

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

UNITED STATES ANTI-DOPING AGENCY,

Claimant,

and

STIRLEY JONES,

Respondent.

AAA Case No. 01-18-0004-6622

CORRECTED FINAL AWARD

Pursuant to the American Arbitration Association's ("AAA") Commercial Arbitration Rules ("AAA Commercial Arbitration Rules") as modified by the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes as contained in the Protocol for Olympic and Paralympic Movement Testing, effective January 1, 2009, pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 USC 22501, *et seq.* ("USADA Protocol"), an evidentiary hearing was held in Los Angeles, California, on April 23, 2019, before the duly appointed arbitration panel consisting of Jeffrey G. Benz (Chair), David M. Benck and Barbara A. Reeves (collectively, "the Panel" or "the Arbitrators"). The Panel, having been duly sworn, and having duly heard the proofs, arguments, witness testimony, and allegations of the parties, do hereby render our full award pursuant to our undertaking to do so within the time required under the relevant rules, as follows:

I. INTRODUCTION

1.1 This matter arises from an out-of-competition urine sample provided by Paralympic athlete Stirley Jones ("Mr. Jones" or "Athlete") on October 2, 2018, which tested positive for Stanozolol. This was Mr. Jones' first out-of-competition test, as the date in of the test was only his second day in the Registered Testing Pool ("RTP").

1.2 Mr. Jones posits that he has never knowingly ingested Stanozolol, and as further described below, believed that his ingestion of the prohibited substance was the result

of a contaminated supplement provided to him on a promotional basis by an affiliate/distributor of the supplement company.

1.3 Mr. Jones does not dispute the presence of Stanozolol in his system, but he does dispute that he took the substance intentionally and with fault.

1.4 The United States Anti-Doping Agency (“USADA”) has charged Mr. Jones with violation of Articles 2.1 (Presence) and 2.2 (Use) under the International Paralympic Committee Anti-Doping Code (“IPC ADC”).

1.5 Mr. Jones was represented in these proceedings by Howard Jacobs, Esq., Lindsay Brandon, Esq., and Lauren Brock, Esq., all of the Law Offices of Howard Jacobs.

1.6 USADA was represented in these proceedings by Jeff Cook, Esq. and Nadia Soghomonian, Esq., all of the in house legal department of USADA.

II. FACTUAL AND PROCEDURAL HISTORY

2.1 Mr. Jones’ Background in Athletics

2.1.1 Mr. Jones is a 34-year-old Track and Field Athlete competing for Team USA in Para Athletics. Diagnosed with Keratoconus, a thinning disorder of the cornea that causes visual distortion, Mr. Jones has coped with severe visual impairment since high school.

2.1.2 Hailing from Lake Butler, Florida, Mr. Jones was originally a multiple sport athlete, playing football (wide receiver) and basketball. While in high school, Mr. Jones began squinting in class and uncharacteristically dropping passes afterward on the football field. When playing basketball, he realized his ability to aim for the basket was heavily dependent on the gym’s lighting.

2.1.3 He went to the eye doctor, who prescribed bifocals, but they failed to help. Eventually, he was referred to a specialist who was able to determine that Mr. Jones suffered from Keratoconus. Essentially, his cornea resembled the shape of a football rather than a sphere, causing him to suffer from 20/400 vision, classified as severe visual impairment.

2.1.4 From that point forward, Mr. Jones had to wear special contacts. Not wanting to let his condition get in the way of his love for sport, he began running track in high school, and thrived at sprinting.

2.1.5 Despite being recruited by colleges, Mr. Jones took a year off after graduating from high school to work at a local convenience store and live at home. The following year, he moved to Orange County, California to attend Golden West College, where he played three sports, studied towards his associate degree, and worked in the

evenings. While attending Golden West College, Mr. Jones placed 5th and 6th in the 100 m and 200 m finals at the National Junior College Athletic Association Southern California Finals.

2.1.6 Unfortunately, while attending Golden West College, Mr. Jones was in a serious car accident that caused damage to his spine. As a result, he took a year off from school; and for a period of time could no longer afford his apartment in Huntington Beach, and was homeless for a period of time. He did not tell his family out of fear of disappointing them.

2.1.7 Eventually, Mr. Jones was able to return to school, and graduated from Golden West in 2007. Mr. Jones worked odd jobs, mostly for minimum wage, before returning to school in 2013 after competing independently at local invitationals and USATF events. After earning credits at Concordia University, Mr. Jones transferred to Bristol University.

2.1.8 At the age of 30, however daunting, Mr. Jones rededicated himself to his school and athletic disciplines. In 2015, he won gold in the 200m dash at the USATF Club Championships. In 2016, he graduated with a degree in business administration with honors.

2.1.9 Since graduating, Mr. Jones has continued to train and reside in Orange County, where he helps coach other athletes at Bethesda University in Anaheim.

2.1.10 Most recently, Mr. Jones' athletic dreams became a reality when he was named to the 2019 U.S. Paralympic team. Unfortunately, however, he has been unable to compete as a result of his positive test.

2.2 Mr. Jones' October 2, 2018 Urine Sample Collection

2.2.1 On October 2, 2018, Mr. Jones was visited by doping control on only the second day of his inclusion into the RTP.

2.2.2 Because this was his first out-of-competition test, Mr. Jones was very anxious, mostly due to his condition. His fiancé at the time, now wife, had already departed for work, and he was unable to put in his contact lenses before the sample collection process began. Therefore, he did not feel like he was able to collect his medications and supplements in order to declare them, so he declared nothing at all.

2.2.3 The DCO, Kris Forberg, conducted the sample collection without incident, but had to assist Mr. Jones with the splitting and sealing of his sample. This is indicative of how debilitating Mr. Jones' condition can be without use of his contacts.

2.3 Of Mr. Jones' positive test, subsequent efforts to determine its cause, and disclosure to USADA

2.3.1 On October 17, 2018, Mr. Jones was notified of his positive test for Stanazolol.

2.3.2 On November 7, 2018, the UCLA Lab confirmed the finding of Stanazolol in Mr. Jones' "B" Sample, at which time he was provisionally suspended.

2.3.3 Not knowing where his positive test could have come from, Mr. Jones sent a list of all supplements and medications that he had been taking, as well as any of those supplements and medications that he had in his possession, to his counsel.

2.3.4 On November 1, 2018, Mr. Jones' counsel sent the following supplements to Korva Labs for testing. The first batch of supplements were selected based upon counsel's assessment of the several supplements provided by Mr. Jones:

- 2.3.4.1 Bulk Supplements Creatine;
- 2.3.4.2 Deer Antler Velvet Spray; and
- 2.3.4.3 Nitro Tech Whey Protein.

2.3.5 On or about November 13, 2018, it was reported that the Bulk Supplements Creatine and the Deer Antler Velvet Spray did not contain Stanazolol, but that the Nitro Tech Whey Protein was contaminated with Stanazolol.

2.3.6 The Nitro Tech Whey Protein, manufactured by MuscleTech, was obtained through a promotional sponsorship with Iovate Health Sciences, who distributed the product. The product was recommended by Mr. Jones' nutritionist, Angelica Ibanez Amaro (who was specifically instructed to recommend supplements that did not contain any WADA-prohibited substances), and he only used it on training days, which were typically Mondays and Wednesday. A photo of the Nitro Tech Whey Protein that Mr. Jones used is pictured below:



2.3.7 On November 30, Mr. Jones disclosed to USADA that this was the source of his positive test via e-mail, with attachments. At the request of USADA, the Nitro Tech Whey Protein was sent from Korva Labs to SMRTL for further testing. The testing by SMRTL confirmed the presence of Stanozolol at an approximate concentration of 260 ng/g.

