Championships also violates the IAAF Constitution (attached as Exhibit 15). Three Objects of the IAAF Constitution are violated by not conducting a Women’s 50km Race Walk Event:

*The Objects of the IAAF are:*

...

3. *To encourage participation in Athletics at all levels throughout the world regardless of ... gender ....*

4. *To strive to ensure that no gender ... discrimination exists, continues to exist, or is allowed to develop in Athletics in any form, and that all may participate in Athletics regardless of their gender ....*

5. *To compile and enforce rules and regulations governing Athletics and to ensure in all competitions, whether sanctioned by the IAAF, an Area Association or a Member, that such rules and regulations shall be applied in accordance with their terms.*

(IAAF Const., Art. 4(3)-(4)-(5); see Exh. 15, at 15-7.)

The IAAF Constitution also provides: *“In the case of conflict between this Constitution and the constitution of an Area Association, the terms of this Constitution shall prevail.”* (IAAF Const., Art. 10(2); see Exh. 15, at 15-21.)

26. The IAAF Constitution applies because Respondent “*EAA is the Area Association of the IAAF.*” (EAA Const., Art. 3(1); see Exh. 6, at 6-5.) “*The EAA shall apply, where relevant, the provisions of the IAAF Constitution, Rules and Regulations.*” (EAA Const., Art. 3(2); see Exh. 6, at 6-5.)

An Area Association such as Respondent EAA exists under the IAAF’s constitutional imprimatur. (IAAF Const., Art. 10(1); see Exh. 15, at 15-21.) Respondent EAA’s Constitution may not conflict with the IAAF’s Constitution. (IAAF Const., Art. 10(2); see Exh. 15, at 15-21.)

Respondent EAA’s origin dates back to 1933, when the IAAF Council appointed a permanent European Committee, one year after having created a special IAAF committee to explore the possibility of organizing a European Championship in Athletics. (History of European Athletics, available at <http://www.european-athletics.org/european-athletics/who-we-are/history.html>, attached as Exhibit 16; see Exh. 16, at 16-1.)

Membership in Respondent EAA is conditioned on membership in the IAAF. “*The EAA shall comprise those national governing bodies for Athletics that are Members of the IAAF, included in Europe in the grouping of Members of the IAAF and admitted to membership of the EAA by a decision of the Congress.*” (EAA Const., Art. 6(1); see Exh. 6, at 6-5.)

27. Not conducting a Women’s 50km Race Walk Event at the 2018 European Athletics Championships also violates the Olympic Charter. The IAAF, and therefore also Respondent EAA, is affiliated to the International Olympic Committee IOC) and plays “a

*leading role in the achievement of the aims of the Olympic Movement.”* (IAAF Const., Art. 4(11); see Exh. 15, at 15-7.)

The relevant Fundamental Principles of Olympism in the Olympic Charter provide:

4. *The practice of sport is a human right. Every individual must have the possibility of practising sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.*

[...]

6. *The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as ... sex ....*

(Olympic Charter, Fundamental Principles of Olympism Nos. 4 & 6; see Exh. 17., at 17-7 and 17-8.)

The applicability of the Olympic Charter to the IAAF (and therefore also to Respondent EAA) is apparent in Art. 4(11) of the IAAF Constitution as well as from the Olympic Charter itself. The Olympic Charter binds the IAAF to its requirements. The *“Olympic Charter defines the main reciprocal rights and obligations of the three main constituents of the Olympic Movement, namely the International Olympic Committee, the International Federations and the National Olympic Committees ...”* (Introduction to Olympic Charter, subd. (c); see also Rule 1(2); see Exh. 17, at 17-6 and 17-9.) The IAAF is one of the International Federations belonging to the Olympic Movement and is specifically mentioned in the Charter as such. (Olympic Charter, Rule 45, Bye-Law 1.3.1; see Exh. 17, at 17-43.) One of the core tenets of the Olympic Movement is that *“Belonging to the Olympic Movement requires compliance with the Olympic Charter ...”* (Olympic



Charter, Fundamental Principles of Olympism, No. 7; see Exh. 17, at 17-8.) The Olympic Charter requires that “*The statutes, practice and activities of the IFs within the Olympic Movement must be in conformity with the Olympic Charter ....*” (Olympic Charter, Rule 25; see Exh. 17, at 17-29.) The mission and role of the IOC are “*to encourage and support the promotion of women in sport at all levels and in all structures with a view to implementing the principle of equality of men and women.*” (Olympic Charter, Rule 2(7); see Exh. 17, at 17-10.) By being part of the Olympic Movement, the IAAF (and hence, Respondent EAA) must comply with the Olympic Charter and its gender equality principles.

