

**American Arbitration Association
Commercial Arbitration Tribunal**

In the Matter of the Arbitration between

UNITED STATES ANTI-DOPING AGENCY,

Claimant

and

KANAK JHA,

Respondent

AAA Case Number: 01-22-0005-2588

FINAL AWARD OF ARBITRATOR

Pursuant to the American Arbitration Association’s (“**AAA**”) Commercial Arbitration Rules (“**AAA Commercial Arbitration Rules**”) as modified by the Procedures for the Arbitration of Olympic & Paralympic Sport Doping Disputes (effective as revised January 1, 2021) (“**Arbitration Procedures**”) as contained in the Protocol for Olympic and Paralympic Movement Testing (effective as revised January 1, 2021) (the “**USADA Protocol**”), and pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 USC 22501, *et seq.* (the “**Act**”), an evidentiary hearing was held via video conference on February 9 and February 16, 2023, before the duly appointed arbitrator Gary L. Johansen.

I, THE UNDERSIGNED ARBITRATOR, having been designated, and having been duly sworn, and having duly heard the allegations, arguments, submissions, proofs, and evidence submitted by the Parties do hereby FIND and AWARD as follows:

I. THE PARTIES

1. United States Anti-Doping Agency (“**USADA**” or “**Claimant**”) is the independent anti-doping organization, as recognized by the United States Congress, for all Olympic, Paralympic, Pan American and Parapan American sport in the United States with headquarters in Colorado Springs, Colorado. USADA is authorized to execute a comprehensive national anti-doping program encompassing testing, results management, education, and research, while also developing programs, policies, and procedures in each of those areas.

2. Kanak Jha, (“**Jha**” or “**Respondent**”), is a 22-year-old table tennis player from Milpitas, California. He is an elite-level athlete who has competed in prestigious international and domestic competitions, including the 2016 and 2020 Olympic Games and the 2019 Pan American Games.
3. USADA was represented in this proceeding by Jeff T. Cook, Esq., USADA General Counsel, Spencer Crowell, Esq., USADA Olympic & Paralympic Counsel, and Samantha Coleman, USADA Legal Assistant.
4. Respondent was represented in this proceeding by Howard L. Jacobs, Esq., Katy Freeman, Esq. and Kayla Williams, legal intern and third-year law student, of the Law Offices of Howard L. Jacobs.
5. Kacie Wallace, USOPC Athlete Ombuds attended the hearing as an observer as provided for in Section 17.a. of the USADA Protocol and R-4 and R-18 of the Arbitration Procedures.
6. USADA and Respondent shall be referred to collectively as the "Parties" and individually as a "Party."

II. ISSUE

7. USADA charged Respondent with an anti-doping rule violation pursuant to Article 2.4 of the World Anti-Doping Code (the “**WAD Code**”) and Article 2.4 of the International Table Tennis Federation (“**ITTF**”) Anti-Doping Rules (“**ITTF Anti-Doping Rules**”). The WAD Code and ITTF Anti-Doping Rules provide that any combination of three missed tests and/or filing failures (whereabouts failures) within a twelve-month period constitute an anti-doping rule violation.
8. USADA asserts that Respondent missed the following three tests:
 - March 18, 2022;
 - June 2, 2022; and,
 - September 4, 2022.
9. Respondent does not dispute the March 18, 2022, or the June 2, 2022, missed tests. However, he challenges USADA’s assertion that the September 4, 2022, collection attempt should be counted as a missed test.
10. Thus, the issue in this proceeding is whether the September 4, 2022, collection attempt is a third missed test within a twelve-month period in violation of WAD Code Article 2.4 and ITTF Anti-Doping Rules Article 2.4. The specific issue relating to the collection

attempt is whether the Doping Control Officer (“**DCO**”) officer did what was reasonable in the circumstances to try and locate and collect a sample from Respondent.

11. If a violation of WAD Code Article 2.4 and ITTF Anti-doping Rules Article 2.4 is found, then the issue to be addressed is what is the appropriate sanction. WAD Code Article 10.3.2 and ITTF Anti-Doping Rules Article 10.3.2 provide that the period of ineligibility for a violation of the WAD Code Article 2.4 and ITTF Anti-Doping Rules Article 2.4 shall be two years, subject to a reduction down to a minimum of one year, depending on the athlete’s degree of fault.
12. Respondent contends that if he is found to have committed an anti-doping rule violation, the period of ineligibility, taking into account his degree of fault, should be at the lowest level of the light degree of fault range, or 12 months. USADA states that the period of respondent’s ineligibility should be in the light degree of fault range, but between 12 and 16 months.

III. JURISDICTION

13. This matter is properly before the AAA and this Arbitrator.
14. Respondent is an elite-level athlete, competing internationally under the authority of the ITTF and competing in the U.S. as a member of USA Table Tennis (“**USATT**”).
15. Sections 4, 5 and 6 of the USADA Protocol, based on the WAD Code and the rules of sports organizations, including the International Olympic Committee (“**IOC**”) and United States Olympic & Paralympic Committee (“**USOPC**”), set forth criteria that subject athletes, athlete support personnel and other persons to the USADA Protocol. A number of the criteria set out in Section 4 apply to Respondent.
16. Accordingly, USADA’s Protocol governs all proceedings involving Respondent’s alleged anti-doping rule violation.
17. Further, this arbitration was conducted by concurrence of the Parties. USADA by letter dated December 1, 2022, sent Respondent a notice letter regarding his potential anti-doping rule violation for three whereabouts failures within a twelve-month period. On December 1, 2022, after receiving the notice letter but prior to being charged, Respondent responded via email stating that he “contests the alleged anti-doping rule violation, and requests a hearing pursuant to the Procedures for Arbitration of Olympic & Paralympic Sport Doping Disputes.” On December 14, 2022, USADA, by letter, notified Respondent that he was being charged with an anti-doping rule violation for three whereabouts failures within a twelve-month period and acknowledged Respondent’s request for a hearing.

USADA then initiated this proceeding by notifying the AAA by letter of December 14, 2022, of Respondent's request to arbitrate.¹

18. The USADA Protocol, at Section 17, provides in pertinent part, that, "all hearings will take place in the United States before the independent arbitral body using the Arbitration Procedures." The AAA has been designated as the independent arbitral body to hear anti-doping disputes in the U.S. The AAA uses the Arbitration Procedures in hearing anti-doping disputes.
19. Also, Neither Party disputed the AAA's jurisdiction over this matter or that Respondent is properly subject to this proceeding. Both Parties participated in this proceeding without objection.²
20. Additionally, neither Party objected to the Arbitrator designated to hear this matter.

IV. BURDEN AND STANDARD OF PROOF

21. As set forth in Article 3.1 of the WAD Code:

The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the 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, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.

22. Article 3.1 of the ITTF Anti-Doping Rules mirror Article 3.1 of the WAD Code:

ITTF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether ITTF has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a

¹ R-4 of the Arbitration Procedures provides that "Arbitration proceedings shall be initiated by USADA with the Arbitral Body after the Athlete, Athlete Support Person, or other Person requests a hearing in response to being charged with an anti-doping rule violation or other dispute subject to arbitration under the USADA Protocol."

² R-7c of the Arbitration Procedures requires that, "A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection."

reasonable doubt. Where these Anti-Doping Rules place 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, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.

V. PROCEDURAL HISTORY

23. This proceeding was initiated on December 14, 2022, pursuant to USADA's letter notifying the AAA of Respondent's request for a hearing.
24. On January 13, 2023, the Arbitrator held a preliminary hearing with the Parties as provided for in the Arbitration Procedures.³ The Arbitrator issued Preliminary Hearing and Scheduling Order Number 1, on January 14, 2023, which, among other things, set dates for the submission of pre-hearing briefs, exhibits and designation of potential witnesses, and set the hearing date for February 9, 2023.
25. Prior to commencement of the hearing the Parties submitted pre-hearing briefs, offered exhibits, and listed potential witnesses as provided for in Preliminary Hearing and Scheduling Order Number 1. Additional documents were offered as exhibits and additional witnesses were called during the course of the hearing.
26. On February 9, 2023, the Arbitrator held an evidentiary hearing by video conference.⁴ At the request of USADA, after both Parties had submitted evidence and presented witness testimony, the hearing was adjourned so that USADA could call additional witnesses to address issues that had been raised in the hearing. The hearing reconvened by video conference on February 16, 2023. Because of the adjournment, the hearing lasted two days. Both USADA and Respondent participated in both days of the hearing.
27. On February 10, 2023, USADA requested to enter the International Testing Authority ("ITA") Out-of-Competition Testing Instructions for Doping Control Officer ("**ITA Testing Instructions**") into evidence under the protection of a confidentiality and protective order. Respondent was provided an opportunity to respond to USADA's request and did so on February 11, 2023, objecting to the issuance of a confidentiality and protective order. Thereafter, both USADA and Respondent were provided with an opportunity to further respond, and both did so. After consideration of this matter, on

³ R-15 of the Arbitration Procedures provides that, "At the request of any party or at the discretion of the arbitrator or the Arbitral Body, the arbitrator may schedule as soon as practicable a preliminary hearing" which "should be conducted by telephone at the arbitrator's discretion."

⁴ R-8a of the Arbitration Procedures provides that, "All hearings shall take place by telephone or video conference unless the parties and the arbitrator agree to an in-person hearing."

February 15, 2023, the Arbitrator issued a Confidentiality and Protective Order with conditions, relative to the ITA Testing Instructions.⁵

28. During the hearing, the Parties called witnesses to testify. Each Party was afforded the opportunity to ask questions of the witnesses and did so as they considered necessary.
29. The Arbitrator heard from the following witnesses, all of whom were sworn:

For Respondent:

- Kanak Jha, Respondent.
- Jörg Bitzigeio, Coach of Respondent.

For USADA:

- Dr. Matthew Fedoruk, Ph.D., USADA Chief Science Officer.
- Martin Dassler, GQS Doping Control Officer.
- Dominique Leroux, ITA Head of Legal Department: Corporate & Anti-Doping Affairs
- Kristen Reith. GQS Head of Testing

30. Respondent also submitted a sworn witness statement from:

- Manuel Pfender, TTF Liebherr Ochsenhausen Team Manager

31. The Parties submitted numerous exhibits at the start of and during the hearing, which were admitted into evidence without objection.
32. The Parties also provided opening and closing statements and gave arguments and presented their positions on various issues that arose during the hearing.
33. The Parties declined to submit post-hearing briefs.
34. The rules of evidence were not strictly enforced, and rules of evidence generally accepted in administrative proceedings were applied.⁶

⁵ USADA asserted that the ITA Testing Instructions had not been made public, and needed to be kept confidential, because they could be used by athletes or unauthorized individuals as a way to avoid being tested. The conditions placed on the Confidentiality and Protection Order issued by the Arbitrator were that the ITA Testing Instructions could be used by Respondent for the purpose of presenting his case, including its use in examining witnesses and that the Arbitrator could use the document in rendering his decision, and refer to and cite it in his award, if necessary.

⁶ R-26a of the Arbitration Procedures provides that, "Conformity to legal rules of evidence shall not be necessary."

35. At the conclusion of the hearing the Arbitrator inquired of the Parties whether they had “further proofs to offer or witnesses to be heard.”⁷ The Parties indicated that they did not.
36. The Arbitrator declared the hearing closed as of February 16, 2023.⁸

VI. RESPONSIBILITY FOR RESULTS MANAGEMENT

37. USADA is conducting, and has authority to conduct, results management in this proceeding.
38. Respondent is charged with a violation of WAD Code Article 2.4 and ITTF Anti-Doping Rules Article 2.4 for having three missed tests (whereabouts failures) within a twelve-month period.
39. The ITTF is the international governing body for table tennis with headquarters in Switzerland. ITTF partners with the ITA, which is based in Switzerland, for many of its anti-doping activities, including sample collection. The ITTF assigned collection of Respondent’s out-of-competition sample to the ITA. The ITA in turn contracted with Global Quality Sports (“GQS”), based in Germany, to collect a sample from Respondent, who was in Germany.
40. Notwithstanding the above, pursuant to the WAD Code, the ITTF Anti-Doping Rules, the International Standard for Results Management (“ISRM”) and USADA Protocol, as set out below, the national anti-doping organization with whom the athlete files whereabouts information has authority to administer results management.
41. Respondent files his whereabouts information with USADA. Therefore, USADA has the authority and responsibility to conduct results management in this proceeding.
42. The WAD Code Article 7.1 provides:

7.1 Responsibility for Conducting Results Management

7.1.6 Results Management in relation to a potential whereabouts failure (a filing failure or a missed test) shall be administered by International Federation or the National Anti-Doping Organization with whom the Athlete

⁷ R-30 of the Arbitration Procedures provides that, “The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard.”

⁸ R-30 of the Arbitration Procedures provides that, “The arbitrator shall declare the hearing closed at the conclusion of closing arguments unless a party demonstrates that the record is incomplete and that such additional proof or witness(es) are pertinent and material to the controversy.”

in question files whereabouts information, as provided in the International Standard for Results Management.

43. The ITTF Anti-Doping Rules Article 7.1 similarly provides:

7.1 Responsibility for Conducting Results Management

7.1.6 Results Management in relation to a potential whereabouts failure (a filing failure or a missed test) shall be administered by ITTF or the National Anti-Doping Organization with whom the Athlete in question files whereabouts information, as provided in the International Standard for Results Management.