2.3.8 Mr. Jones provided further disclosure regarding his use of the supplement, along with his reason for using the supplement on March 7, 2019.

2.3.9 USADA separately obtained a sealed container of the MuscleTech Nitro Tech Whey Protein for testing; however, the initial container obtained, which did not contain Stanozolol, was not from the same lot number as Mr. Jones' container. Eventually, USADA was able to obtain an unopened case of six sealed containers directly from the manufacturer from the same lot number, which, when tested, did not contain Stanozolol.

2.4 These facts were for the most part accepted by both sides. This is a summary of the relevant facts and allegations based on the parties' written and oral submissions, pleadings and evidence adduced during the pendency of this arbitration proceeding. Additional facts and allegations found in the parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, this Award only refers to the submissions and evidence necessary to explain the Panel's reasoning. This section is intended only to give a brief overview of the basic facts underlying this case and is without prejudice to the facts stated in the Analysis section below. The facts presented or relied upon here may differ from one side's or the other's presented version and that is the result of the Panel necessarily having to weigh the presented evidence to come to an award and to provide the basis therefor.

2.5 Helpfully, the parties have agreed to a stipulation of facts which provides as follows:

"The United States Anti-Doping Agency ("USADA") and Stirley Jones ("Respondent"), stipulate and agree for purposes of all proceedings involving USADA urine specimen number 1619254 as follows:

1. That the USADA Protocol for Olympic and Paralympic Movement Testing ("Protocol") governs all proceedings involving USADA urine specimen number 1619254;

2. That the mandatory provisions of the World Anti-Doping Code (the "Code") including, but not limited to, the definitions of doping, burdens of proof, Classes of Prohibited Substances and Prohibited Methods, sanctions, the Protocol, the International Paralympic Committee ("IPC") Anti-Doping Rules and the United States Olympic Committee ("USOC") National Anti-Doping Policies are applicable to any matter involving USADA urine specimen number 1619254;

3. That USADA collected the urine sample designated as USADA urine specimen number 1619254 out-of-competition on October 2, 2018;

4. That USADA's collection of the sample and the chain of custody for USADA urine sample 1619254 was conducted appropriately and without error;

5. That USADA sent USADA urine specimen number 1619254 to the World Anti-Doping Agency ("WADA") accredited laboratory in Los Angeles, California (the "California Laboratory") for analysis;

6. That the California Laboratory's chain of custody for USADA urine specimen number 1619254 was conducted appropriately and without error;

7. That the California Laboratory, through accepted scientific procedures and without error, reported both A and B samples of urine specimen number 1619254 contain 3'-hydroxystanozolol, a metabolite of stanozolol;

8. Stanozolol and its metabolites are Prohibited Substances in the class of Anabolic Agents on the WADA Prohibited List, adopted by both the Protocol and the IPC Anti-Doping Rules;

9. That a Provisional Suspension was imposed on Respondent on October 17, 2018, barring him from competing (or participating in any capacity) in any competition or other activity under the jurisdiction of the IPC, US Paralympic and the USOC, or any clubs, member associations or affiliates of these entities, until his case is deemed not to be a doping offense, he accepts a sanction, he fails to contest this matter, or a hearing has been held and a decision reached in this matter;

10. That Respondent had the opened container of Muscletech Nitro Tech Whey Gold, lot 818601C 04, exp. June 13, 2021, that was first tested by Korva Labs (which detected stanozolol by qualitative means), forwarded to the WADA accredited laboratory in Salt Lake City, Utah ("SMRTL") and SMRTL, through accepted scientific procedures and without error, reported that it detected stanozolol at approximately 260 nanograms per gram.

11. That USADA had six sealed containers of Muscletech Nitro Tech Whey Gold, provided directly from Iovate Health Sciences International, Inc. ("Iovate") on or about February 11, 2019, with lot 818601C 04, exp. June 13, 2021 printed on the container, the same lot number as Respondent's opened container, sent to SMRTL for analysis. SMRTL, through accepted scientific procedures and without error, reported that it did not detect stanozolol in any of the six sealed containers. (Respondent is not agreeing that the containers are from the lot number printed on the label).

12. That USADA had one sealed container of Muscletech Nitro Tech Whey Gold, provided directly from Iovate, on or about January 4, 2019, with lot 827401A 04, exp. July 7, 2021 printed on the label, sent to SMRTL for analysis. SMRTL, through accepted scientific procedures and without error, reported that it did not detect stanozolol. (Respondent is not agreeing that the container is from the lot number printed on the label)."

2.6 The Panel accepts the Parties' joint stipulation without issue.

III. THE LEGAL FRAMEWORK

(i) Applicable provisions of the IPC ADC

3.1 Article 2 of the IPC ADC specifies the circumstances and conduct that constitute Anti-Doping Rule Violations (“ADRV”) and provides in the relevant parts:

“2.1. Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample

2.1.1. It is each Athlete’s duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence, or knowing Use on the Athlete’s part be demonstrated in order to establish an Anti-Doping Rule Violation under Article 2.1.

2.1.2. Sufficient proof of an Anti-Doping Rule Violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete’s A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analyzed; or, where the Athlete’s B Sample is analyzed and the analysis of the Athlete’s B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete’s A Sample; or, where the Athlete’s B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle”.

3.2 Article 3 of the IPC ADC deals with proof of doping and states in the relevant parts:

“3.1 Burdens and Standards of Proof

The IPC or other Anti-Doping Organisation shall have the burden of establishing that an Anti-Doping Rule Violation has been committed. The standard of proof shall be whether the IPC has established the commission of the alleged Anti-Doping Rule Violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation that is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where this Code places the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions

Facts relating to anti-doping rule violations may be established by any reliable means...

[...]

3.2.2 Compliance with an International Standard (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard were performed properly.

3.2.3 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in compliance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred that could reasonably have caused the Adverse Analytical Finding. In such an event, the IPC shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.

3.2.4 Departures from any other International Standard, or other anti-doping rule or policy set out in the Code or these Anti-Doping Rules that did not cause the facts alleged or evidence cited in support of a charge (e.g., an Adverse Analytical Finding) shall not invalidate such facts or evidence. If the Athlete or other Person establishes the occurrence of a departure from an International Standard or other anti-doping rule or policy set out in the Code or these Anti-Doping Rules that could reasonably have caused the Adverse Analytical Finding or other facts alleged to constitute an Anti-Doping Rule Violation, then the IPC or other Anti-Doping Organisation shall have the burden to establish that such departure did not cause such Adverse Analytical Finding or the factual basis for the Anti-Doping Rule Violation.”

3.3 Article 10.2 of the IPC ADC provides the sanction to be imposed for an ADRV under Article 2.1 (Presence) as follows:

“10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility to be imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete or other

Person's first anti-doping rule violation shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

(a) The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional."

3.4 According to Article 10.2.2 of the IPC ADC, *"If Article 10.2.1 does not apply, the period of Ineligibility shall be two years"*.

3.5 Article 10.4 of the IPC ADC then states that, *"If an Athlete or other Person establishes in an individual case that he/she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated"*.

3.6 Article 10.5 of the IPC ADC provides for reduction "of the Period of Ineligibility based on No Significant Fault or Negligence" in pertinent part as follows:

"10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6.