28. Not conducting a Women’s 50km Race Walk Event at the 2018 European Athletics Championships also violates Swiss law. Swiss law is relevant to this Claim, as provided for by the EAA Court Procedural Rules, Rule 12 (“*Subsidiarily, the EAA Court shall apply Swiss law*”) and the EAA Constitution’s Article 44 (“*The EAA and its rules and regulations shall be subject to the laws of Switzerland*”). (See, respectively, Exh. 7, at 7-6; Exh. 6, at 6-20.)

Switzerland is a signatory to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (UN Convention). The UN Convention is attached as Exhibit 18. Switzerland became a signatory on January 23, 1987, and ratified the UN Convention on March 27, 1997, as set forth in [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-)

[8&chapter=4&lang=en](#), a pdf copy of which is attached as Exhibit 19. (See Exh. 19, Status of UN Convention, at 19-3, 19-56 and 19-57.)

The Preamble to the Convention notes

*that the Charter of the United Nations reaffirms faith in the fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women [...]*

(UN Convention, Preamble; see Exh. 18, at 18-1.)

The provisions of the Convention aim to counteract all vestiges of discrimination against women:

*Article I*

*For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.*

*Article II*

*1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

*[...]*

*(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;*

*(c) The right to free choice of profession and employment,*

*[...]*

*Article 13*

*States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:*

[...]

*(c) The right to participate in recreational activities, sports and all aspects of cultural life.*

[...]

*Article 15*

*1. States Parties shall accord to women equality with men before the law.*

(See Exh. 18, at 18-2, 18-5, 18-6 and 18-7.)

29. Switzerland became a Member of the United Nations (UN) on September 10, 2002. (See <http://data.un.org/CountryProfile.aspx?crName=Switzerland>, a copy of the first page of which is attached as Exhibit 20.) The United Nations Charter is attached as Exhibit 21.

The Preamble of the UN Charter provides that

*WE THE PEOPLES OF THE UNITED NATIONS DETERMINED*

[...]

*to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and*

[...]

*AND FOR THESE ENDS*

[...]

*to employ international machinery for the promotion of the economic and social advancement of all peoples.*

(UN Charter, Preamble; see Exh. 21, at 21-2.)

Article 1 of the UN Charter sets forth the Purposes of the United Nations:

*The Purposes of the United Nations are:*

[...]

3. *To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion [...]*

(UN Charter; see Exh. 21, at 21-3.)

Not conducting a Women's 50km Race Walk Event at the 2018 European Athletics Championships violates the United Nations Charter and the UN Convention, as Swiss law incorporates the provisions of the Charter and the UN Convention.

30. As discussed above in paragraph 25, the IAAF Constitution prevails if the EAA Constitution is in conflict. (IAAF Const., Art. 10(2); see Exh. 15, at 15-21.) In addition, “[t]he EAA Court shall decide the dispute based on the Rules and Regulations of the EAA and, if applicable the IAAF.” (EAA Court Procedural Rules, Rule 11; see Exh. 7, at 7-6.) The IAAF Constitution provides: “The governing law of the IAAF shall be the law of Monaco.” (IAAF Const., Art. 21; see Exh. 15, at 15-31.) Monaco acceded to the UN Convention on the Elimination of All Forms of Discrimination against Women on March 18, 2005. (See Exh. 19, at 19-2.) Monaco became a Member of the United Nations on

May 28, 1993. (See <http://en.gouv.mc/Policy-Practice/Monaco-Worldwide/International-Organisations/Monaco-the-UN-and-Membership-to-its-Specialised-Agencies>, attached as Exhibit 22.) Hence, as discussed in the preceding paragraphs 28 and 29 with respect to Swiss law, Monegasque law likewise incorporates the gender equality requirements of the UN Charter and UN Convention. This means that Respondent EAA is required to organize a Women's 50km Race Walk Event at the 2018 European Athletics Championships pursuant to Monegasque law.