44. The ISRM Annex B Article B.3 provides:

B.3 Results Management for a Potential Whereabouts Failure

B.3.1 In accordance with Code Articles 7.1.6, the Results Management Authority in relation to potential Whereabouts Failures shall be the International Federation or the National Anti-Doping Organization with whom the Athlete in question files their whereabouts information.

45. Further, the USADA Protocol Section 6 states:

Choice of Rules In conducting Testing and Results Management under this Protocol, USADA shall apply the following rules and principles:

c. USADA shall be responsible for Results Management of the following: (1) tests initiated by USADA, unless otherwise referred by USADA to a foreign sports organization having jurisdiction over the Athlete, Athlete Support Person, or other Person, (2) all other tests for which the applicable IF rules require the initial adjudication to be done by a domestic body (if responsibility for Results Management is accepted by USADA), and (3) other potential violations of Annex A,⁹ the applicable IF's anti-doping rules, the USOPC NADP, or the USADA Protocol involving any Athlete described in section 4 of this Protocol, or any Athlete Support Personnel or other Persons described in section 5 including, without limitation, all potential violations discovered by USADA, unless otherwise referred by USADA to a foreign

⁹ The reference to Annex A is a reference to the WAD Code.

sports organization having jurisdiction over the Athlete, Athlete Support Person, or other Person.

VII. APPLICABLE LAW

46. In their submissions, the Parties rely on the provisions of the WAD Code, International Standard for Testing and Investigations (“**ISTI**”), ISRM, ITTF Anti-Doping Rules, USADA Protocol, the USOPC National Anti-Doping Policy, various sample collection guidelines and instructions, Arbitration Procedures, and on CAS and AAA jurisprudence. No law was cited by the Parties and no argument was made by the Parties that required the Arbitrator to deviate from the directives of the above listed rules, regulations, guidelines and jurisprudence, or to deviate from documents that were referred to or referenced in the above listed rules, regulations, guidelines or jurisprudence.
47. Although not every rule, regulation or guideline submitted by the Parties is listed below, the Arbitrator sets forth the primary rules, regulations, guidelines and instructions considered applicable to this proceeding.
48. The relevant WAD Code provisions applicable to this proceeding¹⁰ are as follows:

Article 2. Anti-Doping Rule Violations

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

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.4 Whereabouts Failures by an Athlete

Any combination of three missed tests and/or filing failures, as defined in the International Standard for Results Management, within a twelve-month period by an Athlete in a Registered Testing Pool.

¹⁰ WAD Code effective January 1, 2021.

Article 3. Proof of Doping

3.1 Burdens and Standards of Proof

The Anti-Doping Organization shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the Anti-Doping Organization has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the 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, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.

10. Sanctions on Individuals

10.3 Ineligibility for Other Anti-Doping Rule Violations

The period of Ineligibility for anti-doping rule violations other than as provided in Article 10.2 shall be as follows, unless Article 10.6 or 10.7 are applicable:

10.3.2 For violations of Article 2.4, the period of Ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the Athlete's degree of Fault. The flexibility between two (2) years and one (1) year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.

10.10 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension

or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

10.13 Commencement of Ineligibility Period

Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. Otherwise, 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.

10.13.2 Credit for Provisional Suspension or Period of Ineligibility Served

10.13.2.1 If a Provisional Suspension is 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 the Athlete or other Person does not respect a Provisional Suspension, then the Athlete or other Person shall receive no credit for any period of Provisional Suspension served. 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.

Appendix 1 Definitions

Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting

calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.

49. The relevant ITTF Anti-Doping Rules applicable to this proceeding¹¹ are as follows:

ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

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

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.4 Whereabouts Failures by an Athlete

Any combination of three (3) missed tests and/or filing failures, as defined in the International Standard for Results Management, within a twelve (12) month period by an Athlete in a Registered Testing Pool.

ARTICLE 3 PROOF OF DOPING

3.1 Burdens and Standards of Proof

ITTF shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether ITTF has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.

¹¹ ITTF Anti-Doping Rules effective January 1, 2021.

ARTICLE 10 SANCTIONS ON INDIVIDUALS

10.3 Ineligibility for Other Anti-Doping Rule Violations

The period of Ineligibility for anti-doping rule violations other than as provided in Article 10.2 shall be as follows, unless Article 10.6 or 10.7 are applicable:

10.3.2 For violations of Article 2.4, the period of Ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the Athlete's degree of Fault. The flexibility between two (2) years and one (1) year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.

10.10 Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

10.13 Commencement of Ineligibility Period

Where an Athlete is already serving a period of Ineligibility for an anti-doping rule violation, any new period of Ineligibility shall commence on the first day after the current period of Ineligibility has been served. Otherwise, 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.

10.13.2 Credit for Provisional Suspension or Period of Ineligibility Served

10.13.2.1 If a Provisional Suspension is 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 the Athlete or other Person does not respect a Provisional Suspension, then the Athlete or other Person shall receive no credit for any period of Provisional Suspension served. 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.

APPENDIX 1 DEFINITIONS

Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.7

50. The relevant ISTI provisions applicable to this proceeding¹² are as follows:

4.8 Collecting whereabouts information

4.8.6 Registered Testing Pool

¹² ISTI effective January 1, 2021. The ISTI is a mandatory international standard developed as part of the world anti-doping program.

4.8.6.2 An Athlete who is in a Registered Testing Pool shall:

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

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

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

4.8.8 Whereabouts Filing Requirements

4.8.8.1 Anti-Doping Organizations shall review Athletes Whereabouts Filings to ensure they are submitted in accordance with Articles 4.8.8.2 and 4.8.8.3.

4.8.8.2 The Anti-Doping Organization collecting an Athlete's Whereabouts Filings may specify a date prior to the first day of each quarter (i.e., 1 January, 1 April, 1 July and 1 October, respectively) when an Athlete in a Registered Testing Pool shall file a Whereabouts Filing that contains at least the following information:

[Comment to 4.8.8.2: To facilitate planning and readiness for Testing on the first day of the quarter (as countenanced in Article 4.8.8.2), Anti-Doping Organizations may require that whereabouts information is submitted on a

date which is the 15th of the month preceding the quarter. However, no consequences for a failure to submit prior to the first day of the quarter shall apply.]

a) A complete mailing address and personal e-mail address where correspondence may be sent to the Athlete for formal notice purposes. Any notice or other item mailed to that address will be deemed to have been received by the Athlete seven (7) days after it was deposited in the mail and immediately when notification of a sent e-mail receipt is generated/obtained (subject to applicable law);

[Comment to 4.8.8.2(a): For these purposes, the Athlete should specify an address where they live or otherwise know that mail received there will be immediately brought to their attention. An Anti-Doping Organization is encouraged also to supplement this basic provision with other notice and/or “deemed notice” provisions in its rules (for example, permitting use of fax, email, SMS text, approved social networking sites or applications or other methods of service of notice; permitting proof of actual receipt as a substitute for deemed receipt; permitting notice to be served on the Athlete’s National Federation if it is returned undelivered from the address supplied by the Athlete). The aim of such provisions should be to shorten the Results Management timelines.]

b) Specific confirmation that the Athlete understands that their Whereabouts Filing will be shared with other Anti-Doping Organizations that have authority to conduct Testing on them;

c) For each day during the following quarter, the full address of the place where the Athlete will be staying overnight (e.g., home, temporary lodgings, hotel, etc.);

d) For each day during the following quarter, the name and address of each location where the Athlete will train, work or conduct any other regular activity (e.g., school), as well as the usual time frames for such regular activities; and

[Comment to 4.8.8.2 (d): This requirement applies only to activities that are part of the Athlete’s regular routine. For example, if the Athlete’s regular routine includes training at the gym, the pool and the track, and regular physio sessions, then the Athlete should provide the name and address of the gym, pool, track and physio in their Whereabouts Filing, and then set out their usual routine, e.g., “Mondays: 9-11 gym, 13-17 gym; Tuesdays: 9-11 gym, 16-18 gym; Wednesdays: 9-11 track, 3-5 physio; Thursdays: 9-12 gym,

16-18 track, Fridays: 9-11 pool, 3-5 physio; Saturdays: 9-12 track, 13-15 pool; Sundays: 9-11 track, 13-15 pool". If the Athlete is not currently training, they should specify that in their Whereabouts Filing and detail any other routine that they will be following in the forthcoming quarter, e.g., their work routine, or school schedule, or rehab routine, or other routine, and identify the name and address of each location where that routine is conducted and the time frame during which it is conducted.

In the case of a Team Sport or other sport where competing and/or training are carried out on a collective basis, the Athlete's regular activities are likely to include most, if not all, Team Activities.]

e) The Athlete's Competition/Event schedule for the following quarter, including the name and address of each location where the Athlete is scheduled to compete during the quarter and the date(s) and time(s) at which they are scheduled to compete at such location(s).

4.8.8.3 Subject to Article 4.8.8.4, the Whereabouts Filing must also include, for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. each day where the Athlete will be available and accessible for Testing at a specific location.

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

4.8.8.4 As the sole exception to Article 4.8.8.3, if (but only if) there are dates in the relevant quarter in which the Athlete is scheduled to compete in an Event (excluding any Events organized by a Major Event Organization), and the Anti-Doping Organization that put the Athlete into the Registered Testing Pool is satisfied that enough information is available from other sources to find the Athlete for Testing on those dates, then the Anti-Doping Organization that put the Athlete into the Registered Testing Pool may waive the Article 4.8.8.2

requirement to specify a 60-minute time slot in respect of such dates ("In Competition Dates"). If each of the International Federation and a National Anti-Doping Organization put the Athlete into its Registered Testing Pool, the International Federation's decision as to whether to waive that requirement in respect of In-Competition Dates will prevail. If the requirement to specify a 60-minute time slot has been waived in respect of In-Competition Dates, and the Athlete has specified in their Whereabouts Filing a series of dates when and locations where they anticipate being In-Competition (and as a result has not specified a 60-minute time slot for those dates), if they are then eliminated from the Competition before the end of those dates, so that the remaining dates are no longer In-Competition Dates, they must update their Whereabouts Filing to provide all the necessary information for those dates, including the 60-minute time slot specified in Article 4.8.8.3.

4.8.8.5 It is the Athlete's responsibility to ensure that they provide all of the information required in a Whereabouts Filing as outlined in Articles 4.8.8.2 and 4.8.8.3 accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in their Whereabouts Filing for that day, including but not limited to during the 60-minute time slot specified for that day in the Whereabouts Filing.

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

[Comment to 4.8.8.5(a): For example, declarations such as "running in the Black Forest" are insufficient and are likely to result in a Filing Failure. Similarly, specifying a location that the DCO cannot access (e.g., a "restricted-access" building or area) is likely to result in a Filing Failure. The Anti-Doping Organization may be able to determine the insufficiency of the information from the Whereabouts Filing itself, or alternatively it may only discover the insufficiency of the information when it attempts to test the Athlete and is unable to locate them. In either case, the matter should be pursued as an apparent Filing Failure, and/or (where the circumstances warrant) as an evasion of Sample collection under Code Article 2.3, and/or as Tampering or Attempting to Tamper with Doping Control under Code Article 2.5. Further information on Whereabouts Filing requirements can be

found in WADA's Guidelines for Implementing an Effective Testing Program. Where an Athlete does not know precisely what their whereabouts will be at all times during the forthcoming quarter, they must provide their best information, based on where they expect to be at the relevant times, and then update that information as necessary in accordance with Article 4.8.8.5.]

b) If the Athlete is tested during the 60-minute time slot, the Athlete must remain with the DCO until the Sample collection has been completed, even if this takes longer than the 60-minute time slot. A failure to do so shall be pursued as an apparent violation of Code Article 2.3 (refusal or failure to submit to Sample collection).

c) If the Athlete is not available for Testing at the beginning of the 60-minute time slot, but becomes available for Testing later on in the 60-minute time slot, the DCO should collect the Sample and should not process the attempt as an unsuccessful attempt to test, but should report the details of the delay in availability of the Athlete. Any pattern of behaviour of this type should be investigated as a possible anti-doping rule violation of evading Sample collection under Code Article 2.3 or Code Article 2.5. It may also prompt Target Testing of the Athlete. If an Athlete is not available for Testing during their specified 60-minute time slot at the location specified for that time slot for that day, they will be liable for a Missed Test even if they are located later that day and a Sample is successfully collected from them.

d) Once the DCO has arrived at the location specified for the 60-minute time slot, if the Athlete cannot be located immediately, then the DCO should remain at that location for whatever time is left of the 60-minute time slot and during that remaining time they should do what is reasonable in the circumstances to try to locate the Athlete. See WADA's Guidelines for Implementing an Effective Testing Program for guidance in determining what is reasonable in such circumstances.

[Comment to 4.8.8.5(d): Where an Athlete has not been located despite the DCO's reasonable efforts, and there are only five (5) minutes left within the 60-minute time slot, then as a last resort the DCO may (but does not have to) telephone the Athlete (assuming they have provided their telephone number in their Whereabouts Filing) to see if they are at the specified location. If the Athlete answers the DCO's call and is available at (or in the immediate vicinity of) the location for immediate Testing (i.e., within the 60-minute time slot), then the DCO should wait for the Athlete and should collect the Sample from them as normal. However, the DCO should also make a careful note of all the circumstances, so that it can be decided if any

further investigation should be conducted. In particular, the DCO should make a note of any facts suggesting that there could have been tampering or manipulation of the Athlete's urine or blood in the time that elapsed between the phone call and the Sample collection. If the Athlete answers the DCO's call and is not at the specified location or in the immediate vicinity, and so cannot make himself/herself available for Testing within the 60-minute time slot, the DCO should file an Unsuccessful Attempt Report.