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.

10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under the Article may be no less than eight years."

3.7 Where a period of ineligibility is to be found, then Article 10.11 of the IPC ADC provides as follows regarding its start and credit for time that an athlete has been

provisionally suspended:

“10.11 Commencement of Ineligibility Period

Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

[. . .]

10.11.3 Credit for Provisional Suspension or Period of Ineligibility Served

10.11.3.1 If a Provisional Suspension is imposed and respected by the Athlete or other Person, then the Athlete or other Person shall receive a credit for such period of Provisional Suspension against any period of Ineligibility which may ultimately be imposed. If a period of Ineligibility is served pursuant to a decision that is subsequently appealed, then the Athlete or other Person shall receive a credit for such period of Ineligibility served against any period of Ineligibility which may ultimately be imposed on appeal.”

3.8 In light of the foregoing provisions and given the classification of Stanazolol listed in S1.1a of the WADA 2018 Prohibited List, the mandatory period of Ineligibility pursuant to Article 10.2.1 of the IPC ADC to be imposed for an ADRV under Article 2.1 of the IPC ADC and Article 2.2 of the IPC ADC is four years unless the athlete can establish on a balance of probabilities that the ADRV was not intentional, in which case the period is to be reduced to two years. Moreover, the sanction is to be reduced further if the Athlete is able to establish that he bears “*No Significant Fault or Negligence*” and the sanction is to be entirely eliminated if the athlete proves that he bears “*No Fault or Negligence*” under Article 10.4 of the IPC ADC.

3.9 The Panel is also mindful of the relevant cases that have addressed similar issues and will discuss those points below.

IV. THE PARTIES’ CONTENTIONS AND REQUESTED RELIEF

4.1 On November 30, 2018, USADA charged Mr. Jones with violating Articles 2.1 (presence) and 2,2 (use/attempted use) of the IPC ADC.

4.2 Mr. Jones contends in summary that:

- a. Because he did not intentionally violate the anti-doping rules the default sanction is 2 years, not 4 years;

- b. On a balance of probabilities he ingested a supplement that was contaminated with Stanozolol;
- c. Because the source of his positive test was a contaminated supplement, his sanction should be significantly reduced; and
- d. He should be given credit for his provisional suspension which started on October 17, 2018.

4.2 USADA contends in summary that:

- a. The default period of ineligibility for non-Specified Substances like Stanozolol is four (4) years;
- b. Mr. Jones has not established the source of his positive test was from a Contaminated Product;
- c. The plausibility of Mr. Jones intentionally spiking his supplement further undercuts his contamination theory; and
- d. The sanction should be four years, with a start date of the start date of his provisional suspension of October 17, 2018 (a point on which both parties agree), though USADA submits that results he obtained from sample collection (October 2, 2018) until the start of his provisional suspension should be disqualified (though no party has asserted there were any).

V. PROCEDURAL HISTORY

5.1 On November 30, 2018, USADA charged the Athlete with an ADRV as a result of his positive test for Stanozolol, by sending a charging letter that same day.

5.2 On February 27, 2019, the Panel conducted a preliminary hearing which resulted in Procedural Order No. 1 (which issued on March 7, 2019), the initial scheduling order providing in pertinent part as follows:

“... By order of the Panel after considering the views of the parties, and by agreement of the parties, the following rules are now in effect:

Article I - Parties

1. Jeffrey Cook, Esq., Legal Affairs Director of the United States Anti-doping Agency and Nadia Soghomonian, Esq., Legal Affairs & Investigations Counsel (“Claimant” or “USADA”), appeared and represented Claimant USADA. Howard Jacobs, Esq., and Lindsay Brandon, Esq. of the Law Offices of Howard Jacobs, appeared and

represented Respondent Stirley Jones (“Respondent”) (collectively, Claimant and Respondent shall be referred to as “the parties” and individually “party”).

Article II - Jurisdiction/Clause/Burden of Proof/Choice of Law/Confidentiality

2.1 Arbitration Provision. The USADA Protocol provides for this arbitration process to resolve anti-doping disputes and all competitors in Olympic-related events subject to drug testing are required to read and sign an agreement to arbitrate in accordance with the USADA Protocol and this arbitration process as set forth in the USADA Protocol.

2.2 Procedure/Burden of Proof/Confidentiality. The applicable rules of procedure to these proceedings shall be the USADA Protocol, as amended or supplemented by this Order. The burden of proof in this proceeding shall be as set forth in the applicable version of the World Anti-Doping Code and the relevant sport rules with respect to each asserted issue. The Panel has been advised that Respondent intends to assert a defense based on the length of sanction so briefing in this matter shall be serial and shall commence with briefing from Respondent. The Panel wishes to remind the parties that the confidentiality rules governing the proceedings provided for in the AAA Commercial Arbitration Rules, USADA Protocol, and the World Anti-Doping Code shall apply.

2.3 Choice of Law. The law that shall govern these proceedings shall be the mandatory provisions of the World Anti-Doping Code contained in the USADA Protocol and any relevant individual sport rules.

2.4 Jurisdiction. The parties have not objected to jurisdiction of the Arbitrators in this case and participated in the initial preliminary hearing without objection or limitation.

Article III - Discovery/Disclosure

3.1 Generally. The Panel encourages the parties to resolve discovery issues between them, but if they are unable to do so the Panel will undertake a review of any discovery issues and address them as appropriate, including the use of any appropriate discovery devices between the parties or between a party and any third parties (including but not limited to interrogatories, requests for admissions, requests for production of documents, depositions, subpoenas, and other methods).

3.2 Discovery. Except as otherwise specifically provided herein, the provisions, procedures, and standards for discovery contained in the AAA Commercial Arbitration Rules as modified by the USADA Protocol shall apply to this proceeding. The parties shall raise with the Panel any disputes regarding the agreed upon discovery to be exchanged or the failure of the other party to produce any properly

requested discovery as soon as possible given the short timelines in this case. Before any such dispute is brought to the attention of the Panel, the parties are required to reasonably meet and confer in good faith in advance on such issues with the aim being to narrow the issues in dispute that are raised with the Panel, and the Panel encourages the bringing of such motions as early as reasonably practical. Nothing herein shall restrict the ability of a party to raise any issues concerning the admissibility of discovery at the hearing based on the failure to produce in a timely fashion properly requested discovery. The parties shall meet and confer re: any additional discovery sought and if no agreement can be reached, then the party seeking additional discovery may apply to the Panel for additional discovery upon a showing of good cause, and otherwise in accordance with the AAA's Commercial Arbitration Rules as modified by the USADA Protocol.

3.3 Disclosure of Witnesses. The parties shall serve a final disclosure of all witnesses reasonably expected to be called by that party at the hearing at the time each party files its respective opening brief in this matter (as set forth in this Order). The disclosure of fact witnesses shall include the full name of each witness, and a very brief summary of each witness' expected testimony and shall be served in accordance with this Order. The witnesses shall be presented live (whether in person or via tele- or video-conference at the hearing for both their direct and their cross-examination testimony. The disclosure of expert witnesses shall include a summary of the facts and opinions upon which the expert is expected to testify, and the written C.V.

3.4 Unavailability of Information/Duty to Update. If certain required information is not available, the disclosures shall so state and shall provide the reasons for such unavailability. Each party shall be responsible for updating its disclosures as such information becomes available. The duty to update this information continues up to and including the date that the hearing in this matter terminates.