31. The proceedings before the EAA Court do not meet the due process rights and the right to equal treatment guaranteed by Rule 6.1 of the EAA Court Procedural Rules and suffer from a fundamental jurisdictional defect (see *Gundel* case at Exh. 9), as set forth in the jurisdictional objection by the Claimants in paragraphs 4 through 11 above.

## **IX. REASONING, EVIDENCE AND WITNESSES**

32. EAA Court Procedural Rules require the claims to set forth their reasoning accompanied by all available evidence and a list of all witnesses. (EAA Court Procedural Rules, Rule 7.1.1; see Exh. 7, at 7-4.) The reasoning supporting the claims is set forth in the arguments made in this brief and the authorities cited.

33. The available evidence is attached in Exhibits 1 through 35 which are all incorporated hereto as if fully set forth herein.

34. The witnesses that may be called at the hearing on this matter include either Claimant, each one of whom is expected to testify to the following: athletic background; 50km Race Walk Event achievements; desire to compete at all 50km major championship

events; efforts to be entered at 50km race walk events; obstacles faced as a woman athlete in being able to participate at the same level of 50km race walk competition as any male athlete; the mixed nature of many race walk events; and the performance differences time-wise between male and female athletes in race walking events.

**X. THE BURDEN OF PROOF SHIFTS TO RESPONDENT EAA TO JUSTIFY THE GENDER DISCRIMINATORY EFFECT OF ITS EXCLUSION OF WOMEN FROM THE EUROPEAN ATHLETICS CHAMPIONSHIPS 50KM RACE WALK EVENT ONCE CLAIMANTS ESTABLISH A *PRIMA FACIE* CASE OF GENDER DISCRIMINATION AND ATHLETE EXCLUSION**

35. The EAA Court Procedural Rules address the standard of proof:

*The standard of proof in all cases shall be determined on a sliding scale from, at minimum, a mere balance of probability (for the least serious violation) up to proof beyond a reasonable doubt (for the most serious violation). The Panel shall determine the applicable standard of proof in each case.*

(EAA Court Procedural Rules, Rule 12.7; see Exh. 7, at 7-7.)

Claimants accept that they have the burden to establish a *prima facie* case by the balance of probability. Claimant's burden is easily discharged: male athletes have an opportunity to compete in the 50km Race Walk Event at the 2018 European Athletics Championships but female athletes do not have that same opportunity. (See Exh. 13, at 13-2 [European Championships Regs., Reg. 102.2]; Exh. 14 [Championships Time Table].) This establishes a *prima facie* case that a female athlete is discriminated against based on her gender and that she is deprived of her right to participate in the sport of athletics with respect to the 50km Race Walk Event.

36. Once this *prima facie* case is established, the burden shifts to Respondent EAA, as the responsible party for the discriminatory practices and deprivation of the

athlete's rights to participate in sports, to justify the discriminatory effect of excluding women from the European Championships 50km Race Walk Event.

37. Gender discrimination and depriving an athlete of the right to participate in athletics are violations of such fundamental constitutional rights that Respondent EAA should be required to justify its exclusion of women in the 50km Race Walk Event by proof beyond a reasonable doubt. The EAA Court's Rules provide that "*proof beyond a reasonable doubt*" is the proper standard for "*the most serious violation[s]*." (EAA Court Procedural Rules, Rule 12.7; see Exh. 7, at 7-7.) These constitutional violations are of the most serious kind.

**XI. CONSTITUTIONAL GENDER EQUITY REQUIREMENT DEPRIVES RESPONDENT EAA OF ANY JUSTIFICATION FOR ITS EXCLUSION OF WOMEN RACE WALKERS FROM THE 50KM RACE WALK EVENT AT THE 2018 EUROPEAN ATHLETICS CHAMPIONSHIPS**

38. Women's athletic events have historically lagged behind men's events for inclusion at major competitions. The first participation of women athletes at the Olympics did not occur until 1928, at the 8th Summer Olympics. Even then, there were only five events on the program. Between 1928 and 1972, there was no event longer than 800 meters for women. A women's 1,500 meters was added in 1972; the women's marathon was not added until 1984. Women triple jumpers, pole vaulters, hammer throwers and steeple chasers had to wait until the 1990s or the new millennium for inclusion at the Olympics. (See IAAF Media Release of September 1, 2008, *IAAF Celebrates 80 Years of Women Athletes at the Olympic Games*, available at

<https://www.iaaf.org/news/news/iaaf-celebrates-80-years-of-women-athletics-a>; attached as Exhibit 23; and IAAF Media Release of August 11, 2011, *Nineties the Age of Gender Equality*, available at <https://www.iaaf.org/news/news/nineties-the-age-of-gender-equality>; attached as Exhibit 24; Martin, David E. & Gynn, Roger W., *The Politics of Inclusion-A Women's Olympic Marathon* in their book *The Olympic Marathon* (2000), at 334-336 [excerpt attached as Exhibit 25].)