4.8.8.6 Where a change in circumstances means that the information in a Whereabouts Filing is no longer accurate or complete as required by Article 4.8.8.5, the Athlete shall file an update so that the information on file is again accurate and complete. The Athlete must always update their Whereabouts Filing to reflect any change in any day in the quarter in question in particular; (a) in the time or location of the 60-minute time slot specified in Article 4.8.8.3; and/or (b) in the place where they are staying overnight. The Athlete shall file the update as soon as possible after they become aware of the change in circumstances, and in any event prior to the 60-minute time slot specified in their filing for the relevant day. A failure to do so may be pursued as a Filing Failure and/or (if the circumstances so warrant) as evasion of Sample collection under Code Article 2.3, and/or Tampering or Attempted Tampering with Doping Control under Code Article 2.5. In any event, the Anti-Doping Organization shall consider Target Testing of the Athlete.

[Comment to 4.8.8.6: The Anti-Doping Organization collecting the Athlete's Whereabouts Filings should provide appropriate mechanisms (e.g., phone, fax, Internet, email, SMS, approved social networking sites or applications) to facilitate the filing of such updates. It is the responsibility of each Anti-Doping Organization with authority to conduct Testing on the Athlete to ensure that it checks for any updates filed by the Athlete prior to attempting to collect a Sample from the Athlete based on their Whereabouts Filing. For the avoidance of doubt, however, an Athlete who updates their 60-minute time slot for a particular day prior to the original 60-minute slot must still submit to Testing during the original 60-minute time slot, if they are located for Testing during that time slot.]

4.8.9 Availability for Testing

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

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

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

b) To guarantee that the Athlete can be found, and a Sample can be collected, at least once per day (which should deter doping, or, as a minimum, make it far more difficult);

c) To increase the reliability of the rest of the whereabouts information provided by the Athlete, and so to assist the Anti-Doping Organization in locating the Athlete for Testing outside the 60-minute time slot. The 60-minute time slot “anchors” the Athlete to a certain location for a particular day. Combined with the information that the Athlete must provide as to where they are staying overnight, training, competing and conducting other ‘regular’ activities during that day, the Anti-Doping Organization should be able to locate the Athlete for Testing outside the 60-minute time slot; and

d) To generate useful anti-doping intelligence, e.g., if the Athlete regularly specifies time slots with large gaps between them, and/or changes his time slot and/or location at the last minute. Such intelligence can be relied upon as a basis for the Target Testing of such Athlete.]

51. The relevant ISRM provisions applicable to this proceeding¹³ are as follows:

ANNEX B – RESULTS MANAGEMENT FOR WHEREABOUTS FAILURES

B.1 Determining a Potential Whereabouts Failure

B.1.1 Three (3) Whereabouts Failures by an Athlete within any 12-month period amount to an anti-doping rule violation under Code Article 2.4. The Whereabouts Failures may be any combination of Filing Failures and/or Missed Tests declared in accordance with Article B.3 and adding up to three (3) in total.

[Comment to Article B.1.1: While a single Whereabouts Failure will not amount to an anti-doping rule violation under Code Article 2.4, depending on the facts, it could amount to an anti-doping rule violation under Code

¹³ ISRM effective May 20, 2021. The ISRM is a mandatory international standard developed as part of the world anti-doping program.

Article 2.3 (Evading Sample Collection) and/or Code Article 2.5 (Tampering or Attempted Tampering with Doping Control).]

B.1.2 The 12-month period referred to in Code Article 2.4 starts to run on the date that an Athlete commits the first Whereabouts Failure being relied upon in support of the allegation of a violation of Code Article 2.4. If two (2) more Whereabouts Failures occur during the ensuing 12-month period, then Code Article 2.4 anti-doping rule violation is committed, irrespective of any Samples successfully collected from the Athlete during that 12-month period. However, if an Athlete who has committed one (1) Whereabouts Failure does not go on to commit a further two (2) Whereabouts Failures within the 12-months, at the end of that 12-month period, the first Whereabouts Failure “expires” for purposes of Code Article 2.4, and a new 12-month period begins to run from the date of their next Whereabouts Failure.

B.1.3 For purposes of determining whether a Whereabouts Failure has occurred within the 12-month period referred to in Code Article 2.4:

a) A Filing Failure will be deemed to have occurred (i) where the Athlete fails to provide complete information in due time in advance of an upcoming quarter, on the first day of that quarter, and (ii) where any information provided by the Athlete (whether in advance of the quarter or by way of update) transpires to be inaccurate, on the (first) date on which such information can be shown to be inaccurate; and

b) A Missed Test will be deemed to have occurred on the date that the Sample collection was unsuccessfully attempted.

B.2 Requirements for a Potential Filing Failure or Missed Test

B.2.2 While Code Article 5.2 specifies that every Athlete must submit to Testing at any time and place upon request by an Anti-Doping Organization with Testing Authority over them, in addition, an Athlete in a Registered Testing Pool must specifically be present and available for Testing on any given day during the 60-minute time slot specified for that day in their Whereabouts Filing, at the location that the Athlete has specified for that time slot in such filing. Where this requirement is not met by the Athlete, it shall be pursued as an apparent Missed Test. If the Athlete is tested during such a time slot, the Athlete must remain with the DCO until the Sample collection has been completed, even if this takes longer than the 60- minute time slot. A failure to

do so shall be pursued as an apparent violation of Code Article 2.3 (refusal or failure to submit to Sample collection).

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

a) That when the Athlete was given notice that they had been designated for inclusion in a Registered Testing Pool, they were advised that they would be liable for a Missed Test if they were unavailable for Testing during the 60-minute time slot specified in their Whereabouts Filing at the location specified for that time slot;

b) That a DCO attempted to test the Athlete on a given day in the quarter, during the 60- minute time slot specified in the Athlete's Whereabouts Filing for that day, by visiting the location specified for that time slot;

c) That during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test;

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

d) That Article B.2.3 does not apply or (if it applies) was complied with; and

e) That the Athlete's non-availability for Testing at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the Athlete will be presumed to have been negligent upon proof of the matters set out at sub-Articles B.2.4 (a) to (d). That presumption may only be rebutted by the Athlete establishing that no negligent behavior on their part caused or contributed to their failure (i) to be available for Testing at such location during such time slot, and (ii) to update their most recent Whereabouts Filing to give notice of a different location where they would instead be available for Testing during a specified 60-minute time slot on the relevant day.

B.3.6 A finding that an Athlete has committed a Code Article 2.4 anti-doping rule violation has the following Consequences: (a) imposition of a period of Ineligibility in accordance with Code Article 10.3.2 (first violation) or Code Article 10.9 (subsequent violation(s)); and (b) in accordance with Code Article 10.10 (Disqualification, unless fairness requires otherwise) of all individual results obtained by the Athlete from the date of the Code Article 2.4 anti-doping rule violation through to the date of commencement of any Provisional Suspension or Ineligibility period, with all of the resulting Consequences, including forfeiture of any medals, points and prizes. For these purposes, the anti-doping rule violation shall be deemed to have occurred on the date of the third Whereabouts Failure found by the hearing panel to have occurred. The impact of any Code Article 2.4 anti-doping rule violation by an individual Athlete on the results of any team for which that Athlete has played during the relevant period shall be determined in accordance with Code Article 11.

52. The relevant WADA Code Implementation Support Program Guidelines for Sample Collection (“**WADA Sample Collection Guidelines**”) provisions applicable to this proceeding¹⁴ are as follows:

Introduction

Welcome to the Guidelines for Sample Collection (Guidelines), a third-level, non-mandatory document that supports the International Standard for Testing and Investigation (ISTI), specifically requirements related to Sample Collection procedures.

Where the ISTI gives a minimum of what to do, the Guidelines aim to help you understand how to do it, giving you examples and suggestions, and showing you how to go above and beyond the requirements where possible.

The processes outlined in this document promote good practice, assisting Testing Authorities (TAs) and Sample Collection Authorities (SCAs) in the development of systems, processes and protocols to support an effective sample collection session of athletes by Sample Collection Personnel (SCP).

Chapter 7 Inability to locate the athlete

The TA or SCA should provide the SCP with sufficient instructions in order to locate an athlete. If a selected athlete is not located based on the

¹⁴ WADA Sample Collection Guidelines, Version 1, dated January 2021. The WADA Sample Collection Guidelines are not mandatory but offer guidance generally to DCOs relating to sample collection procedures.

whereabouts information provided, the SCP should attempt to locate the athlete by any other means, based on the nature of the location and other people in the vicinity, with no advance notice. If the attempt is made within the athlete's 60-minute time slot, the SCP must make all reasonable attempts to locate the athlete with no advance notice. Examples of reasonable attempts include:

- ❖ If the attempt takes place at the athlete's residence, the SCP should ring the doorbell or knock upon arrival and then at regular intervals during their attempt. While waiting, the SCP should stay somewhere close-by, where they are able to observe access in and out of the residence and monitor any activity inside the residence e.g., lights switched on or off or people moving around the residence. At the end of the 60-minute time slot one last attempt should be made.*
- ❖ If the attempt takes place at a residential address or location with gated or security access, the TA/SCA should ensure that through the whereabouts provided by the athlete that specific information is available on how the SCP will reach the athlete. This might include an access code to a security gate or specific instructions on how to access a building with security personnel in attendance.*
- ❖ If the attempt takes place at a sporting venue or other training location and the athletes can't initially be located, the SCP should check other areas to try and locate the athlete. This could include, treatment rooms, meeting rooms, gym, changing rooms etc. The TA/SCA should ensure that the athlete is providing precise location information especially in large venues as part of their whereabouts filings. A failure by an athlete to provide accurate whereabouts information may result in a potential Filing Failure or if relative to testing during the athlete's 60-minute time slot a Missed Test.*

For detailed guidance for SCP on making reasonable attempts refer to WADA's [Template DCO Manual Section 4.3](#).

The TA/SCA must also provide instructions on whether a telephone call to the athlete 5-minutes before the end of the 60-minute time slot by the SCP is acceptable. It is recommended that such strategy only be used in exceptional circumstances and only if the athlete cannot be located by exhausting all other means. The TA/SCA should also provide instructions to the SCP on how to proceed when or if the athlete responds to the telephone call. This should include whether to leave a voice message, call again, send a follow up text message, what to do if the athlete is close-by, and how to proceed if a third-party is contacted.

The frequency of these telephone calls by SCP and the apparent reliance on them by athletes in order to be located for a test should be monitored by the TA/SCA for intelligence purposes and target testing.

Note the use of a telephone call in the last 5 minutes of an athlete's 60-minute time slot is not mandatory. TAs should educate athletes on the purpose of the telephone call. For more guidance on the use of the telephone call refer to WADA's Template DCO Manual section 4.3.

If the attempt is made outside the athlete's 60-minute time slot, SCP should again make all reasonable attempts to locate the athlete with no advance notice. If this is not possible, the TA/SCA should provide instructions to the SCP on how to proceed.

53. The relevant provisions of the ITA Testing Instructions applicable to this proceeding¹⁵ are as follows:¹⁶

2. LOCATING AND NOTIFYING THE ATHLETE

2.1. In-hour Testing (during the Athlete's 60-minute slot) Procedure

2.1.1. Upon arrival, if the Athlete cannot be found at the designated location, the DCO should do what is reasonable in the circumstances to try to locate the Athlete for the entire time slot period, in a discrete manner and short of giving the Athlete any advance notice.

2.1.2. If the Athlete receives advance notice of the Doping Control (such as via a phone call), the DCO is required to document the time advance notice was given as well as the circumstances that led to the advance notice.

2.1.3. If the Athlete is not available when the DCO arrives at the designated location but becomes available for Testing later on (but still within the 60-minute slot), the Sample Collection should be carried out as per normal procedure. No Unsuccessful Attempt Form ("UAF") should be filled. However, the DCO is required to provide full details about the Athlete's delay on a Supplementary Report Form ("SRF").

¹⁵ The ITA Testing Instructions were in effect on the day of the test, September 4, 2022.

¹⁶ Since a Confidentiality and Protective Order was entered regarding the ITA Testing Instructions, although with conditions, the Arbitrator is only setting out here those specific sections that were brought up and referred to by the Parties during the course of the proceeding. *See supra* footnote 5.