3.5 Witness Scheduling and Attendance. The parties shall make arrangements to schedule the attendance of witnesses at the hearing and in discovery so that the case can proceed with all due expedition and without any unnecessary delay or unreasonable burden on any party, witness, or the Panel.

3.6 Witness Order. Except as otherwise required by the disclosure of witnesses in this Order, each party shall give notice to the other party and the Panel no later than the time when the witnesses are identified pursuant to the provisions hereof of the names of the witnesses on its witness list who will be called to testify during its case in chief, the order in which the witnesses will be called, whether

the witnesses will appear in person or by telephone or videoconference, any restrictions on the ability or timing of the witnesses to testify, and the need for any special accommodations for any witness to testify. The Panel will determine all issues relating to the disclosure or non-disclosure of testifying witnesses when their testimony is presented, if not earlier, and the Panel encourages the parties to raise any such issues at the earliest reasonable opportunity. The Panel wishes to express its strong view that all witnesses appearing remotely appear by videoconference, Skype, or similar technology permitting their observation on video feed while they are testifying and their voice is heard.

Article IV - Evidence/Exhibits

4.1 Exhibit Set and Documentary Submissions. The parties shall attempt to agree upon a jointly prepared consolidated and comprehensive set of exhibits no later than the day before the date set for the filing of the parties' opening briefs on their affirmative claims (as set forth below). Said set of joint exhibits shall be provided to the Panel at the same time that the first opening brief is due, as set forth herein, in binders with side tabbed numerical, sequential exhibit designations. If a joint set is not possible, each party shall provide to the Panel and opposing counsel at the same time that their respective opening briefs are due their own separate binders with side tabbed exhibit designations, and the parties shall mutually agree upon which party will use letters and which party will use numbers for designating their respective exhibits. At least 2 extra sets of all exhibit binders referenced in this paragraph shall also be brought to the hearing by the proffering party for use at the hearing by witnesses, the Panel, and others as directed by the Panel. The pages in the exhibit binders used at the hearing shall be sequentially and consecutively numbered or Bates labeled. All binders of exhibits shall be 3-ring D-ring binders with each binder having rings no larger than 2.5" and the copies for the parties and the Panel shall have at the front a copy of the parties' respective hearing briefs and witness list, any witness statements and expert reports, if applicable, and a basic table of contents. All documents submitted to the Panel in printed form shall be printed double-sided. Failure to comply with the requirements of this paragraph may cause the Panel to issue an order excluding the presentation of such non-complying evidence. The Parties shall provide the Panel with electronic copies of their hearing briefs, and all other lawyer prepared documents, in MS Word format.

4.2 Language. The language of this proceeding is English. Any party proffering a witness who needs interpretation, or proffering a document written in a foreign language requiring translation, shall

provide for the Panel and the other parties an English language translation or interpretation, as appropriate.

4.3 Rebuttal Evidence. The disclosure of evidence/exhibits shall be without prejudice to a party's ability to provide other evidence/exhibits on cross-examination or re-direct, provided said evidence/exhibits are reasonably related to the direct examination or cross-examination, as appropriate, and subject to the other party's right to object to the admissibility of such evidence/exhibits, or to the testimony of any witness, at the time they are presented, including on the basis that they should have been produced earlier. Documents properly used for impeachment or rebuttal are not required to be disclosed in advance of the hearing if they are not otherwise required to be disclosed earlier pursuant to this Order or the applicable rules.

4.4 Objections to Evidence Unaffected. Nothing in this order is intended to limit or otherwise restrict or prevent any party from objecting to the consideration of any evidence by the Panel on valid grounds at the time it is presented, though as provided in the applicable AAA rules the formal rules of evidence shall not apply.

4.5 Joint Stipulations. The parties shall meet and confer and in good faith endeavor to prepare joint stipulations of fact and law for the case, which joint stipulations, or a declaration from each counsel of no joint stipulations providing that they met and conferred and were unable to reach agreement on any factual or legal issues, shall be filed no later than the commencement of the hearing unless the Panel determines otherwise. If the parties are unable to agree upon any joint stipulations of fact and law then the parties shall advise the Panel of that fact jointly at the time that the first hearing brief is due.

Article V - Schedule for Exchange of Briefs/Exhibits

5.1 Briefing Schedule. The Panel has ordered the following deadlines for providing information and the parties' respective positions to the Panel and each other (all briefs should be submitted to the Panel and opposing counsel in electronic form on the date due at the email addresses set forth below and provided in hard copy form as set forth herein):

a. **March 24, 2019**: The Respondent shall provide its opening brief, exhibits and evidence that Respondent intends to rely upon at the hearing;

b. **April 8, 2019**: The Claimant shall provide its opposition brief to the opening brief of the other side, exhibits, and evidence that Claimant intends to rely upon at the hearing in opposition, and limited to addressing the scope of the opening brief filed by Respondent.

c. *The parties have agreed there will be no reply brief and that any reply submissions shall be made in opening statements at the hearing.*

5.2 Content. *The parties' opening briefs shall set forth all significant disputed issues, claims, and defenses, stating the party's position, and the supporting arguments and authorities, and the parties shall provide copies of all authorities relied upon by each party, which authorities shall be included as numbered exhibits and presented and assembled in accordance with Article IV hereof.*

Article VI - Hearing

6.1 *Except as otherwise ordered by the Panel, the hearing in this matter will commence before the Panel, on **April 23, 2019**, at the offices of Bryan Cave, 120 Broadway, Ste. 300, Santa Monica CA 90401, at **9:00 AM PT** continuing day to day thereafter until concluded (the parties have estimated 1 day of hearing is required for the hearing and the parties and their counsel shall reserve such time exclusively for the hearing). A telephone speakerphone and videoconference facility shall be provided in the hearing room to accommodate witnesses testifying by telephone or videoconference, as appropriate. The Panel orders the parties to coordinate the testimony of any witnesses testifying by telephone or videoconference to ensure their availability for the hearing. Appropriate accommodation shall be made for a testifying witness and a court reporter, if any; the room should comfortably seat the Panel, the parties' counsel and party representatives, the parties' exhibits and documents, any court reporter, any permitted observers, and at least 1 testifying witness at a time. Private breakout rooms for Claimant and each Respondent and for the Panel shall be provided.*

Article VII - Miscellaneous

7.1 Other Disputes/Further Preliminary Hearing. *Any preliminary matters not otherwise provided for herein, including motions in limine, shall be raised with the Panel no later than **April 11, 2018**, in the form of a written motion (coming after meeting and conferring) and the Panel will determine any briefing and argument schedule needed thereon. If necessary, the Panel will undertake a further telephonic preliminary hearing and status/hearing readiness conference, and possibly consider oral argument on any pending motions or otherwise set any required briefing or oral argument schedule for any matters not specifically addressed herein, on **April 16, 2018**, at **8:00 am PT**.*

7.2 Court Reporter/Recording. *To the extent the services of a court reporter are sought by any party, that party shall be responsible for making the arrangements for the court reporter and paying for the services of the court reporter. To the extent both parties seek a court*

reporter, they shall be equally responsible for arranging for the court reporter and paying for the services of the court reporter. Any party seeking to record or reduce to writing the proceedings in this matter, or to use a court reporter, shall so notify the other party and the Panel no later than **April 16, 2018**.