**A. CONSTITUTION RANKS HIGHER THAN CHAMPIONSHIPS REGULATION**

39. The EAA Constitution provides for gender equity and an individual athlete's right to participate in athletics. (EAA Const., Art. 2(h)-(l); see Exh. 6, at 6-4.) But the regulations that govern the 2018 European Athletics Championships do not provide for a women's 50km Race Walk Event even though the event is provided for men. (EAA Championships Regulations, Reg. 102.2; see Exh. 13, at 13-2.) Yet, Respondent EAA cannot justify its exclusion of women from the 50km Race Walk Event by relying on the regulatory provision 102.2 which is in conflict with the requirements of Respondent EAA's own Constitution. The reason that Respondent EAA cannot justify its discrimination in this fashion is based on the elementary legal principle that the EAA Constitution is of a higher ranking priority when its terms conflict with those of an ordinary regulation.

40. In a case with persuasive force, a CAS Decision has referenced the priority of higher ranking Rules. In Chiba v. Japan Amateur Swimming Federation (JASF), CAS 2000/A/278 ("Chiba"), Dr. Hans Nater, the Sole Arbitrator, confirmed that international



federations are bound by provisions of their Constitutions and the Olympic Charter. He stated:

*Rule 6 of the Olympic Charter names fair play as one of the fundamental principles of the Olympic movement. The same Rule expresses the idea that sport must be practised without discrimination of any kind. Article C2 of the FINA Constitution prohibits any discrimination against national federations and individuals. The principles of fair play and non-discrimination are valid for athletes and sports organizations and must be followed in the process of selecting athletes for the Olympic Games.*

(Chiba, at 4; the Chiba decision is attached as Exhibit 26; see Exh. 26, at 26-4.)

41. In a later Award with equal persuasive force, Football Federation Islamic Republic of Iran (IRIFF) v. Fédération Internationale de Football Association (FIFA), CAS 2008/A/1708 (IRIFF v. FIFA), the CAS Panel stated the important legal principle of higher-ranking rules:

*In principle, any International Federation (IF) has the freedom to establish its own provisions, but there are limits to this autonomy. When creating new rules and regulations, the relevant organs are bound by the limits imposed on them by the higher ranking provisions, in particular the association's statutes.*

(IRIFF v. FIFA, at 1; Award is attached as Exhibit 27; see Exh. 27, at 27-1.)

The FIFA Statutes are akin to the EAA's Constitution, whereas the Rules Governing the FIFA Procedures are similar to the EAA's Championships Regulations. The Panel in IRIFF v. FIFA held that the FIFA Statutes are "a provision of higher level in the hierarchy of the FIFA regulations." (IRIFF v. FIFA, at 2; see Exh. 27, at 27-2.)

42. Additional CAS jurisprudence on the subject holds that a regulation must be declared invalid if it contravenes a higher-ranking rule, as pronounced in United States

IOC):

*One of the expressions of private autonomy of associations is the competence to issue rules relating to their own governance, their membership and their own competitions. However, this autonomy is not absolute. [...] Because the Panel has found that the rule prohibiting doped athletes from participation in the next Olympic Games is not in compliance with the WADA Code, and because the WADA Code has been incorporated into the Olympic Charter, the rule is not in compliance with the IOC's Statutes, i.e. the Olympic Charter.*

(USOC v. IOC, at 2; Award is attached as Exhibit 28; see Exh. 28, at 28-2.)