2.1.4. *If, after using best efforts, the DCO still cannot locate the Athlete at the end of the 60-minute slot, the DCO should conclude the attempt and an UAF shall be issued.*

2.1.5. *After the end of the 60-minute slot and once the UAF is filed, the DCO should telephone the Athlete using the telephone number provided in the Athlete's Whereabouts or the Specific Instructions of the Testing Order, and comply with the ITA Phone Call Policy outlined in clause 3. of the present Instructions.*

2.1.6. *If the DCO can't reach the athlete, the DCO shall follow the procedure outlined in clause 3.5.*

3. PHONE CALL POLICY (APPLICABLE TO ALL MISSIONS)

3.1. *In addition to the cases described in in clauses 2.1.5 and 2.2.1 above, the DCO can exceptionally call the Athlete upon arrival if he/she encounters restricted or limited access to the location (e.g. doorbell does not work, gated access, no apartment number, etc.), but only after using best efforts to access the location without giving any advance notice to the Athlete.*

3.5. *If the Athlete does not answer the phone:*

3.5.1. *the DCO should not leave a voicemail.*

3.5.2. *the DCO shall keep the records of the phone call in the device and take a screenshot of the call(s).*

VIII. FACTUAL SUMMARY

A. Introduction

54. Below 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 Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceeding, this Award only refers to the submissions and evidence necessary to explain the Arbitrator's reasoning. The facts presented or relied upon by the Arbitrator may differ from one side or the other's presented version. That is the result of the Arbitrator necessarily having to weigh the presented evidence in providing the basis for and in coming to a decision as to the Award.

B. Background/Factual Summary

55. Respondent is a 22-year-old table tennis player from Milpitas, California. He is an elite-level athlete who has competed in prestigious international and domestic competitions, including the 2016 and 2020 Olympic Games and the 2019 Pan American Games. Respondent is a four-time national champion, having won four straight titles from 2016 through 2019. Respondent also competes in table tennis professionally. Respondent has a top 20 world table tennis ranking.
56. Respondent has been a member of USA Table Tennis (“**USATT**”) since 2006.
57. Respondent was first added to a whereabouts pool in 2014, when he was added to USADA’s National Testing Pool (“**NTP**”). He remained in the NTP from April 2014 through December 2018. Respondent was then moved to USADA’s Clean Athlete Program (“**CAP**”) whereabouts pool. Respondent was in the CAP from January 2019 through January 2022, before being added to the Registered Testing Pool (“**RTP**”) in January 2022, where he remains to this day.
58. Respondent has been regularly tested throughout his career and has never had a positive test.
59. USADA provides athletes with newsletters and education materials that provide information on anti-doping matters, including information regarding an athlete’s responsibilities pertaining to whereabouts filings and sample collection. Respondent received these materials. USADA also provides athletes with Athlete’s Advantage Tutorials that deal with anti-doping matters. Respondent has completed these tutorials each year from 2014 through 2022. The 2014 Tutorial specifically addressed whereabouts and advised athletes that, “It’s good practice to get into the habit of checking your whereabouts every day as part of your training plan, to confirm the information is accurate and up to date.” The 2022 Tutorial further advised athletes that during a sample collection attempt “a DCO may, but is not required to, call athletes in the last five minutes of their 60-minute time slot.”
60. On March 18, 2022, Respondent missed a collection attempt during his 60-minute window at his residence at Schulstrasse 27, Ochsenhausen, Germany. Respondent admitted to his whereabouts failure On March 18, 2022, in an email to USADA.
61. On June 2, 2022, Respondent missed a collection attempt during his 60-minute window at his residence at Schulstrasse 27, Ochsenhausen, Germany. Respondent responded to USADA on June 27, 2022, indicating that he had failed to change his whereabouts to his actual location on June 2, 2022, which was in California.

62. Respondent timely submitted his 3rd quarter Athletes Whereabouts Location Form in June 2022. On that Form, Respondent listed his primary residence address as Schulstrasse 27, Ochsenhausen, Germany.
63. Respondent moved from his residence at Schulstrasse 27 to Uhlandstrasse 41, Ochsenhausen, Germany on July 27, 2022. Respondent updated his whereabouts information to indicate that as of July 27, 2022, his new residence address would be at Uhlandstrasse 41.
64. On August 25, 2022, Respondent updated his whereabouts as to location and time pertaining to his 60-minute time slots to account for his schedule. However, Respondent failed to change his whereabouts for the 1:00 p.m. - 2:00 p.m. time slots on September 4 and 5, 2022, which continued to indicate that he would be at the Schulstrasse 27 address rather than at the Uhlandstrasse 41 address.
65. As part of its anti-doping program, ITTF selected Respondent for an out-of-competition test. The ITTF assigned collection of Respondent's out-of-competition sample to the ITA. ITA utilized GQS to collect the sample. GQS retained DCO Dassler to collect Respondent's sample.
66. On September 4, 2022, the following information was listed on Respondent's whereabouts filing:
 - 60-minute window: 1:00 p.m. – 2:00 p.m.
 - Address: Schulstrasse 27, Ochsenhausen, Barden Wuttemberg
 - Phone number: 408.8768136
67. On September 4, 2022, DCO Dassler attempted to collect a sample from Respondent. Dassler utilized Respondent's whereabouts filing to locate Respondent and collect the sample.
68. DCO Dassler arrived at the Schulstrasse 27 address at 12:50 p.m. and began the attempt at 12.55 p.m. Dassler rang the doorbell at Schulstrasse 27 at least six times over the course of the attempt at approximately fifteen-minute intervals. Throughout the attempt, DCO Dassler waited at the front door. At 1:55 p.m. Dassler placed a call to Respondent dialing the number Respondent included on his whereabouts filing. Dassler took a screen shot of his phone which displayed the dialed number "4088768136." Dassler left the Schulstrasse 27 address shortly after 2:00 p.m.
69. In an attempt to further locate Respondent, DCO Dassler went to Sparkassen Trainingszentrum, Riedstrasse 42, Ochsenhausen, Germany, an address listed on Respondent's whereabouts as his training facility. Dassler was unable to locate Respondent and left.

70. Finally, in a further attempt to locate Respondent, DCO Dassler went to the Uhlandstrasse 41 address, which was also listed as a residential address on Respondent's whereabouts. Dassler was unable to locate Respondent and left.
71. DCO Dassler filed an Unsuccessful Attempt Report ("UAR")¹⁷ on September 4, 2022. The following information was listed in the report:

Arrival 12:50 p.m. at Schulstrasse 27, Ochsenhausen 88416

- ringing the door bell 12:55 / 13:00 / 13:10 / 13:25 / 13:40 / 13:55 p.m.
- waiting all the time in front of the door
- 13:55 p.m. phone call – no answer
- 14:15 p.m. arrival at Sparkassen Trainingszentrum Ochsenhausen, Riedstrasse, athlete wasn't there
- 14:25 arrival at Uhlandstrasse 41, Ochsenhausen, athlete wasn't there

Finished the attempt 14:25 p.m.

72. On September 5, 2022, Respondent updated his whereabouts as to location and time pertaining to his 60-minute time slots to account for his schedule. When updating his whereabouts, Respondent noticed that the location for his 60-minute time slots for September 4 and 5, 2022, was at the Schulstrasse 27 address, instead of at the Uhlandstrasse 41 address. Respondent changed the address for the 60-minute time slot for September 5 to Uhlandstrasse 41.
73. On September 16, 2022, USDA sent Respondent a letter which stated:

You were selected for out-of-competition ("OOC") testing for the 3rd quarter of 2022 by the International Table Tennis Federation ("ITTF"). The United States Anti-Doping Agency ("USADA") is assigned as the whereabouts custodian organization. ITTF assigned a Doping Control Officer ("DCO") to locate you for testing on September 4, 2022, during your 60-minute window at the residence that you specified on the Whereabouts Filing that you submitted to USADA. After a reasonable effort to locate you for testing, the DCO completed an Unsuccessful Attempt Report ("UAR") and submitted it to USADA and ITTF. A copy of your Whereabouts Filing(s) and the UAR are enclosed with this letter.

¹⁷ The ITA Testing Instructions refer to Unsuccessful Attempt Forms ("UAFs"), but these forms are more commonly referred to in the anti-doping movement as Unsuccessful Attempt Reports ("UARs"). For consistency, UAR will be used in this Award.

USADA reviewed the UAR and your Whereabouts Filings and alleges that your 60-minute window was inaccurate on September 4, 2022. As a result, USADA has concluded that this should be declared a Whereabouts Failure.

USADA also notified Respondent of his right to submit a written response explaining why his September 4, 2022, missed test should not be counted as a whereabouts failure.

74. On October 6, 2022, USADA sent Respondent a follow-up letter again stating that USADA had declared a whereabouts failure against Respondent for failing to be available on September 4, 2022, during the 60-minute timeslot at the location Respondent specified in his whereabouts filing. USADA notified Respondent that three whereabouts failures within a rolling twelve-month period would result in an anti-doping rule violation. USADA notified Respondent that if he chose, he could have the whereabouts failure first heard by a USADA Administrative Review Panel, or if he elected not to do so, he could go directly to arbitration.
75. Respondent requested an administrative review of his whereabouts failure. In an October 20, 2022, letter to USADA Respondent explained that he was at the Uhlandstrasse 41 address during the 60-minute window, not realizing at the time that his whereabouts information for his testing window listed the Schulstrasse 27 address rather than the Uhlandstrasse 41 address. Respondent also indicated that although DCO Dassler attempted to call Respondent, the call never went through since Dassler did not dial the U.S. country code of “+1” that is required when making a call to a U.S. number from a German phone. Respondent submitted that:

the alleged September 4, 2022 missed test must be set aside because the Doping Control Officer did not do what was reasonable in the circumstances on September 4, 2022, to locate Mr. Jha for testing. Mr. Jha now respectfully requests that this USADA administrative review panel dismiss the alleged September 4, 2022, missed test for the reasons stated herein.
76. On November 17, 2022, USADA notified Respondent that the Administrative Review Panel had considered the materials submitted by Respondent and that the Panel upheld USADA’s determination of a whereabouts failure.
77. By letter of December 1, 2022, USADA imposed a provisional suspension on Respondent, immediately barring him from:

participating in any Competition or activity (e.g., as an athlete, official, race director) under the jurisdiction of ITTF, USA Table Tennis, and the USOPC, or any clubs, member associations or affiliates of these entities, or other Signatories of the Code, until your case is deemed not to be an anti-doping rule

violation, you accept a sanction, you fail to contest this matter, or a hearing has been held and a decision has been reached in this matter.

78. On December 14, 2022, USADA charged Respondent with an anti-doping rule violation for having three missed tests (whereabouts failures) in a rolling twelve-month period in violation of WAD Code Article 2.4 and ITTF Anti-Doping Rules Article 2.4.

C. Testimony

79. In addition to the facts set out above, witness testimony was presented by the Parties during the hearing. An analysis of this case does not depend on determining the absolute truth or falsity of any fact presented by a witness. The summary presented below is not a verbatim recitation of a witness's testimony but paraphrases the crux of pertinent testimony presented by the witness.
80. Respondent Jha testified that:
- a) Respondent received anti-doping education from USADA, including education regarding whereabouts responsibilities.
 - b) Respondent understood that he had to provide a location and a 60-minute window on his whereabouts and that he must be available for testing during that time. Respondent also provided a telephone number on his whereabouts. USADA never informed Respondent that he had to list a country code.
 - c) Respondent acknowledged that anti-doping rules apply to all athletes and that he is required to file accurate whereabouts information.
 - d) Respondent acknowledged that he has to update his whereabouts information as necessary and that he can do this from his phone or computer.
 - e) As best Respondent can recall, he has been tested out-of-competition from 8 to 11 times.
 - f) Concerning Respondent's March 18, 2022, missed test, Respondent was not at the location provided on his whereabouts. The DCO tried to call Respondent, but he was training, and his phone was in his gym bag. Respondent doesn't recall if the DCO left a voice mail, or if Respondent just noticed a missed call on his phone. This was the first missed test that Respondent had ever received.
 - g) Regarding the June 2, 2022, missed test, again Respondent was not at the location provided on his whereabouts. Respondent had traveled to California. Respondent recalled that this was a stressful time for him as he didn't make his May 31 flight to Korea because of issues with his travel papers and he didn't end up travelling until June 1. However, Respondent

acknowledged that his failure to update his 60-minute window location was not caused by his travel issues.

- h) Respondent indicated that he took his two missed tests very seriously and afterwards was more conscious in making updates to his whereabouts information. Respondent acknowledged that having had two missed tests was problematic.
- i) On August 25, 2022, when Respondent made updates to his whereabouts, including making updates for travel between September 6 and September 9, he thought that he had also updated his whereabouts for September 4 and 5 as well.
- j) On September 4, 2022, Respondent was at his new residence, Uhlandstrasse 41, Ochsenhausen, Germany, for the entire 60-minute window. However, the location for the 60-minute window listed on his whereabouts was his prior residence, Schulstrasse 27, Ochsenhausen, Germany.
- k) After staying at Uhlandstrasse 41 for the required 60-minute window, Respondent went to his training facility at Sparkassen Trainingszentrum, Riedstrasse 42, Ochsenhausen, Germany.
- l) During September 4, 2022, Respondent was never aware that there was a DCO attempting to collect a sample from him.
- m) Respondent did not receive a phone call from DCO Dassler on September 4, 2022. If Respondent had received a phone call, he could have travelled from his new residence at Uhlandstrasse 41 to his prior residence at Schulstrasse 27 within 5 minutes and the sample collection could have been completed prior to 2:00 p.m.
- n) On a prior occasion, Respondent was walking his dog when a DCO attempted to collect an out-of-competition sample during Respondent's 60-minute window. However, the DCO called Respondent, the collection test was completed, and Respondent did not receive a whereabouts failure.
- o) When Respondent made updates to his whereabouts on September 5, 2022, he noticed that he had the wrong address for his 60-minute window. Respondent changed the location for his 60-minute window to the Uhlandstrasse 41 address. When Respondent made this change, he had no idea that he had missed a test. Respondent did not change his whereabouts for September 4, 2022, as that date had already passed.
- p) The first time Respondent became aware that he had missed a test was on September 16, 2022, when he received a notification letter from USADA. When he got the letter Respondent was completely shocked.
- q) There has been no attempt to test Respondent out-of-competition since the collection effort on September 4, 2022.
- r) If Respondent is subject to a period of ineligibility, he will lose his world ranking and be precluded from competing in the 2023 Pan American Games. Depending on the length of Respondent's period of ineligibility,

Respondent's opportunity to compete in the 2024 Olympic Games and the ITTF World Championships will be jeopardized, if not made impossible.