7.3 Information Exchange/AAA Website. The Panel has ordered that documents to be filed in this matter will be done by direct exchange and as provided in this paragraph. To the extent possible, and except as otherwise specifically provided herein, the exhibits and all briefs, pleadings, and correspondence in this matter shall be provided electronically by email to the Panel and the other parties at the email addresses set forth below, with a copy simultaneously to the AAA at the email address set forth below in addition to the hard copies being provided in accordance with the other provisions of this Order. If such electronic exchange/delivery of documents or discovery occurs before the deadline time set forth herein on the appropriate date, it shall be deemed sufficient and timely service or delivery. The parties shall also post on the AAA's www.adr.org website, or on an alternate website agreed to by the parties and the Panel, their pleadings, briefs, and exhibits and other relevant documents (but not discovery) simultaneously with the provision of the briefs, pleadings, and exhibits and other documents by email to each other and the Panel. The Parties shall exchange discovery among themselves and shall not copy same to AAA or the Panel unless such discovery is made an exhibit to brief or pleading or as part of a Party's submission of evidence at the hearing or as part of a motion regarding the discovery. The parties are reminded that their submissions shall be in the form set forth under Section 4.1 hereof."

7.4 Award. The form of award to be issued shall be a reasoned award issued within the time required by the applicable rules. The Panel may request post-hearing briefing or other materials from the parties. The Panel may issue an operative award or an interim award addressing the merits and identifying the prevailing party(ies) and the Panel may set a briefing schedule therein for submissions on fees and costs and determination thereof by the Panel, if appropriate.

7.5 Deadlines. Unless specified otherwise herein, for all deadlines for any party to take any action under this Order, the time by which such action shall be due for each such designated action shall be **midnight Pacific Time** on the date given. All deadlines stated herein will be strictly enforced; any deviation requires the permission of the Panel, good cause having been shown. To the extent this Order differs from the requirements of the USADA Protocol or the AAA's

Commercial Arbitration Rules, the provisions of this Order shall apply.

7.6. Waiver/Deviation. To the extent this Order does not comply strictly with any deadlines set forth in the AAA Commercial Arbitration Rules or the USADA Protocol, or any other rules that apply to this proceeding, or the parties' arbitration clause, the parties intend to and do waive any such deadlines and agree to comply with this Order. The parties have had an opportunity to offer any objections to the seating or jurisdiction of the Panel in this arbitration, the parties have appeared before the Panel, no arbitrator or jurisdictional objections have been offered, and therefore any such objections have been waived. Failure to follow the requirements of this order shall be grounds for the Panel to take appropriate sanctions.

7.7 Effectiveness. This Order shall continue in effect from the date executed by the Panel below unless and until amended by subsequent order of the Panel.

7.8 Emergency Preliminary or Other Hearing. Any party may request a further preliminary hearing not otherwise scheduled to address any matter at any time by contacting the Panel by email, and copying the other parties and the AAA, and stating the reason for and nature of the request.

7.9 Disclosure Obligation. Counsel are reminded of their continuing obligation, and that of their respective clients, to immediately disclose any fact of which they become aware during this arbitration proceeding which could require further disclosure by the Panel or could reasonably lead to the disqualification of the Panel or a member thereof.

7.10 Exclusion of Liability. The parties are directed to Section 4-48(d) of the AAA Commercial Arbitration Rules excluding liability of the Panel in connection with this proceeding.

IT IS SO AGREED AND SO ORDERED."

5.3 The parties and the Panel adhered to the schedule set forth in Procedural Order No. 1.

5.3 A hearing on the merits was held in person in Los Angeles on April 23, 2019.

5.4 The Panel requested and the parties agreed to additional time for rendering of the Award until and through June 14, 2019.

5.5 The Panel rendered this Award within the time required and agreed.

5.6 No party contested the jurisdiction of the Panel here and indeed both parties participated fully in the proceedings without reservation.

5.7 The parties alerted the Panel to a permissible correction to, and internal inconsistency in, the Final Award with respect to the start date and the Panel made that correction on the date set forth below as signed, rendering this Corrected Final Award.

VI. MERITS

The Anti-Doping Rule Violation

6.1 Pursuant to Articles 2.1 (Presence) and 2.2 (Use) of the IPC ADC, the Presence of a Prohibited Substance or its Metabolites or Markers in an athlete's Sample, or its use, in this case Stanozolol (listed as a prohibited substance under S1.1a. Exogenous Anabolic Androgenic Steroids of the WADA 2018 Prohibited List) constitutes an ADRV.

6.2 According to Articles 2.1.1 and 2.2.1 of the IPC ADC, respectively, it is each athlete's personal duty to ensure that no prohibited substance enters his body and that no prohibited substance is used. Accordingly, it is not necessary for USADA to demonstrate intent, fault, negligence or knowing use by the Athlete in order to establish that an ADRV for "Presence" or "Use" have occurred. The Athlete is strictly liable for the presence and use of prohibited substances.

6.3 In this case, the Athlete has not challenged the results of the analysis of the A and B Samples collected from him and tested by the Laboratory. In fact, the Athlete explicitly accepted the presence of the prohibited substance Stanozolol and that he had committed an ADRV under Article 2.1 of the IPC ADC. Furthermore, no apparent departures from the International Standard for Testing and Investigations ("ISTI") or the International Standard for Laboratories ("ISL") have been identified. Nor has a valid Therapeutic Use Exemption ("TUE") to justify the presence of Stanozolol in the Sample under Article 7.3 of the IPC ADC been revealed.

6.4 Therefore, based on the foregoing, the Panel is comfortably satisfied that the Athlete committed an ADRV pursuant to Article 2.1 of the IPC ADC. The violation of the said Article is not in issue between the parties; rather what is in issue is the consequences of that violation.

6.5 According to its brief, USADA charged the Athlete with violations of both 2.1 and 2.2 of the IPC ADC. The Athlete's brief responds to the Article 2.1 violation and not the Article 2.2 charge. The Panel is of the view that while the analysis for Articles 2.1 and 2.2 are substantially similar they are not the same. A charge of use requires proof of an affirmative basis for use and no such use was established here. Use is defined in the definitions section of the IPC ADC as, "The utilization, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method." It is apparent to the Panel that to find use there has to be some proof of the Athlete knowing

that what he was allegedly “using” contained a prohibited substance. Here, there was no such allegation or proof.

6.6 The presence of Stanozolol in the Athlete’s sample is unchallenged here and it is on that basis that the Panel conducts its analysis.

Intention or Lack Thereof

6.7 Pursuant to Article 10.2.1 of the IPC ADC, the mandatory period of Ineligibility to be imposed on the Athlete for his violation of Articles 2.1 and 2.2 of the IPC ADC is four years unless he can prove by a balance of probabilities that the ADRV was not intentional, in which case the sanction would be reduced to two years. A further reduction is available to the Athlete if he can prove that he bears “*No Fault or Negligence*” or “*No Significant Fault or Negligence*” under Articles 10.4 and 10.5 of the IPC ADC, respectively.

6.8 The Panel must thus determine whether the Athlete proved by the balance of probability that the ADRV was not intentional, and, if so, whether he bore any fault or negligence.

6.9 In other words, the key question for the Panel is whether Mr. Jones has established by a balance of probabilities (more likely than not) that he did not have intention to enhance his performance. If he is able to establish this, then, his base sanction would be reduced to 2 years and should Mr. Jones meet the requirements, the Panel would be confronted with a contaminated supplement case, and the prospect of reducing his period of ineligibility dramatically under a fault analysis under the *Cilic* CAS case structure would apply. If he is not able to establish lack of intention, then the Panel is only able to deliver a sanction of 4 years’ duration given his admission of an ADRV having occurred based on presence.