**B. ADDITION OF GENDER EQUITY TO THE CONSTITUTION OF RESPONDENT EAA REMOVES SUFFICIENCY OF INTEREST WEIGHING AS A JUSTIFICATION FOR THE CONTINUED GENDER DISCRIMINATION PRACTICED BY RESPONDENT EAA AND REPLACES IT WITH A DIFFERENT JUSTIFICATION STANDARD THAT RESPONDENT EAA IS UNABLE TO MEET UNLESS IT ORGANIZES A WOMEN'S 50KM RACE WALK EVENT AT THE 2018 EUROPEAN ATHLETICS CHAMPIONSHIPS**

43. Before the IOC and IAAF added a gender equity provision to their constitutions, the method for adding a new women's event (where those events already existed for men) was to gauge if "sufficient interest" existed around the world. In their book *The Olympic Marathon*, authors David E. Martin and Roger W.H. Gynn described how the "sufficiency of interest" test worked in tracking how the women's marathon was added to the 1984 Los Angeles Olympics:

How did the women's marathon get approved for the Los Angeles Olympic Games? It was a many-step process. Rule 52 of the IOC Charter (Sports Programme, Admission of Sports, Disciplines, and Events), outlining the requirements, is reprinted below.

52.3.2 To be included in the programme of the Olympic Games, events must have a recognized international standing both numerically and geographically, and have been included at least twice in world or continental championships.

52.3.3 Only events practiced by men in at least fifty countries and on three continents, and by women in at least thirty-five countries and on three continents, may be included in the programme of the Olympic Games.

52.3.4 Events are admitted four years before specific Olympic Games in respect of which no change shall thereafter be permitted.

(Martin & Gynn, *The Olympic Marathon* (2000), at 334; see Exh. 25, at 25-3.)

When the Olympic Charter adopted gender equality in 2004, there was an obvious tension with the “sufficiency-of-interest” rule. (Former Olympic Charter, September 1, 2004 ed., Fundamental Principles of Olympism No. 5 [*“Any form of discrimination with regard to a country or a person on grounds of ... gender ... is incompatible with belonging to the Olympic Movement.”*]) and former Art. 47(1.1) [sufficiency-of-interest rule]; see Exh. 29, 2004 Olympic Charter (superseded), at 29-9 and 29-89.) The tension did not last long. The “sufficiency-of-interest” rule was eliminated in the next edition of the Olympic Charter (2007) (superseded). (See Exhibit 30.)

44. Prior to the inclusion of gender equality as a fundamental constitutional value, athletic federations could arguably justify the exclusion of a women’s event at a major championship on the basis that not “sufficient interest” was shown at the national and area levels. But adopting gender equality puts paid to that justification argument.

45. The “sufficiency-of-interest” justification is simply a reflection of the historic gender bias that has been perpetrated by athletic federations. Women athletes were

excluded from the 50km Race Walk Event across the board, world-wide, area wise and on the national level (with few exceptions). Such exclusionary practices meant that “sufficient interest” could not be shown. To permit an athletic federation to argue that men have a particular event at a major championship, such as the 50km race walk, but women don’t because they have not participated sufficiently in a sufficient number of countries, is to permit such a “sufficiency-of-interest” justification to enshrine past discrimination.

46. Respondent EAA’s recent constitutionalization of gender equity, effective October 15, 2017, changes the legal justification test. Instead of analyzing how many women in how many countries participate in a particular event at national or regional meets (“sufficiency-of-interest” justification), gender equity requires a new justification analysis: ‘Is the Event organized for Men at a major competition? If the answer is ‘yes’, then gender equality requires that the Event also be staged for Women. Respondent EAA cannot pass this gender equity justification test. Any response that not enough national federations have organized women’s 50km race walk national championships for the event to be included at the 2018 European Athletics Championships elevates past gender discriminatory exclusion practices to the level of current policy that is flagrantly in conflict with the new gender equity constitutional provision Respondent EAA adopted last month. Telling women they cannot race the 50km because they have not been permitted to do it in the past is not a legal justification for continued discrimination.

47. There does not exist any justification that Respondent EAA could proffer that overcomes the IAAF constitutional Object that participation in athletics must be

encouraged at all levels regardless of gender. (IAAF Const., Art. 4(3); see Exh. 15, at 15-7.) Excluding women from the 50km Race Walk Event at the 2018 European Athletics Championships is to discourage athletic participation of women athletes, the opposite of the IAAF's constitutional imperative.