81. Jörg Bitzigeio, Coach of Respondent, testified that:

- a) Bitzigeio has a sports business degree. He is a former athlete, has served as national team head coach for Germany, as high-performance director for USA Table Tennis and as a coach for table tennis players.
- b) Bitzigeio has coached Jha for five and one-half years.
- c) Part of the duty of an athlete is to fulfill whereabouts obligations. Because of an athlete's changing schedule, this is sometimes difficult to deal with but must be done. Jha understands these obligations.
- d) Jha is serious about his whereabouts responsibilities. Jha is a clean athlete.
- e) Bitzigeio has high praise for Jha. Jha loves and lives table tennis.
- f) Jha informed Bitzigeio of Jha's missed tests that occurred on March 18, 2022, and on June 2, 2022.
- g) Bitzigeio and Jha discussed the attention that Jha needed to give in filing his whereabouts after the two missed tests.
- h) Bitzigeio informed Mathew Pfender, who is the team manager for Jha's club and who has an office at Jha's training facility that Jha had two missed tests. Pfender's office is near the front door of the training facility. Bitzigeio told Pfender that if a DCO showed up at the training facility looking for Jha, Pfender should immediately locate Jha so that he could provide a sample and not have a missed test.
- i) Jha informed Bitzigeio of Jha's September 4, 2022, missed test on September 16, 2022, when Jha received the notification letter from USADA. Bitzigeio was quite shocked by Jha's missed test.
- j) Jha told Bitzigeio that at the time of the missed test he was at his residence at Uhlandstrasse 41, Ochsenhausen, Germany. Uhlandstrasse 41 is about eight hundred meters from Jha's former residence at Schulstrasse 27 Ochsenhausen, Germany.
- k) Jha told Bitzigeio that he never received a call from the DCO on September 4, 2022. Bitzigeio reviewed the screen shot of DCO Dassler's missed call to Jha, which was included with the September 16, 2022, letter. The screen shot of the attempted phone call shows the number "4088768136" and has the phrase "Anruf abgebrochen," which translated from German to English means that the call never went through.
- l) Bitzigeio attempted to replicate calling "4088768136" from his German phone. The call did not go through. Bitzigeio got a message, in both German and English, "the number you have dialed is not assigned." When calling a number from a German phone, one must first dial the country code if calling a number outside Germany, or first dial the city or area code if calling a number inside Germany.

- m) Jha's goal is to participate in the 2024 Olympic Games. If Jha receives a suspension, it will be very difficult, if not impossible, for him to qualify for and be able to participate at the Games.

82. Manuel Pfender, presented a sworn witness statement:¹⁸

- a) Pfender is the team manager for TTF Liebherr Ochsenhausen, located at Riedstrasse 42, Ochsenhausen, Germany.
- b) Pfender was present at Riedstrasse 42 on September 4, 2022, at approximately 2:15 pm.
- c) Pfender did not have any contact with a DCO on September 4, 2022. No one knocked on his office door, nor did he see or speak with any DCO on September 4.
- d) Had Pfender been made aware that a DCO had arrived at the training center to test Jha, Pfender would have placed a call to Jha to inform him that the DCO was attempting to reach Jha.

83. Dr. Matthew Fedoruk, Ph.D., testified that:

- a) Fedoruk is Chief Science Officer at USADA. He has a PhD. in Pathology and Laboratory Medicine. He has had over 15 years of experience in anti-doping matters. He has been with USADA for over 11 years.
- b) Fedoruk leads USADA's science and research team and drug reference team. Fedoruk is involved in USADA's test distribution plan, which is crafted annually to determine how USADA goes about its urine and blood testing programs.
- c) Whereabouts is important from three main aspects. First, planning of testing, which includes understanding at a macro level where athletes are located when traveling and participating in competitions. Second, test execution, which allows a DCO to locate athletes and detect the use of prohibited substances. Third, deterrence; athletes know that they will be tested with no advance notice, anytime, anywhere, 365 days a year.
- d) No advance notice testing is the hallmark of a modern anti-doping program. Athletes are not notified in advance of being tested out-of-competition. A test is a snapshot in time and if an athlete knew a test was going to happen, the athlete could manipulate the sample or change their doping program to get around having a positive test.
- e) The 60-minute time slot is important as it ensures that the athlete can be located and the test can be completed when planned.
- f) It is important that tests be conducted in accordance with sample collection rules.

¹⁸ USADA made no request to cross-examine Pfender on his statement, so he did not appear in person.

- g) When an athlete is selected for being tested, the collection entity would get a mission statement from the organization requesting the test. The collection entity would use its own DCO manual.
- h) No advance notice is important.
- i) Fedoruk acknowledged that as a practical matter, a DCO may have to buzz an athlete on an intercom to gain access to the athlete's apartment or have a receptionist call an athlete who is staying at a hotel to locate the athlete's room. In these circumstances, an athlete will have some notice of an impending test. However, calling an athlete during the last 5 minutes of a 60-minute window is different. This is not a notification call. The purpose of the call is to confirm that the athlete is not available at the location stated on the athlete's whereabouts filing. Such a call is not required under the anti-doping rules, but it can be made. If the athlete is at the location listed on the athlete's whereabouts filing and is reached when such a call is made, the test could proceed. There would be no missed test.

84. Martin Dassler testified¹⁹ that:

- a) Dassler has worked for Global Quality Sports (GQS) for 10 years. During this time Dassler has conducted approximately two hundred tests.
- b) Dassler attempted to collect a sample from Jha on September 4, 2022, at Schulstrasse 27, Ochsenhausen, Germany.
- c) Dassler reviewed the UAR that he filled out after attempting to collect a sample from Jha. Dassler adopts that report as his testimony.
- d) Dassler remembers the test at Schulstrasse 27. It is a house with six doorbells, so Dassler assumed the building was divided into apartments. The doorbells were on the outside of the building. One would have to ring the doorbell in order to get into the building.
- e) Dassler began Jha's test attempt a little before 1:00 p.m. on September 4, 2022.
- f) Dassler rang the doorbell at Schulstrasse 27 six times between 1:00 and 2:00 p.m. Dassler stood in front of the door at Schulstrasse 27 during the entirety of the 60-minute period.
- g) During the time Dassler was at Schulstrasse 27, one man went in and then came out of the building to deliver lunch for the man's mother. Dassler didn't ask this person if he knew Jha. The person seemed like he was very busy. Dassler is taught to make inquiries of persons he encounters in order to locate an athlete, but he can't force someone to speak with him if they are busy. Dassler acknowledged that if he encounters someone during a collection attempt, he is supposed to note that in the UAR. However, since Dassler's attempt to speak with the person was not successful, Dassler did not write a note in the Report.

¹⁹ An interpreter translated Dassler's testimony, as he testified exclusively in German.

- h) Dassler tried to call Jha five minutes before the end of the 60-minute window. Dassler found Jha's phone number on Jha's whereabouts sheet. Dassler dialed the phone number that was listed, "4088768136." Dassler assumed that the number he dialed was the correct number because it was the number listed by Jha.
- i) There was a voice mail message when Dassler made the call, but Dassler didn't understand the message. When the phone call didn't go through Dassler hung up.
- j) Dassler has a German cell phone. Dassler doesn't know if he has to dial a code before dialing a number.
- k) Dassler has no idea what U.S. numbers look like. Dassler dialed the number as it was written on the whereabouts sheet. Dassler has never called a U.S. phone from his German phone. He has called foreign numbers before, but there was a country code listed on the whereabouts.
- l) Dassler acknowledged that if one calls a phone number from a German phone the caller has to dial a "0" a "00" or "+" to start the call. Dassler acknowledged that a phone call wouldn't go through if a code wasn't dialed. However, Dassler stated that as far as he knew this is only valid only for European numbers. Dassler is not aware of rules for other countries. Dassler does not know which code relates to which country.
- m) As a DCO, Dassler assumes that the number listed on the athlete's whereabouts information sheet is correct.
- n) There was no indication that Jha was at Schulstrasse 27 location. Dassler left Schulstrasse 27 at 2:10 p.m.
- o) If Jha had answered his phone and had arrived at Schulstrasse 27, Dassler would have collected a sample from Jha. In this case, Dassler would not have submitted a UAR.
- p) After Dassler left Schulstrasse 27, he went to Sparkassen Trainingszentrum, Riedstrasse 42, Ochsenhausen, Germany, which was Jha's training center. Dassler went there because Jha is a professional table tennis player, and since Dassler did not find him at Schulstrasse 27, he wanted to make an attempt to reach Jha at the training center since Jha could be training. Dassler knew of the Riedstrasse 42 address from Jha's whereabouts sheet. Dassler did not speak with anyone at the training center, because September 4 was a Sunday and the door to the training center was locked. Dassler had no access to the training center. Dassler did not see anyone at the training center.
- q) Dassler acknowledged that if he had located Jha at Riedstrasse 42, he would have collected a sample from Jha. In this case, Dassler would not have submitted a UAR.
- r) After Dassler left Riedstrasse 42 he went to Uhlandstrasse 41. This address was also in Jha's whereabouts. Dassler didn't know that this address was also listed as a residence address.
- s) Dassler went to the front door at Uhlandstrasse 41. Jha's name was not on the front door or listed on the building. Dassler rang the doorbell, but no one

answered. Dassler acknowledged that he did not try to call Jha because Jha hadn't answered the phone before. Dassler knew that the phone number wasn't working.

- t) Dassler acknowledged that if he had located Jha at Uhlandstrasse 41, he would have collected a sample from Jha. In this case, Dassler would not have submitted a UAR.
- u) The two addresses, Schulstrasse 27 and Uhlandstrasse 41, are very close in distance; 2 or 3 kilometers away from each other.
- v) GQS, and in turn Dassler, conducted Jha's test under the direction of the International Testing Agency (ITA). The collection attempt was conducted under ITA rules. ITA testing instructions for DCOs applied to Jha's September 4, 2022, collection attempt. It is an ITA requirement that a DCO has to wait for an hour at the testing location and if the athlete can't be located, then the DCO has to call the athlete in the last five minutes.
- w) GQS's rules also require a DCO to call an athlete in the last five minutes of a collection attempt.
- x) Dassler had a duty call Jha, which he did.
- y) Dassler has received training from GQS, but he has not gotten training from ITA.

85. Dominique Leroux-Lacroix testified that:

- a) Leroux-Lacroix is Head of Legal Department: Corporate & Anti-Doping Affairs at the International Testing Agency (ITA).
- b) Leroux-Lacroix's responsibilities include, on behalf of International Federations who delegate anti-doping programs to the ITA, results management, whereabouts failures and antidoping rule violations. Leroux-Lacroix also provides advice around drafting regulations, policies, and instructions relating to anti-doping programs.
- c) ITA is nonprofit foundation based in Switzerland created in 2018. Its mandate is to handle anti-doping programs for anti-doping organizations, primarily for International Federations such as the International Table Tennis Federation (ITTF). ITA's mandate is to abide by the WAD Code in delivering programs as well as International Federation regulations, in an independent manner.
- d) ITA handles doping programs for ITTF meaning from doping control to results management. ITA handles everything that falls under anti-doping rules.
- e) ITA both conducts tests and hires private sample collection authorities, such as GQS, to collect tests. ITA contracted with GQS to collect a sample from Jha. GQS handled Jha's test on behalf of ITTF through ITA. GQS appointed DCO Dassler to conduct the test.
- f) In the appointment of GQS for Jha's test, ITA gave a mission order, which included an instruction to test out-of-competition, the name of the athlete, a specific window time frame and specific date. ITA's out-of-competition testing instructions were also given to GQS.
- g) ITA's out-of-competition testing instructions are to abide by the WAD Code, the ISTI and the ISR. ITA's out-of-competition testing instructions are in

compliance with these rules. Instructions for 60-minute time slots state that attempts to notify the athlete of doping control must be done without advance notice, in order to be in compliance with the wording of ISTI and ISRM, which say that attempts to notify an athlete should be done without advance notice.