6.10 The Panel does not approach its task lightly given the potential impact of its findings on Mr. Jones. The facts that the Panel had to seek extensions of time to render this award and the Panel, consisting of three reasonable, impartial and independent factfinders with requisite knowledge of the law, is divided in its views speak volumes to the care and seriousness of approach taken by the Panel to reach the result it did here.

6.11 For an athlete to satisfy his burden under Article 10.2.1 of the IPC ADC, he must establish that it is more likely than not – in mathematical terms more than 50 percent – that the violation was not intentional. Where there is a range of possibilities, his preferred possibility must pass the same 50 percent threshold. That he can establish that his preferred possibility is more likely than others may be indicative that he can pass that threshold but is not dispositive (CAS 2017/A/5301 *Errani v. ITF* at para. 182). For this purpose 50 percent will not suffice; 50.001 percent will. The Panel therefore disagrees with the “*binary choice*” proposition that in the present case it must choose between the Athlete’s version (i.e., an unintentional ADRV caused by ingestion of a contaminated supplement) or another version (i.e., that the ADRV was intentional). There is a third version – indeed the one actually advanced by USADA, that the Athlete has not proved that his ADRV was unintentional.

6.12 The purported requirement to prove source as an essential element of an athlete proving lack of intention, and thereby reducing the initial sanction from 4 years to 2 years, has engendered much debate in the cases and commentary that have succeeded the adoption of the 2015 WADC. There is one line of CAS cases that finds that an athlete is required to establish proof of source of the prohibited substance that underpins his ADRV and another that takes a more lenient approach. In this case, Mr. Jones argues for the latter.

6.13 As to how an athlete can satisfy his burden, some CAS cases have held that he must in principle establish how the substance entered his body (*see, e.g., CAS 2016/A/4377 WADA v. IWF & Alvarez* at para. 51; *CAS 2016/A/4662 WADA v. Caribbean RADO & Greaves* at para. 36; *CAS 2016/A/4563 WADA v. EgyNADO & El Salam* at para. 50; *CAS 2016/A/4626 WADA v. Indian NADA & Meghali*; *CAS 2016/A/4845 Fabien Whitfield v. FIVB*).

6.14 Another more nuanced line of CAS cases has left open the possibility that an athlete might be able to rebut the presumption of intentionality without establishing the origin of the prohibited substance, all the while emphasizing that this will be the case only in the most exceptional of circumstances (*see e.g. 2016/A/4534 Villanueva v. FINA* at para. 37: the “*narrowest of corridors*”; *CAS 2016/A/4919 WADA v. WSF & Iqbal* at para. 66: “*in all but the rarest cases the issue is academic*”).

6.15 Mr. Jones argues that he is not required to establish the source of the Stanazolol to prevail on the showing of lack of intention to reduce his initial sanction from 4 years to 2 years.

6.16 Mr. Jones argues that if the drafters of the WADC (on which the IPC ADR is based) had sought to require an athlete to establish how the prohibited substance entered the athlete’s system to establish lack of intention to violate the anti-doping rules then it would have provided so specifically, as was done for the definitions of “no fault or negligence” and “no significant fault or negligence”. In support of this position, and in addition to the words of the IPC ADR itself, Mr. Jones directs the Panel to consider the following excerpt from a law journal article that post-dated the adoption of the 2015 World Anti-Doping Code:

“The 2015 Code does not explicitly require an Athlete to show the origin of the substance to establish that the violation was not intentional. While the origin of the substance can be expected to represent an important, or even critical, element of the factual basis of the consideration of an Athlete’s level of Fault, in the context of Article 10.2.3, panels are offered flexibility to examine all the objective and subjective circumstances of the case and decide if a finding that the violation was not intentional is warranted. To illustrate this difference, we refer to the Contador award. In this award, the CAS panel accepted on a balance of probability that the Prohibited Substance in the Athlete’s system originated from contaminated supplements, rather than the Athlete’s theory of meat contamination. However, since the cyclist neither established which particular supplement was contaminated nor the circumstances surrounding the contamination,

the panel found that the fault related reductions could not apply for lack of sufficient precision regarding the origin of the substance, and the sanction remained a 2-year period of Ineligibility. *When it comes to a finding that a violation was not intentional, by contrast, if the panel accepts that the Athlete did not intend to cheat and finds that the most probable pathway of ingestion was inadvertent, applying a 4-year period of Ineligibility for failure to establish the origin of the substance stricto sensu would inevitably raise proportionality concerns.*” (emphasis added).

Rigozzi, Haas, Wisnosky, Viret, *Breaking down the process for determining a basic sanction under the 2015 World Anti-Doping Code*, Intl. Sports Law J (2015) 15:3-48.

6.17 Mr. Jones also directs the Panel to consider the case of *Fiol v. FINA* (CAS 2016/A/4534) at its paragraph 37 where the decision states:

“The Panel finds the factors set out in paragraph 35 [that establishment of the source of the prohibited substance in an athlete’s sample **is not** a *sine qua non* of proof of absence of intent] more compelling than those set out in paragraph 36 [that the source of the prohibited substance in an athlete’s sample **is** a *sine qua non* of proof of absence of intent]. In particular, it is impressed by the fact that the FINA DC, based on WADC 2015, represents a new version of an anti-doping Code whose own language should be strictly construed without reference to case law which considered earlier versions where the versions are inconsistent. Furthermore, the Panel can envisage the theoretical possibility that it might be persuaded by an athlete’s simple assertion of his innocence of intent when considering not only his demeanor, but also his character and history.... That said, such a situation would inevitably be extremely rare. Even on the persuasive analysis of *Rigozzi, Haas et al.*, proof of source would be ‘an important, even critical’ first step in any exculpation of intent. Where an athlete cannot prove source it leaves the narrowest of corridors through which such an athlete must pass to discharge the burden which lies upon him.” (emphasis and inserts added).

6.18 Mr. Jones also directs the Panel to consider the case of *Ademi v UEFA* (CAS 2016/A/4676), where the panel determined, among other things, that the then new WADC:

“represents a new version of an anti-doping Code whose own language should be strictly construed without reference to case law which considered earlier version where the versions are inconsistent. The relevant provisions, . . . do not refer to any need to establish source, in direct contrast to [the articles relating to fault], which expressly and specifically require to establish source. Furthermore, the Panel can envisage the theoretical possibility that it might be persuaded by a Player’s simple assertion of his innocence of intent when considering not only his demeanor, but also his character and history, even if such a situation may inevitably be extremely

rare.” *Ademi*, at para. 72.

6.19 The Panel is mindful that it must engage in an analysis for determining intention, and establishing the base sanction, that is different than the analysis for fault, as is suggested by the language of the IPC ADC itself. Those two analyses must proceed in their two separate logical spheres and not be blended together into essentially the same test for both determining intention and determining fault. Blending those analyses is logically inconsistent with the language of the IPC ADC (*nee* the World Anti-Doping Code), and yields a result that appears to have never been intended by the drafters, of importing proof of source as the only element in the analysis of intention rather than leaving it, as a sole criteria, confined to being the narrow threshold issue required to permit an athlete to benefit from a reduction based on fault. *See Ademi* and *Rigozzi, et al.*, both cited above (“*panels are offered flexibility to examine all the objective and subjective circumstances of the case and decide if a finding that the violation was not intentional is warranted.*”).