48. There does not exist any justification that Respondent EAA could proffer that overcomes the IAAF constitutional Object "*to strive to ensure that no gender ... discrimination exists, continues to exist, or is allowed to develop in Athletics in any form, and that all may participate in Athletics regardless of their gender ....*" (IAAF Const., Art. 1(4); see Exh. 15, at 15-7.) Gender discrimination has existed in the 50km Race Walk Event. Men have had an opportunity to contest it at the Olympics since 1932 (with the exception of 1976) and at the IAAF World Championships since 1976. Women have only been able to contest the event at the IAAF World Championships since this year. (See Exh. 3.) For Respondent EAA to not conduct a Women's 50km Race Walk Event at the 2018 European Athletics Championships is to allow gender discrimination to continue to exist and to preclude women from participating in athletics based on their gender, in violation of the IAAF's constitutional imperatives. If the IAAF can organize a Women's 50km Race Walk Event at its World Championships, as it did last August, then certainly there is no justification for Respondent EAA's failure to do the same at Berlin next August.

49. There does not exist any justification that Respondent EAA could proffer that overcomes the Olympic Charter's establishment of the practice of sport by every individual, free from sex discrimination, as a human right. (Olympic Charter, Fundamental

Principles of Olympism, Nos. 4 & 6; see Exh. 17, at 17-7 and 17-8.) Conditioning participation in the 50km Race Walk Event at the 2018 European Athletics Championships on being a man constitutes a violation of the Olympic human right.

50. Lest there be any ambiguity about what the Olympic gender discrimination ban means, the Olympic Agenda 2020, which was unanimously agreed upon at the 127th IOC Session in December 2014, spells it out in succinct fashion:

*Recommendation 11  
Foster gender equality*

...

1. *The IOC to work with the International Federations to achieve 50 per cent female participation in the Olympic Games and to stimulate women's participation and involvement in sport by creating more participation opportunities at the Olympic Games.*

(Olympic Agenda 2020, Recommendation 11; available at <https://www.olympic.org/olympic-agenda-2020>; attached as Exhibit 31; at 31-16.)

The current Time Table for the 2018 European Athletics Championships set forth 24 events for men but only 23 for women, with the 50km Race Walk Event being the difference. (See Exh. 13, at 13-2 [Reg. 102.2]; and Exh. 14.) The European Championships have a 51 % to 49 % split between men's and women's events, and a 100 % to 0 % male to female participation ratio in the 50km Race Walk Event. Both sets of figures illustrate the gender bias exhibited by Respondent EAA in its conduct of the European Athletics Championships.

51. There does not exist any justification that Respondent EAA could proffer that overcomes the UN Convention's requirement that discrimination against women be eliminated with respect to the participation in sports. (UN Convention, Art. 13; see Exh.

18, at 18-6 and 18-7.) Keeping women athletes out of the 50km Race Walk Event in Berlin is to maintain gender discrimination, not eliminate it.

Article 11 seeks the same freedom from discrimination in the right to the same employment opportunities and the free choice of profession and employment. (UN Convention, Art. 11; see Exh. 18, at 18-5.) Women walkers do not have the same employment opportunity as men when it comes to choosing the 50km Race Walk Event. By being excluded from the event, women athletes are prevented from earning prize money and sponsorships that are available to their male 50km counterparts.

Article 15 requires States Parties such as Switzerland and Monaco to “*accord women equality with men before the law.*” (UN Convention, Art. 15; see Exh. 18, at 18-7.) Article 1 defines discrimination against women to mean any exclusion or restriction that impairs or nullifies the exercise by women, on an equal basis with men, of human rights and freedoms in any economic, social, cultural, civil or other field. (UN Convention, Art. 1; see Exh. 18, at 18-2.) Not permitting women walkers to contest the 50km race walk, while at the same time affording men that opportunity, is precisely the “exclusion” Article 1 warns against.

52. Switzerland and Monaco have a further obligation under the United Nations Charter to reaffirm a faith in the equal rights of men and women. (UN Charter, Preamble; see Exh. 21, at 21-2.) Their laws will not countenance the exclusion of women from the 50km Race Walk Event at Berlin 2018.

## **XII. GENDER DISCRIMINATION IN 50KM EVENT IS EASILY REMEDIED**

53. The 50km Race Walk Event Gender Discrimination is easily remedied. The actions by the IAAF last summer are a case in point. The IAAF stopped excluding women walkers from the 50km World Championships on July 23, 2017, one year after permitting one woman walker to participate at the 2016 IAAF World Race Walking Team Championships 50km Race Walk Event. (IAAF Media Release of July 23, 2017, attached as Exhibit 32.) The Women's race was held at the same time as the men's 50km race but with a separate entry standard and classification. The last-minute addition to the competition program was a resounding success. Claimant Henriques set the only world record for the entire World Championships. Two other women smashed Area records. (See Exh. 3.)