- h) Under the ITA's out-of-competition testing instructions, DCOs are not required to place a phone call to athletes at any time during the 60-minute window, including during the last five minutes. The ITA's out-of-competition testing instructions say that out-of-competition attempts should be done without advance notice. Making a phone call may constitute advance notice.
- i) If an athlete cannot be located during the 60-minute time slot, but the athlete is located after the 60-minute time slot, the DCO is still required to submit a UAR.
- j) An athlete must be available and accessible at the athlete's whereabouts location without advance notice during the 60-minute time slot. Anything that happens after the 60-minute time slot has no bearing on the missed test.
- k) Leroux-Lacroix does not have responsibility for training DCOs. Leroux-Lacroix reviews instructions but has no contact with DCOs. Leroux-Lacroix acknowledged that she does not know what training Dassler received from GQS.
- l) Leroux-Lacroix has seen the mission order provided to GQS. The mission order contains ITA's out-of-competition testing instructions. Leroux-Lacroix acknowledged that she doesn't know what information was provided to Dassler by GQS.
- m) Leroux-Lacroix acknowledged that if a call is made during the test, whether there would be a missed test depends on the circumstances of where the athlete is. No-advance-notice is about having the athlete directly in contact with the DCO, and not having time for the athlete to get in touch with the DCO. Therefore, if a phone call is made and the athlete is at the location and answers the door directly, it is without advance notice. An example of this would be if the athlete had not heard the doorbell but was at the location. If a phone call is made and the athlete needs 50 minutes or an hour, needs time, because the athlete is not at the whereabouts location, then this is with advance notice. The definition of no advance notice is that the athlete is not informed of the test. It is very important to document if the athlete has any notice of the test, because this may have an impact on the quality of sample that is provided.
- n) ITA's out-of-competition testing instructions apply to all missions. Only after using best efforts at the end of a 60-minute time slot may a DCO place a phone call, but it is not necessary. If during the 60-minute time slot a doorbell doesn't work, if it is a gated access, or if it is a hotel and you have no hotel room number, the DCO must first use best efforts to access the location without giving advanced notice before making a phone call. In circumstances that are not exceptional, then a phone call would not be the first thing to do.
- o) There are two assessments in determining if there is a missed test. The DCO must do what is reasonable under the circumstances, and the athlete must be at the declared location. If the DCO knocks on the door and goes back to his car for 55-minutes and doesn't do anything else, and the athlete is at the declared location, this may not be reasonable under the circumstances.

- p) An athlete has an obligation to provide accurate and complete whereabouts location for the 60-minute time slot. An athlete also has to be accessible and available during the 60-minute time slot. If the athlete is not at the declared location, that is material to whether the athlete provided accurate whereabouts information.
- q) Leroux-Lacroix acknowledged that if the athlete is at the location and the DCO does not do what is reasonable in attempting to locate the athlete, and a sample cannot be procured, then the athlete shouldn't be charged with a missed test. The DCO's failure would strike down the missed test. Leroux-Lacroix acknowledged that an assessment that the DCO did nothing would be considered in determining what is reasonable.
- r) Leroux-Lacroix stated that if the athlete was not at the declared location, and the DCO did nothing, that would still be a missed test. If the athlete was not at the location declared, the athlete was not accessible and available where the athlete could be tested.
- s) Leroux-Lacroix acknowledged that if phone call is made in the last 5 minutes and the athlete appears and provides a sample, then there is no missed test. The athlete is where the athlete declared in the athlete's whereabouts. Athletes should be at the location during the 60-minute time slot. If a phone call is placed and the sample is provided, there is no unsuccessful attempt.
- t) An athlete has the obligation to provide information that allows a DCO to gain access to the athlete's whereabouts location. An athlete needs to provide this information in the athlete's whereabouts filing.

86. Kristen Reith testified²⁰ that:

- a) Kristen Reith has been Head of Testing at Global Quality Sports (GQS) since 2015.
- b) GQS is a sample collection authority. GQS conducts doping controls for the International Testing Agency.
- c) Reith coordinates the testing of athletes, looks for Doping Control Officers (DCOs) to conduct the tests, trains DCOs.
- d) GQS would have trained DCO Dassler.
- e) GQS training does not specifically include instructions on making phone calls during the 60-minute window. The training teaches DCOs how to do tests in total. DCOs have to call the athlete, but not how they call the athletes, because different International Federations or testing agencies have different out-of-competition testing instructions.
- f) GQS does not provide its own out-of-competition testing instructions. GQS conducts tests for the International Testing Agency (ITA). ITA provides the instructions to GQS.
- g) Regarding the September 4, 2022, test of Jha, Dassler would have received out-of-competition testing instructions from ITA. ITA would

²⁰ Reith testified in English, but an interpreter was available and assisted with translation when necessary.

have sent the instructions with the mission statement. GQS didn't provide any training regarding ITA's instructions. GQS expects DCOs to follow the instructions given to them. Reith acknowledged that the out-of-competition testing instructions provided to Dassler were in English.

- h) GQS does fairly comprehensive training of DCOs. DCO candidates must attend a basic training session and then complete a practical test, which would include conducting a test as an attendant with an experienced DCO. Once qualified, a DCO would have to take a GQS update twice a year.
- i) GQS trains DCOs that they have to call the athlete, but every International Federation or testing agency has different instructions as to when to call the athlete. Some instructions say to call 5 minutes before the end of the 60-minute window, some say to only call after the 60-minute window has ended. The DCO has to utilize the instructions given by the International Federation or testing agency.
- j) Reith acknowledged that what is reasonable in conducting a test depends on the unique circumstances of each test attempt. Reith acknowledged that DCO Dassler's understanding of what would be reasonable under the circumstances would be in part based on his training.
- k) Reith acknowledged that based on their training it is up to each DCO to decide what is reasonable. Reith would defer to each DCO as to what is reasonable in trying to locate an athlete.
- l) GQS training includes training DCOs on collecting samples from athletes who are located in Germany but who are from another country.
- m) GQS doesn't train DCOs that they need to include a country code when calling an athlete. DCOs have to use the telephone number that is provided in the athlete's whereabouts. Reith acknowledged that normally a DCO would know that the DCO has to call the country code. Reith pointed out that many athletes from other countries also have German telephone numbers.
- n) Most GQS tests for international athletes are in the Netherlands, Belgium and Switzerland. DCOs are mostly German residents.
- o) It is possible that if a person is dialing a local number, a "0" would not have to be dialed. Reith acknowledged that with the exception of a local number, a country code would have to be dialed.
- p) GQS doesn't train DCOs that they have to make a phone call within the one-hour slot or after the one-hour slot. Different testing agencies and International Federations have different testing instructions. There is a general understanding that a telephone call has to be made if the athlete is not present. Some International Federations or testing agencies instruct to call 5 minutes before the end of the 60-minute window. Some instruct to call after the 60-minute window. This can be confusing for DCOs. GQS tells DCOs to make phone calls as required in the test instructions. For Jha's test the instructions would be the

ITA's out-of-competition testing instructions. GQS's training does not supersede instructions provided by the testing agency or International Federation.

IX. DISCUSSION AND MERITS

A. Issue

87. The WAD Code Article 2.4 and the ITTF Anti-Doping Rules Article 2.4 provide that an anti-doping rule violation (whereabouts failure)²¹ occurs if an athlete in a registered testing pool commits:

Any combination of three missed tests and/or filing failures, as defined in the International Standard for Results Management, within a twelve-month period by an Athlete in a Registered Testing Pool.

88. Respondent admits that the unsuccessful attempts on March 18, 2022, and June 2, 2022, were missed tests. Thus, the issue is whether the September 4, 2022, collection attempt should be counted as a missed test. If so, Respondent would have had three missed tests in a twelve-month period and would have committed an anti-doping rule violation (whereabouts failure) of WAD Code Article 2.4 and the ITTF Anti-Doping Rules Article 2.4.

89. Pursuant to ISRM Annex Article B.2.4 a missed test is established under the following circumstances:

a) That when the Athlete was given notice that they had been designated for inclusion in a Registered Testing Pool, they were advised that they would be liable for a Missed Test if they were unavailable for Testing during the 60-minute time slot specified in their Whereabouts Filing at the location specified for that time slot;

b) That a DCO attempted to test the Athlete on a given day in the quarter, during the 60- minute time slot specified in the Athlete's Whereabouts Filing for that day, by visiting the location specified for that time slot;

c) That during that specified 60-minute time slot, the DCO did what was reasonable in the circumstances (i.e. given the nature of the specified location) to try to locate the Athlete, short of giving the Athlete any advance notice of the test;

²¹ A "whereabouts failure" is defined as either a filing failure or a missed test. ISRM Annex Article B.1.1.

d) That Article B.2.3²² does not apply or (if it applies) was complied with; and

e) That the Athlete's non-availability for Testing at the specified location during the specified 60-minute time slot was at least negligent. For these purposes, the Athlete will be presumed to have been negligent upon proof of the matters set out at sub-Articles B.2.4 (a) to (d). That presumption may only be rebutted by the Athlete establishing that no negligent behavior on their part caused or contributed to their failure (i) to be available for Testing at such location during such time slot, and (ii) to update their most recent Whereabouts Filing to give notice of a different location where they would instead be available for Testing during a specified 60-minute time slot on the relevant day.

90. USADA contends, and Respondent does not contest, that ISRM Annex Article B.2.4 subsections (a), (b), (d) and (e) were complied with.²³

91. Thus, the issue before the arbitrator is whether, during the specified 60-minute time slot, the DCO did what was reasonable in the circumstances to try and locate and collect a sample from Respondent, short of giving Respondent any advance notice of the test.

B. USADA's Case

92. USADA in presenting its case points out that Respondent has been competing at an elite level and has been in USADA's whereabouts pools since 2014. During that time Respondent has been completing yearly tutorials that instruct Respondent on his obligations regarding whereabouts. Respondent has been advised to keep accurate and up-to-date whereabouts. Respondent was instructed on a multitude of ways to update his whereabouts information. Specifically, Respondent was instructed in 2022 that a DCO is not required to call when attempting to collect a sample.

93. USADA asserts that Respondent's whereabouts filing and DCO Dassler's attempt to collect a sample from Respondent was straightforward and clear.

²² ISRM Annex Article B.2.3 states:

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

²³ Although Respondent initially claimed that he was not negligent, and therefore ISRM Annex Article B.2.4(e) was not established, during the hearing Respondent did not pursue that position.

94. USADA states that Respondent, on his whereabouts, listed the Schulstrasse 27, Ochsenhausen, Germany address as the testing location for his 60-minute window for September 4, 2022.
95. USADA states that DCO Dassler arrived at Schulstrasse 27 just prior to commencement of Respondent's 60-minute window. Dassler stayed in front of the door at Schulstrasse 27 the entire 60-minutes to maximize his chances of being seen by Respondent or seeing Respondent himself. USADA points out that the WADA Sample Collection Guidelines Chapter 7 recommend that a DCO should stay somewhere close-by, where the DCO is able to observe access in and out of the residence and monitor any activity inside the residence. Respondent emphasizes that Dassler did even more, by putting himself in the best position possible by standing directly in front of the door for the entire hour.
96. USADA points out that DCO Dassler rang the doorbell at Schulstrasse 27 at least six times over the course of the collection attempt at varying intervals, but no one interval was longer than fifteen-minutes.
97. USADA contends that this fulfills all of the requirements for showing that DCO Dassler did "what was reasonable in the circumstances" to locate Respondent and collect a sample.
98. USADA goes on to state that Respondent's attempt to cast blame on DCO Dassler as the cause of Respondent's missed test is unjustified and is merely an attempt to shift the focus of the missed test away from Respondent. In that regard, USADA states that this case does not turn on Dassler's attempted phone call to Respondent or on Dassler's failed attempt to find Respondent at locations other than Schulstrasse 27.
99. First, USADA states that the onus is on Respondent to make sure that his whereabouts information is fully updated and accurate. Here, USADA contends that Respondent failed in this obligation. Respondent cites ISTI Article 4.8.8.5, which says:

It is the Athlete's responsibility to ensure that they provide all of the information required in a Whereabouts Filing as outlined in Articles 4.8.8.2 and 4.8.8.3 accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in their Whereabouts Filing for that day, including but not limited to during the 60-minute time slot specified for that day in the Whereabouts Filing.

100. USADA also cites ISTI Article 4.8.8.3 which states that an athlete's:

Whereabouts Filing must also include, for each day during the following quarter, one specific 60-minute time slot between 5 a.m. and 11 p.m. each

day where the Athlete will be available and accessible for Testing at a specific location.

101. USADA points out that Respondent was not at the location he listed on his whereabouts filing, which was Schulstrasse 27.
102. USADA also asserts, citing *Coleman v. World Athletics*, CAS 2020/A/7528 (2021), that Respondent had an obligation to be accessible and available at the location listed on his whereabouts filing. It is not enough that Respondent was nearby. *Id.* ¶ 119.
103. USADA goes on to assert that the anti-doping rules plainly contradict Respondent's assertion that he had a "right" to expect a phone call from DCO Dassler during Dassler's attempt to collect a sample from Respondent.
104. USADA contends that the making of a phone call is discretionary rather than mandatory. USADA cites the Comment to ISRM Annex Article B.2.4(c) which states:

Due to the fact that the making of a telephone call is discretionary rather than mandatory, and is left entirely to the absolute discretion of the Sample Collection Authority, proof that a telephone call was made is not a requisite element of a Missed Test, and the lack of a telephone call does not give the Athlete a defense to the assertion of a Missed Test.

105. USADA also cites the WADA Sample Collection Guidelines Chapter 7, which state that "the use of a telephone call in the last 5 minutes of an athlete's 60-minute time slot is not mandatory."
106. USADA further states that the ITA was acting on behalf of the ITTF in collecting a sample from Respondent. USADA asserts that it is the ITA's testing Instructions that provide instructions on whether a telephone call is to be made. USADA contends that the ITA Testing Instructions are clear, that a telephone call should not be made during the 60-minute window. USADA contends that the ITA Testing Instructions only provide for a call to be made at the end of the 60-minute window and after a UAR has been filed, indicating Respondent's missed test.
107. As to the phone call that DCO Dassler attempted to make during the last five minutes of the 60-minute window, USADA states that any issues that Dassler experienced attempting to call Respondent should be attributed to Respondent himself. USADA asserts that the onus is on Respondent to provide complete and accurate contact information, which would include the country code on any telephone number. USADA states that Respondent's failure to provide a country code with his phone number in his whereabouts filing cannot be imputed to Dassler and certainly cannot be used as a defense to Respondent's anti-doping rule violation, particularly when a phone call was not even required.