6.20 The Panel appreciates the reasoning of the passage from the *Rigozzi, et al.* commentary and indeed accepts it. The Panel also agrees with the approach of *Fiol* and *Ademi* that there is a doorway through which an athlete might pass on the issue of establishing lack of intention for purposes of a reduction from four years to two years, but that doorway is a very narrow passage, and one that opens only where there is sufficient proof of lack of intention, of which proof of source can be one, albeit strong, indicator. Athlete protestations and character evidence, without more, simply do not suffice under the rule and the cases.

6.21 The first part of the Panel’s analysis on intention has been conducted with a look to all the facts and circumstances. The Panel accepts that this is a different inquiry entirely from the requirements on ameliorating a sanction on the basis of fault or lack thereof, which analysis expressly requires the athlete to meet the balance of probabilities burden on source. It is entirely possible for an Athlete to prevail on the finding of lack of intention only to fail to establish source to get a further reduction; such a result is not logically inconsistent and is in fact possible under the very different tests provided by the IPC ADC.

6.22 The Panel believes it has approached the two different analyses appropriately here. It is on the first phase of that analysis that the Panel splits, with the majority finding that there was insufficient proof of lack of intention and the minority finding that there was sufficient proof of lack of intention. The Panel makes no finding on fault as it was not required to undertake that analysis given the majority view on the first prong. To the extent this Award refers to “majority” and “minority”, such reference is to the views of 2 or 1 arbitrator respectively; to the extent this Award references the Panel or “unanimously” then the proposition that follows is the decision of the entire Panel.

The Burden of Proof

6.23 The burden to establish a reduction in base sanction based on lack of intention lies solely on the athlete, albeit at the lower balance of probabilities standard. The anti-doping organization (here USADA) does not have the burden “*to hypothesize, still less*

prove” an alternative source than the one suggested by the athlete (*see e.g.* CAS 2012/A/2759 Rybka v. UEFA at paras. 11.31-11.32: “*It was not for UEFA – the Panel emphasise – to hypothesise, still less prove, their own version of events*” as to how the prohibited substance entered the athlete’s system); CAS 2014/A/3615 WADA v. Daiders & FIM at para. 52: “*The Panel rejects a proposed interpretation of the rules which would seek to impose the burden on the person charging to explain the source of the substance detected in the system of the person charged*”).

6.24 To satisfy his burden the athlete must provide the Panel “*with actual evidence as opposed to mere speculation*” as to the origin of the substance or other bases for a reduction (emphasis in original, *see* CAS 2014/A/3820 WADA v. Damar Robinson & JADCO at para. 80).

6.25 Evidence establishing that the athlete’s suggested source is “*possible*” is insufficient to establish the origin of the prohibited substance (*see e.g.* CAS OG 16/25 WADA v. Yadav & NADA at para. 7.27 where the Panel “*found the sabotage(s) theory possible, but not probable and certainly not grounded in real evidence*” (emphasis added).

6.26 Further, the athlete must demonstrate that the suggested source produced the concentration of the substance detected in his Sample; otherwise his explanation will lack an essential component. The athlete cannot therefore simply limit himself to identifying the source of the prohibited substance. For example, in CAS 2010/A/2277 La Barbera v. IWAS at para. 36, the panel noted:

“Mr. La Barbera did not supply any actual evidence of the specific circumstances in which the unintentional ingestion of the Prohibited Substance would have occurred. Mr La Barbera does in particular neither bring any scientific evidence that would explain how the Prohibited Substance could still be found in his system one week after the end of the dogs’ treatment, nor whether such a potential ingestion through his biting his nails could result in the level of substance found in his body. As a result, the Panel finds that Mr La Barbera’s explanations lack corroborating evidence and prove unsatisfactory, thereby failing the balance of probability test”).”

6.27 The Panel, having had the benefit of seeing and hearing the Athlete testify, was challenged by Mr. Jones to find that he was a liar, and, if it could not, to therefore acquit him of the ADRV charges. In assessing this proposed approach, which had a beguiling simplicity, the Panel bears in mind the following related dicta:

- (i) CAS 2010/A/2230 *International Wheelchair Basketball Federation v. UK Anti-Doping & Simon Gibbs* at para. 11.12: “*To permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination – two prevalent explanations volunteered by athletes for*

such presence – do and can occur; but it is too easy to assert either; more must sensibly be required by way of proof, given the nature of the athlete’s basic personal duty to ensure that no prohibited substances enter his body”.

- (ii) CAS 99/A/234 & CAS 99/A/235 *Meca Medina v Madjen v FINA* at para. 10.17: *“It is regrettable that the currency of such denial is devalued by the fact that it is the common coin of the guilty as well as of the innocent”.*
- (iii) CAS 2014/A/3615 *WADA v Daiders, Daiders & FIM* at para. 51: *“In the Panel’s experience, it is rare for a person charged with a doping offence to admit to deliberate ingestion. For this reason, the weight to be given to an outright denial is diminished by the fact that it is as likely to be the approach taken by a person who is guilty as by one who is not”.*
- (iv) *IAAF v. Glory Onome Nathaniel* (Ref: SR/Adhocsport/245/2018) at para. 63: *“Common lawyers, as distinct from their civilian counterparts, traditionally place emphasis on the advantages of seeing and hearing witnesses, preferably in proximity; but, if only because experience tells that the most seemingly honest witnesses may be in fact accomplished liars and vice-versa, the advantages can be exaggerated... Any proper adjudicative exercise axiomatically requires a holistic evaluation of all relevant and admissible evidence”.*

6.28 While recognizing that other bodies have in other cases taken account of the defendants’ demeanor, the majority prefers to take as its point of departure the other evidence and to consider the persuasive force of the Athlete’s denial only in that context. By saying this, the majority is not saying that it found anything wrong or unbelievable about the demeanor of the Athlete only that it is not the end, nor a primary aspect, of the inquiry insofar as the analysis of the majority is concerned.

Proof of Lack of Intention

6.29 A majority of the Panel considers that while it may look at all the circumstances in considering intention and its concomitant reduction in the base sanction from 4 years to 2 years, it is not persuaded that Mr. Jones has met his burden.

6.30 The evidence submitted in this case in support of his position is 1) Mr. Jones’ word that he did not intentionally consume Stanazolol, 2) the supplement testing that was conducted on the open container of the Muscletech supplement he claims to have ingested which tested positive for the presence of Stanazolol, 3) the fact that there was expert testimony from Mr. Jones’ side that spiking a supplement container in the trace amounts of Stanazolol that was found (consistent with Mr. Jones’ low level positive test) is very difficult if not impossible and would require expert assistance, which was disputed by USADA’s expert, 4) the character evidence of his wife, and 5) his relative lack of sophistication of anything related to anti-doping coupled with his lack of time in the anti-doping testing pool before yielding this positive test.

6.31 Mr. Jones proffered evidence that the open container of the Muscletech supplement he consumed contained low amounts of Stanozolol. He produced laboratory evidence to that effect. But laboratory results were also produced by USADA concerning the same supplement as ingested by Mr. Jones, bearing the same lot and batch number as Mr. Jones' supplement container, that tested negative for the presence of Stanozolol. The Panel finds this evidence difficult for the Athlete to overcome on his open container tested evidence alone.