Women could contest the 50km Race Walk Event in Berlin in joint fashion with the men, as was the case in London for the IAAF race. An entry standard of 5 hours will ensure the presence of a quality field. It must be noted that no entry standard exists for the next longest event, the marathon. (EAA Berlin 2018 Entry Standards, attached as Exhibit 33; see Exh. 33, at 33-1.)

All EAA has to do is to amend its Championships Regulations by changing the language "23 (*twenty-three*) events for Women" to "24 (*twenty-four*) events for Women"; to change the walking event descriptions for women to be the same as that for the men: "*Walking 20km (road), 50km (road)*"; and to change the designation "*M*" to "*M/F*" for the first event of the 2018 Championships. (EAA Championships Regulations, Reg. 102.2;



see Exh. 13, at 13-2; and European Championships Time Table; see Exh. 14.) The race course has already been selected; the race walk judges will be there already for the men's race etc. Permitting the women to walk the 50km event at Berlin 2018 is an easy logistical feat to accomplish. It's also the right thing to do and the only legal course of action to follow in light of Respondent EAA's adoption of gender equity as a constitutional value.

The mixed nature of the 50km Event will increase spectator and broadcast interest and eliminates the organizational burden of having to stage an event of long duration twice, with attendant security, staffing and logistical issues.

Long-distance races lend themselves to being conducted in joint fashion for male and female athletes. The struggle that women marathon runners waged to obtain major status for their event gives us a sense of "déjà vu all over again," in the words of the late U.S. baseball player Yogi Berra. A passage in an article by one of the pioneer woman marathon runners, Nina Kuscsik, published as part of a conference on the marathon convened by the New York Academy of Sciences in 1977 - the article is attached as Exhibit 34 - illustrates the lack of any genuine issue in having men and women race together in a long distance event:

*Overcoming Remaining Obstacles*

*Even after the widely publicized official status of women at the Boston Marathon, obstacles still had to be overcome.*

*The 1972 New York City Marathon was scheduled for October 1. Since its inception in 1970, this race had been organized by men and women for men and women. Now Fred Lebow, marathon director, was told by the AAU Women's Committee chairman, Pat Rico, that the women's section must be a separate event that must begin ten minutes before or after the men. We said the race was separate if the women received separate prizes.*

*The outcome of the event has significance for two reasons. First it became the only event where the women voluntarily added 10 minutes to their times before they even started to run! When the gun went off for them to start, the watches started, but the women sat down behind the starting line and waited for the men's starting gun 10 minutes later.*

*Second, this discrimination paved the way for a pending human rights lawsuit against the AAU for practicing discrimination in a public place. On the West Coast of the United States, another lawsuit was also being prepared: The women there were required to produce medical certificates for a marathon race while the men were not.*

*I traveled to the AAU Convention prepared for a fight. However, at this point the Women's Committee realized it was fighting a losing battle. It not only raised the legal limit of women's running to the marathon distance; it defined that in long distance runs, men and women may start from the same starting line and from the same starting gun. As long as the women were scored separately and competed for separate prizes, they were considered as competing in a separate event. From that point on, the AAU and women long distance runners have had fairly common goals.*

*(“The History of Women's Participation in the Marathon,” by Nina Kuscsik, in *The Marathon: Physiological, Medical, Epidemiological, and Psychological Studies*, ed. by Paul Milvy (Annals of the New York Academy of Sciences, vol. 301 (1977), 862-876, at 870-871; see Exhibit 34, at 34-11 and 34-12.)*

54. The IAAF has scheduled the Women's 50km Race Walk Event at the same time as the Men's 50km Race Walk Event at the May 2018 IAAF World Race Walking Team Championships in Taicang, China. (See IAAF Taicang 2018 Time Table, attached as Exhibit 35.) There is no justification for Respondent EAA not to do the same in Berlin three months later.