108. USADA further points out that the reason a telephone call is not a requisite element of a missed test is because out-of-competitions tests are to be without advance notice. USADA asserts that if an athlete is alerted to the collection attempt, such notice could enable the athlete to evade the collection attempt. USADA cites ISTI Article 5.3.1, which states that, “[n]o advance notice testing shall be the method of sample collection save in exceptional and justifiable circumstances.” USADA also refers to ISTI Article 3.5 (Defined terms specific to the ISTI) that defines “no advance notice testing,” as a “sample collection that takes place with no advance warning to the athlete and where the athlete is continuously chaperoned from the moment of notification through sample provision.”

109. USADA further states that DCO Dassler’s attempt to locate Respondent, after the 60-minute window had ended, at Respondent’s current residence address at Uhlandstrasse 41 and at his training location at Riedstrasse 42, is irrelevant in considering Respondent’s anti-doping rule violation. USADA cites ISTI Art. 4.8.8.5(c), which states that:

If an Athlete is not available for Testing during their specified 60-minute time slot at the location specified for that time slot for that day, they will be liable for a Missed Test even if they are located later that day and a Sample is successfully collected from them.

110. Thus, USADA’s position is that even if Respondent had been located, he would have been charged with a missed test.

111. Finally, USADA turns to Section 3.1 of the ITA Testing Instructions that provide that a DCO can call an athlete upon arrival at the athlete’s testing location if the location is restricted or has limited access. USADA states that when DCO Dassler arrived at Schulstrasse 27 he was able to ring the doorbell and wait outside the entry door. USADA’s position is that since access to Schulstrasse 27 is not restricted or limited, Section 3.1 does not apply, and thus Dassler was not required to make a phone call. Thus, any contention that Dassler should have called Respondent when Dassler arrived at Schulstrasse 27 is misplaced and cannot be used as justification for requiring Dassler to call Respondent so as to reach him for testing.

112. In summary, USADA contends that DCO Dassler did what was “reasonable in the circumstances” to locate Respondent and collect a sample from him. Thus, an anti-doping rule violation was committed.

C. Respondent’s Case

113. Respondent contends that DCO Dassler did not do what was “reasonable in the circumstances” to locate Respondent and collect a sample from him.

114. Respondent's primary position centers around DCO Dassler's attempted phone call to Respondent.
115. Respondent first confronts the language (i) of the Comment to ISRM Annex Article B.2.4(c) ("the making of a call is discretionary rather than mandatory"), (ii) of the Comment to ISTI Article 4.8.8.5(d) ("the DCO may (but does not have to) telephone the Athlete"), (iii) of WADA Sample Collection Guidelines Chapter 7 ("the use of a telephone call in the last 5 minutes of an athlete's 60-minute time slot is not mandatory") and (iv) of Section 2.1.5 of the ITA Testing Instructions (the athlete should only be called "at the end of the 60-minute slot and once the UAF has been filed").
116. Respondent contends that regardless of the above, DCO Dassler was required to call Respondent. This contention is based on two grounds.
117. First, Respondent points out that DCO Dassler believed and testified that under the ITA Testing Instructions he was required to call Respondent in the last five minutes of the 60-minute window. Respondent asserts that since Dassler believed that he had a duty to make a call, this duty obligated Dassler to make the call and thus a call was required to be made by him.
118. Second, even if the Comment to ISRM Annex Article B.2.4(c), the Comment to ISTI Article 4.8.8.5(d), the WADA Sample Collection Guidelines Chapter 7 and Section 2.1.5 of the ITA Testing Instructions don't specifically mandate a call during the 60-minute window, Respondent contends that there are circumstances in which doing what is reasonable requires making a call. Respondent states that not making a call because the above cited rules don't specifically mandate one, cannot automatically negate, or be a justification for, not doing what is reasonable. Respondent asserts the reasonable thing would have been for DCO Dassler to have made a call, and that is what is required.
119. Respondent also argues that DCO Dassler should have called Respondent pursuant to the ITA Testing Instructions, which provide in Section 3.1 that:

the DCO can exceptionally call the Athlete upon arrival if he/she encounters restricted or limited access to the location (e.g. doorbell does not work, gated access, no apartment number, etc.), but only after using best efforts to access the location without giving any advance notice to the Athlete.

120. Respondent relies on DCO Dassler's statement that Schulstrasse 27 was a house with six doorbells, so Dassler assumed that the building was divided into apartments. Respondent asserts that although Dassler may have rung a doorbell that Dassler assumed was Respondent's, the mere fact that the building at Schulstrasse 27 consisted of apartments implies that it was restricted. Therefore, Respondent contends that a phone call was

required but was not made. Respondent argues that since Dassler did not make a call as required by the IST Testing Instructions, he did not do what was reasonable in the circumstances to locate and collect a sample from Respondent.

121. Next Respondent turns to the call itself. Respondent states that although a call was attempted during the last five minutes of the 60-minute window, because the country code for the U.S. was not dialed, the call did not go through.²⁴
122. Respondent points to the facts. Respondent states that DCO Dassler had a German phone, and in attempting to call Respondent, Dassler did not dial Respondent's U.S. country code. Respondent states that the screenshot of Dassler's phone, taken by Dassler when he dialed the call and which was affixed to the UAR, confirms that no country code was dialed and that Dassler confirmed that he did not dial the country code. Respondent contends that it is common knowledge that any call made in Germany either needs an area code for a German number or a country code for a foreign number. Respondent alleges that Dassler's testimony that he did not know or understand that he had to dial a county code when dialing Respondent's U.S. cell phone number is not realistic.
123. Respondent further points out that DCO Dassler received an error message recording upon dialing the call. Respondent states that Dassler confirmed this in his testimony. Respondent contends that this error message should have alerted Dassler to the fact that the phone call was not successful, and Dassler should have taken steps to dial the number correctly using Respondent's country code.
124. Respondent's position is that DCO Dassler either should have known, or if he did not know, the error message should have alerted him to the fact, that he had to dial a country code in order to successfully make a call to Respondent. Since Dassler did not dial the country code and the call did not go through, Respondent alleges that Dassler's failure to dial the country code is indistinguishable from not placing the call at all. Respondent concludes that since in effect a call was not made, Dassler did not do what was reasonable in the circumstances to reach Respondent. Therefore, Respondent argues that USADA has not met its burden as set out in ISRM Annex B.2.4(c).
125. In general support of his position, Respondent cites *International Tennis Federation v X*, SR/025/2022 (2022) for the proposition that testing instructions "should be applied with common sense in light of their objectives" to locate the athlete. *Id.* ¶ 120.
126. Respondent also relies on *ITF v. Cornet*, SR/Adhocsport/12/2018 (2018), which states that the "no advance notice" testing rule should be administered with "common sense and

²⁴ It would seem to be helpful if athletes were instructed to include their international country code as part of their phone number when entering their whereabouts information. Consideration also might be given to including a specific box that must be filled in with an international country code when athletes enter their phone numbers into the whereabouts information system.

flexibly.” *Id.* ¶ 71. Respondent points out that in *Cornet* the hearing panel found that the DCO’s failure, during the 60-minute window, to contact individuals leaving the athlete’s apartment building in order to locate the athlete, was not reasonable under the circumstances. *Id.* ¶¶ 77, 79.

127. Additionally, Respondent states that, if DCO Dassler had successfully made a call at the end of the 60-minute window, or if Dassler had successfully made a call to gain access to Respondent’s apartment at Schulstrasse 27, Respondent would have made himself available for testing and no anti-doping violation would have occurred.
128. Respondent points to his testimony that he was at his new residence address, at Uhlandstrasse 41, Ochsenhausen, Germany, during the entire 60-minute window. Further, at the time Respondent believed that this was the location he had designated on his whereabouts information for his 60-minute window.
129. Respondent presented a Google map that shows the distance between Respondent’s former residence, Schulstrasse 27, where DCO Dassler was attempting to obtain Respondent’s sample, and his new address at Uhlandstrasse 41, was between 1.4 and 1.8 kilometers, depending on the route taken. Respondent points out that the Google map also indicated that the time to travel this distance by car was approximately three to five minutes, depending on the route.
130. Respondent asserts that had he received a call from DCO Dassler, Respondent could have traveled from Uhlandstrasse 41 to Schulstrasse 27 within five minutes and would have submitted a sample within the 60-minute window.
131. Respondent also points out that if DCO Dassler had left a voice mail message, and Respondent had picked it up right away, Respondent still could have presented himself for testing prior to the end of the 60-minute window. But, Respondent points out that since the Dassler’s call did not go through, no voice mail was left.
132. Respondent concludes that if Respondent had received a phone call and submitted a sample, which was feasible for him to do, then Respondent would not have a missed test and he would not be facing an anti-doping rule violation today.
133. Regarding DCO Dassler’s attempt to locate Respondent at his current residence address at Uhlandstrasse 41 and at his training location at Riedstrasse 42, Ochsenhausen, Germany, Respondent contends that this is relevant as again, if Respondent had been located, he could have presented himself for testing and no missed test would have occurred.
134. In summary, Respondent contends that DCO Dassler did not do what was “reasonable in the circumstances” to locate Respondent and collect a sample from him. Thus, USADA

has not met its burden of proof and Respondent cannot be found to have committed an anti-doping rule violation.

D. Decision

135. As stated earlier, the issue before the arbitrator is whether, during the specified time slot and at the specified location, short of giving the Respondent advance notice of the test, did the DCO do what was reasonable in the circumstances to try and locate the Respondent to collect a sample.
136. As a starting point, when analyzing what is reasonable in the circumstances, it is necessary to look at the relevant rules as set forth in the WAD Code and International Standards pertaining to out-of-competition sample collection. Further, as set forth in *Coleman*, although the WAD Code and the International Standards provide the framework for anti-doping testing “each federation/ADO is free to construct its own rules so long as those rules are compliant with the WADC.”²⁵ *Id.* ¶ 160.
137. Here, as part of its anti-doping program, the ITTF assigned collection of Respondent’s out-of-competition sample to the ITA. In fulfilling its responsibility as the testing agent, and as authorized by the ITTF, ITA has promulgated its own rules, as set forth in the ITA Testing Instructions. Thus, these testing instructions were in operation when the sample was attempted to be collected from Respondent.
138. Respondent has not alleged that that the ITA Testing Instructions are non-compliant with the WAD Code and International Standards or contested their validity. The Arbitrator accepts, and finds, that the ITA Testing Instructions are compliant. Accordingly, the ITA Testing Instructions must be considered and have authority in analyzing whether DCO Dassler did what was reasonable in the circumstances to locate and collect a sample from Respondent.
139. The first question concerning whether DCO Dassler did what was reasonable in the circumstances to locate and collect a sample from Respondent the centers around the DCO’s actions at the location Respondent listed on his whereabouts, Schulstrasse 27. The second question centers around whether the DCO was required to call Respondent. These two questions will be addressed in order.
140. As to the first question concerning the DCO Dassler’s actions at Schulstrasse 27, the ISTI, the WADA Sample Testing Guidelines and the ITA Testing Instructions provide the following directions.

²⁵ The Panel in *Coleman* pointed out, however, that the different testing regimes adopted by the various International Federations, Anti-Doping Organizations and testing agencies “must give rise to uncertainty in the mind of any athlete as to what is required on any given occasion for the athlete to comply.” The Panel went on to say that “it is obvious that the more harmonization there is across the various international regimes, the very much better it would be for everyone with an interest in these matters.” *Id.* ¶ 161.

141. ISTI Article 4.8.8.5(d) states:

Once the DCO has arrived at the location specified for the 60-minute time slot, if the Athlete cannot be located immediately, then the DCO should remain at that location for whatever time is left of the 60-minute time slot and during that remaining time they should do what is reasonable in the circumstances to try to locate the Athlete. See WADA's Guidelines for Implementing an Effective Testing Program for guidance in determining what is reasonable in such circumstances.

142. The WADA Sample Testing Guidelines Chapter 7 provides:

If the attempt takes place at the athlete's residence, the SCP should ring the doorbell or knock upon arrival and then at regular intervals during their attempt. While waiting, the SCP should stay somewhere close-by, where they are able to observe access in and out of the residence and monitor any activity inside the residence e.g., lights switched on or off or people moving around the residence. At the end of the 60-minute time slot one last attempt should be made.

143. The ITA Testing Instructions Section 2.1.1 states:

The DCO should do what is reasonable in the circumstances to try to locate the Athlete for the entire time slot period, in a discrete manner and short of giving the Athlete any advance notice.

144. Here, DCO Dassler arrived at the Schulstrasse 27 address at 12:50 p.m. and began his attempt to locate Respondent at 12:55 p.m. Dassler rang the doorbell at Schulstrasse 27 at least six times over the course of the attempt at approximately fifteen-minute intervals. He last rang the doorbell at the end of the 60-minute time slot at 1:55 p.m. Throughout the attempt, Dassler waited at the front door to maximize his chances of being seen by Respondent or seeing Respondent himself.