6.32 In considering the conflicting supplement test reports, Mr. Jones argues that the Panel should consider that Muscletech provided to USADA the sealed supplement containers that tested negative for the presence of Stanozolol and that it was in Muscletech's own self-interest to provide only containers containing no Stanozolol mixed with its supplement product and they did so. For this to be established in this proceeding, this Panel would have to find that Muscletech had either 1) located clean product or produced the clean product just for this purpose, 2) inserted that clean product into a container marked with the same lot and batch number as that of the Athlete, and 3) sealed and shipped the same to USADA or the laboratory for testing. There was no evidence of any such steps being taken by Muscletech. To meet his burden of proof, the majority is of the view that the Athlete must rely on actual evidence, not mere supposition.

6.33 In considering the conflicting supplement test reports, Mr. Jones argues that the Panel should consider the history of contamination in supplements manufactured by Muscletech, like the supplement Mr. Jones took. In that regard, Mr. Jones submitted numerous court complaints, press releases about settlements of litigation against Muscletech for its products, and PACER court index listings showing that Muscletech's parent company (Iovate) has been sued numerous times during its business life. The Panel finds these submissions unpersuasive because none of the submitted cases, so far as the Panel could determine, relate to the supplement at issue here, and because no evidence was adduced on the nature of the claims made, aside from those where complaints were provided, and on the ultimate outcomes or factual and legal findings made in any legal proceedings against Muscletech. In other words, they were good evidence of the fact that Muscletech is sued often in its business, but they do not provide evidence of any weight for this case.

6.34 Mr. Jones also requests the Panel to consider character evidence from his wife to support his contention that he did not intentionally take Stanozolol. This kind of character evidence can and often is offered in every case and essentially always falls along the lines of, "I know this person well, they are serious about their training and the fight against doping, they are conscientious about their obligations regarding doping and what they ingest, and from what I know of this person there is no way they would intentionally dope." It is the view of the majority that it is universally acknowledged that this type of evidence, while it makes the accused feel good to hear and have presented, is simply not probative absent some other specific evidence to support this claim. Given that Mr. Jones had only been in the registered testing pool for two days when he was tested, there is, unfortunately, no other specific evidence to support the character evidence offered and the majority disregards it.

6.35 Mr. Jones also requests the Panel to consider evidence offered by his expert

that it would be relatively difficult for a non-chemist or an athlete like Mr. Jones to spike the open container of the Muscletech product with a sufficiently low amount of Stanozolol, consistent with the low level of Stanozolol in his system. USADA produced contrary expert evidence to make the point that it was relatively easy to spike the whey protein product with low levels of Stanozolol. The majority accepts this position of USADA over that of the Athlete with respect to ease of manipulation; the majority is not saying that Mr. Jones manipulated or spiked the Muscletech product open container but it does find that Mr. Jones does not carry his burden of proof on this point because without additional evidence there is no way to eliminate this possibility. The majority accepts the language of the CAS decision of *Tarnovschi v ICF*, CAS 2017/A/5017, at paras. 59-61, as instructive on this point where an athlete tested positive for a non-Specified Substance and alleged contamination, where an open container of his supplement tested positive and where sealed containers did not:

“As a starting point it would be all too easy for an athlete to spike an open container of a food supplement with the prohibited substance for which he had tested positive, send such ‘mix’ to a testing institute which would obviously returned a positive for that very substance, and then claim that this proves that it was contamination of a product which he took in all innocence, which was responsible for the AAF.

The Panel does not say, indeed cannot say, that this is actually what happened in the case in hand. What it both can and does say is that the Appellant must fail to discharge his burden of proving absence of intent, unless he comes forward with corroborating evidence to support his theory. Without such corroborating evidence, when deconstructed, the Appellant’s theory is nothing other than a more sophisticated way of saying ‘I do not know how the prohibited substance entered my system but I did not knowingly take it.’ It is common ground that a statement of this kind does not suffice to disprove an assumed intentional anti-doping rule violation.”

6.36 The Panel has already disposed of his arguments concerning the supplement testing issue; we have two tests on three containers, only one of which tested positive for Stanozolol. This is not persuasive evidence.

6.37 With respect to Mr. Jones’ denials, the panel is reminded that:

- (i) *“It is regrettable that the currency of such denial is devalued by the fact that it is the common coin of the guilty as well as of the innocent”*. CAS 99/A/234 & CAS 99/A/235 *Meca Medina v Madjen v FINA* at para. 10.17; and
- (ii) *“... [I]t is rare for a person charged with a doping offence to admit to deliberate ingestion. For this reason, the weight to be given to an outright denial is diminished by the fact that it is as likely to be the approach taken by a person who is guilty as by one who is not”*. CAS 2014/A/3615 *WADA v Daiders, Daiders & FIM* at para. 51.

The Sanction

6.38 The Athlete did not establish by a balance of probability to the satisfaction of the majority of the Panel that the ingestion of the Stanozolol was unintentional.

6.39 Unanimously, the Panel does not believe that Mr. Jones was a cheater and the Panel would have welcomed additional evidence to support that belief. Unfortunately, under the existing rules, that belief alone is insufficient and adducing such evidence is acknowledged by the Panel as being difficult to accomplish; the majority is of the view that its hands are tied to issue a sanction of four years ineligibility. The Panel notes the following language from the case of CAS 2018/A/5546 joined with CAS 2018/A/5571 (*Jose Paolo Guerrero v FIFA, etc.*), which the Panel adopts:

“89. The Panel is conscious of the much quoted legal adage ‘Hard cases make bad law’, and the Panel cannot be tempted to breach the boundaries of the WADC (or FIFA ADR) because their application in a particular case may bear harshly on a particular individual. Legal certainty is an important principle to depart from the WADC would be destructive of it and involve endless debate as to when in future such departure would be warranted. A trickle could thus become a torrent; and the exceptional mutate into the norm.

90. It is in the Panel’s view better, indeed necessary, for it to adhere to the WADC. If change is required, that is for a legislative body in the iterative process of review of the WADC, not an adjudicative body which has to apply the *lex lata*, and not some version of the *lex ferenda*.”

Sanction Start Date

6.39 The parties agree that Mr. Jones’ sanction should start on the date he accepted the provisional suspension herein, on October 17, 2018. The Panel sees no reason to disturb that agreement.

6.40 The Panel is of the view that given the fact that Mr. Jones almost immediately accepted the provisional sanction, and that the parties agree on the start date, the sanction start date should be October 17, 2018, as agreed.

VII. AWARD

7.1 On the basis of the foregoing facts, legal analysis, and conclusions of fact, this Panel, by a majority as to paragraph 7.1(b) and unanimously otherwise, renders the following decision:

- a. Mr. Jones has committed his first anti-doping rule violation under Article 2.1 of the IPC ADC;
- b. Mr. Jones has not sustained his burden of proof to qualify for a reduction in the length of his sanction. Therefore, the Panel imposes a period of Ineligibility (defined in the IPC ADC and will all attendant circumstances flowing therefrom) starting from October 17, 2018, the date of his provisional suspension, and continuing through October 16, 2022, a period of 4 years;
- c. The parties shall bear their own attorneys' fees and costs associated with this arbitration;
- d. The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the arbitrators and the Panel, shall be borne entirely by USADA and the United States Olympic Committee;
- e. This Award shall be in full and final resolution of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied; and
- f. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

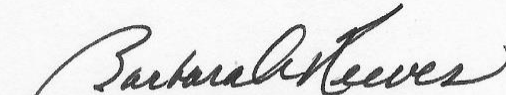
DATED: June 17, 2019.



Jeffrey G. Benz, Chair



David M Benck



Barbara A. Reeves