### **XIII. APPELLANT SEEKS AN AWARD OF COSTS**

55. *“The EAA Court may ... decide that the prevailing party shall be entitled to a contribution to its legal costs and expenses to be paid by the other party.”* (EAA Court Procedural Rules, Art. 14.2; see Exh. 7, at 7-7.) Given the public interest nature of this

dispute - countering gender discrimination - against a party that solely exists to promote athletics but at the same time discriminates against women athletes, it is proper for Respondent EAA to defray the Claimants' legal costs and expenses. Claimants so request.

#### **XIV. CONCLUSION**

56. Claimants request the Court to grant them the relief sought so that qualifying women race walkers will be able to take part in the August 7, 2018 European Championships 50km Race Walk Event in Berlin. Such grant would render Respondent EAA's practices with respect to the 50km Event congruent with the EAA Constitution, the IAAF Constitution, the Olympic Charter, the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the United Nations Charter and the laws of Switzerland and Monaco.

#### **XV. PRAYER FOR RELIEF**

57. Claimants respectfully requests that:

(a) The Court order Respondent EAA to conduct a Women's 50km Race Walk Event at the 2018 European Athletics Championships, to be held at the same time as the Men's 50km Race Walk Event on August 7, 2018, at 8:35 a.m.

(b) The Court order Respondent EAA to establish an entry standard of five hours (5:00:00) for the Women's 50km Race Walk Event at the 2018 European Athletics Championships;

(c) The Court order Respondent EAA to allow a Member Federation to enter up to five women athletes in the Women's 50km Race Walk Event of whom up to three may participate;

(d) The Court order Respondent EAA to institute a separate classification system for men and women athletes in the 50km Race Walk Event at the 2018 European Athletics Championships;

(e) The Court order Respondent EAA to implement any Court orders hereby requested with immediate effect;


(f) The Court order Respondent EAA to immediately inform its Member Federations of the Court's orders so as to allow the Federations to enter women athletes for participation in the 2018 European Athletics Championships Women's 50km Race Walk Event and for those women athletes to properly prepare;

(g) The Court order Respondent EAA to pay the legal fees and costs incurred by the Claimants in prosecuting these Claims; and

(h) The Court order such further and other relief as may be appropriate and just.

DATED: November 10, 2017.

Respectfully submitted,



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HENRIQUES and MARIA  
DOLORES MARCOS VALERO

## LIST OF EXHIBITS

- 1 - European Athletics Directory 2016-2017 Excerpts
- 2 - Excerpt of List of IAAF Member Federations
- 3 - Results of Women's 50km Race Walk 2017 World Championships
- 4 - Results of 2017 Naumburg 50km Race Walk Event
- 5 - Letters of Representation
- 6 - EAA Constitution (2017)
- 7 - EAA Court Procedural Rules (2017)
- 8 - CAS Secretary General M. Reeb Excerpt re CAS
- 9 - Excerpt from *Gundel* Swiss Federal Tribunal Case (1993)
- 10 - Declaration of Counsel re Registration Payment
- 11 - 2015 EAA Constitution (superseded)
- 12 - EAA Media Release of October 14, 2017 re Constitutional Changes
- 13 - European Athletics Championships Regulations (April 2017)
- 14 - 2018 European Athletics Championships Time Table
- 15 - 2017 IAAF Constitution
- 16 - History of European Athletics
- 17 - 2017 Olympic Charter
- 18 - UN Convention on the Elimination of All Forms of Discrimination Against Women
- 19 - Status History of UN Convention
- 20 - UN Data Country Profile for Switzerland
- 21 - United Nations Charter Excerpts
- 22 - Monaco UN Membership
- 23 - IAAF Media Release of September 1, 2008 re Women Olympic Athletes
- 24 - IAAF Media Release of August 11, 2011 re Gender Equality in the 1990s
- 25 - Excerpt re Olympic Inclusion of Women's Marathon from Martin-Gynn Book
- 26 - Chiba v. JASF, CAS 2000/A/278 Decision
- 27 - IRIFF v. FIFA, CAS 2008/A/1708 Decision
- 28 - USOC v. IOC, CAS 2011/O/2422 Decision
- 29 - 2004 Olympic Charter (superseded)
- 30 - 2007 Olympic Charter (superseded)
- 31 - Olympic Agenda 2020
- 32 - IAAF Media Release of July 23, 2017 re Women's 50km Race Walk Event
- 33 - EAA Berlin 2018 Entry Standards
- 34 - Kuscsik 1977 Article re Women's Participation in the Marathon
- 35 - IAAF Taicang 2018 Time Table