145. The Arbitrator is comfortably satisfied that DCO Dassler did what was reasonable in the circumstances while at Schulstrasse 27 to locate and collect a sample from Respondent.

146. Turning to the second question concerning the need for a phone call, two issues are presented. First, was the DCO required to call the Respondent in the last five minutes of the 60-minute window? Second, was the DCO required to call Respondent because access to the building at Schulstrasse 27 was restricted or had limited access? These issues will be considered in turn.

147. Again, *Coleman* provides guidance. As *Coleman* commented, it is entirely a matter for the entity requesting or conducting the test, “to design its rules as it [sees] fit (assuming compliant) and adopt its own position on the making of calls by the DCO.” *Id.* ¶ 160.
148. As to the first issue concerning a requirement by the DCO to call the Respondent during the last five minutes of the 60-minute window the ISTI, the ISRM and the WADA Sample Collection Guidelines provide the following:
149. The Comment to ISTI 4.8.8.5(d) states:

Where an Athlete has not been located despite the DCO’s reasonable efforts, and there are only five (5) minutes left within the 60-minute time slot, then as a last resort the DCO may (but does not have to) telephone the Athlete (assuming they have provided their telephone number in their Whereabouts Filing) to see if they are at the specified location.

150. Further the Comment to ISRM Annex Article B.2.4(c) states:

Due to the fact that the making of a telephone call is discretionary rather than mandatory, and is left entirely to the absolute discretion of the Sample Collection Authority, proof that a telephone call was made is not a requisite element of a Missed Test, and the lack of a telephone call does not give the Athlete a defense to the assertion of a Missed Test.

151. Additionally, the WADA Sample Collection Guidelines Chapter 7 provide:

The TA/SCA must also provide instructions on whether a telephone call to the athlete 5-minutes before the end of the 60-minute time slot by the SCP is acceptable. It is recommended that such strategy only be used in exceptional circumstances and only if the athlete cannot be located by exhausting all other means.

Note the use of a telephone call in the last 5 minutes of an athlete’s 60-minute time slot is not mandatory.

152. Thus, it is clear from the ISTI, the ISRM and the Sample Collection Guidelines that a call may be made in the last five minutes but is not required. Whether a call should be made is left to the rules of the International Federation or testing authority, which in this case is the ITA.

153. Turning then to the ITA Testing Instructions, Section 2.1.5 states:

After the end of the 60-minute slot and once the UAF is filed, the DCO should telephone the Athlete using the telephone number provided in the Athlete's Whereabouts or the Specific Instructions of the Testing Order

154. The ITA Testing Instructions are clear. The DCO should only attempt to call the athlete after the 60-minute time slot has run and only after a UAR has been filed. There is no direction to call the athlete during the last five minutes of the 60-minute window.

155. The Arbitrator is not convinced by Respondent's argument that DCO Dassler had a duty to make a call because he believed that a call was required. DCO Dassler's belief does not supersede the clear language of (i) the ISTI, the ISRM and the WADA Sample Collection Guidelines that a call may be made but is not required and (ii) the ITA Testing Instructions which do not contemplate such a call. Further, the Arbitrator finds no support or authority for Respondent's argument that this is a circumstance that doing what is reasonable requires making a call despite the language of the ISTI, ISRM, WADA Sample Collection Guidelines and the ITA Testing Instructions.

156. Thus, the Arbitrator finds that there was no requirement for DCO Dassler to call Respondent during the last five minutes of the 60-minute window.

157. Since the Arbitrator found that no phone call was required, the Arbitrator does not need to delve into whether DCO Dassler's attempt to call Respondent, which failed to go through because Dassler did not dial a country code, is cause for finding that Dassler did not do what was reasonable in the circumstances.

158. The Arbitrator next turns to the second issue regarding a phone call. Was a call required because the apartment at Schulstrasse 27 was restricted or had limited access?

159. Section 3.1 of the ITA Testing Instructions provide:

the DCO can exceptionally call the Athlete upon arrival if he/she encounters restricted or limited access to the location (e.g. doorbell does not work, gated access, no apartment number, etc.), but only after using best efforts to access the location without giving any advance notice to the Athlete.

160. The Comment to ISTI 4.8.8.3 states:

An Athlete is entitled to specify a 60-minute time slot during which they will be at a hotel, apartment building, gated community or other location where access to the Athlete is obtained via a front desk, or security guard. It is up to

the Athlete to ensure accessibility to their selected 60-minute location with no advance warning to the Athlete.

161. Although Respondent raised this issue during the hearing, the only evidence presented by the Respondent that Schulstrasse 27 was restricted was DCO Dassler's recollection that since the building at Schulstrasse 27 had six doorbells and he assumed it was an apartment. Further, Respondent did not refer in his own testimony as to any restriction that Dassler might have encountered in gaining access to Schulstrasse 27. Also, Respondent never provided any information on his whereabouts filing relating to a way "to ensure accessibility" to the building at Schulstrasse 27 because access to it was in some way restricted. In fact, the evidence that is before the Arbitrator, submitted as a photo as part of an exhibit regarding Respondent's first missed test on March 18, 2022, which also occurred at Schulstrasse 27, shows that there was no barrier to the building that would have hindered Dassler's access. Also, the DCO conducting the second missed test on June 2, 2022, which also occurred at Schulstrasse 27, in filling out the UAR form checked "No" next to the inquiry asking if there was "Restricted access to location."
162. Accordingly, since the Arbitrator finds on the evidence presented that the building at Schulstrasse 27 was not restricted, or that access to it was limited, Section 3.1 of the ITA Testing Instructions do not apply, and no phone call was required.
163. Based on the above, the Arbitrator finds that DCO Dassler was not required to make a call in order to locate the Respondent and collect a sample.
164. However, even if one were to assume that a phone call was required, the Arbitrator does not find this to be of help to the Respondent for the following reasons.
165. First and foremost, Respondent was not at the location he listed on his whereabouts, Schulstrasse 27, when DCO Dassler attempted to locate and collect Respondent's sample. Instead, Respondent was at Uhlandstrasse 41.
166. ISTI Article 4.8.8.5 says:

It is the Athlete's responsibility to ensure that they provide all of the information required in a Whereabouts Filing as outlined in Articles 4.8.8.2 and 4.8.8.3 accurately and in sufficient detail to enable any Anti-Doping Organization wishing to do so to locate the Athlete for Testing on any given day in the quarter at the times and locations specified by the Athlete in their Whereabouts Filing for that day, including but not limited to during the 60-minute time slot specified for that day in the Whereabouts Filing.

167. ISTI Article 4.8.8.3 states that an athlete:

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

168. Even though not providing the correct address may have been due to Respondent's oversight, carelessness or inattention, Respondent failed to list his whereabouts correctly. Because of this, DCO Dassler could not locate Respondent at Schulstrasse 27. Respondent needed to be available and accessible for testing at the location he listed on his whereabouts.

169. As stated in *Coleman*, the athlete has a requirement to be available at the location listed on the athlete's whereabouts. Being nearby is not enough.

In the Panel's view, properly understood, the requirement that an athlete must be available at a specific location for testing for a 60-minute period imposes a requirement on the athlete to be physically present at the specified location during the 60-minute period that has been specified by him or her. It is not enough that the athlete be nearby, such that he or she can get to the specified location if asked to do so within the 60-minute period. It is instead an obligation to be physically at the specified location, and to be accessible and available for testing at that specified location during the specified time.

Id. ¶ 119

170. Placing the onus on the DCO to find the athlete takes away the athlete's responsibility to be at the location listed on the athlete's whereabouts for the 60-minute testing window.

171. Second, a call to Respondent to summon him for testing, which is what Respondent proposes, is not the reason for making a call. The function of a call is "*to see if [the athlete is] at the specified location.*" ISTI Comment to 4.8.8.5(d).

172. As reiterated in *Coleman*, "the purpose of a call to the athlete is not to invite the athlete for testing but to verify whether or not the athlete is at the specified location." *Id.* ¶ 158.

173. If the Arbitrator were to accept Respondent's reasoning, Respondent should have been called so that he could then make himself available, even though Respondent was not at the address listed on his whereabouts. This places the onus on the DCO to find the athlete, by calling the athlete or by otherwise tracking the athlete down by whatever means possible. That is not the responsibility of the DCO.

174. Third, calling the Respondent would have provided him with advance notice of the test. Out-of-competition tests are to be unannounced. They are to be conducted in such a manner that the athlete does not have advance notice that a test will take place.
175. ISTI Article 3.5 (Defined Terms) provides that “*no advance notice testing*,” is a “*sample collection that takes place with no advance warning to the athlete and where the athlete is continuously chaperoned from the moment of notification through sample provision*.”
176. One of the primary reasons for no advance notice testing is to prevent the athlete from evading or manipulating the test.
177. As stated in *Coleman*:
- a. Out-of-competition testing is an important element of the WADC and the general rule of no advance notification to the athlete is the "central element" of that regime.
 - b. While whereabouts requirements are onerous on athletes, they are necessary in order (1) to facilitate no advance notification out-of-competition testing, and (2) to allow athletes to claim with credibility that they are subject to testing at any time so that the public can have confidence that the athletes are clean.
 - c. The definition of 'no advance notice' is clear - it requires that the athlete is continuously chaperoned from the moment of notification through to sample provision and that the chaperone be in sight of the athlete at all times.
 - d. If a call is placed by the DCO then it follows that the athlete does have notice and is not in the chaperone's sight at all times.

Id. ¶ 162.

178. Giving Respondent advance notice that DCO Dassler was looking for him would have defeated the purpose Respondent’s out-of-competition test.
179. Fourth, dealing in hypotheticals about what might have taken place if a call had been made is a problematic, if not a fruitless, endeavor.
180. Respondent contends, however, that is what the Arbitrator should do here. Respondent asserts that if he had been called he could have made his way to Schulstrasse 27 to be tested prior to the end of the 60-minute window.

181. *Cornet* discusses the danger in this approach, stating:

We recognize that what is important is the steps that were reasonable for the DCO to take, not what would have happened if she had taken steps which the athlete submits she should have taken. There is often a danger that in cases such as the present the Player simply posts theoretical steps which could have been taken with the benefit of hindsight.

Id. ¶ 76.

182. Further, As stated in in *Coleman*, “the athlete is required to be present at the location specified by him or her and not somewhere else, even if that somewhere else is a five-minute drive away.” *Id.* ¶ 156.

183. It is purely speculative, and not productive in this case, to consider hypothetical steps that Respondent could have taken, and then attempt to ascertain whether those steps would have resulted in Respondent providing a sample and preventing a missed test. If DCO Dassler had reached Respondent when Dassler attempted to call Respondent, who knows if Respondent could actually have gotten to Schulstrasse 27 within the 60-minute window.

E. Finding

184. Accordingly, the Arbitrator finds that during the specified 60-minute time slot, DCO Dassler did what was reasonable in the circumstances to try and locate and collect a sample from Respondent, short of giving Respondent any advance notice of the test.

185. The Arbitrator further finds that USADA has met its burden of proof to the comfortable satisfaction of the Arbitrator that Respondent has committed an anti-doping rule violation (whereabouts failure) by missing three tests within a twelve-month period.

X. PERIOD OF INELIGIBILITY AND RESULTING CONSEQUENCES

A. Degree of Fault/Period of Ineligibility

186. The WAD Code Article 10.3.2 and the ITTF Anti-Doping Rules Article 10.3.2 provide:

For violations of Article 2.4, the period of Ineligibility shall be two (2) years, subject to reduction down to a minimum of one (1) year, depending on the Athlete’s degree of Fault. The flexibility between two (2) years and one (1) year of Ineligibility in this Article is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.

187. The WAD Code and the ITTF Anti-Doping Rules, define fault as follows:

Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior.

WAD Code Appendix 1 Definitions, Fault and ITTF Anti-Doping Rules Appendix 1 Definitions, Fault.

188. In *Coleman*, the panel utilized an approach analogous to the framework set out in *Cilic v. International Tennis Federation*, CAS 2013/A/3335 (2017) as a basis for assessing the various levels of fault. Noting that the calibration would be different in *Coleman* because the periods of ineligibility in whereabouts cases are from 12-24 months, whereas in *Cilic* the periods of ineligibility were from 0-24 months, the panel came up with the following:

high' (20-24 months, with a midpoint of 22 months), 'medium' (16-20 months, with a midpoint of 18 months), and 'low' (12-16 months, with a midpoint of 14 months).

Coleman ¶ 187.

189. The Arbitrator adopts the approach utilized in *Coleman*, which is based on the framework set out in *Cilic*.

190. Respondent contends that his period of ineligibility, assessing his degree of fault as being in the light range, should be limited to a maximum of 12 months.

191. USADA submits that Respondent's shortcomings also land within the light degree of fault range, although USADA would not limit the period of ineligibility to 12 months but believes that the period of ineligibility would be between 12 to 16 months.

192. In assessing the degree of fault, the Arbitrator has two cases before him that take slightly different approaches. They are *USADA v. Rollins*, AAA No. 01-17-001-32244 (2017) and *Coleman*.

193. In *Rollins*, the panel determined to consider “all of the surrounding circumstances, especially as they deal with [Rollins’] intent.” *Id.* ¶ 8.3. Those circumstances included (i) that it was Rollins’ first offense after years of frequent testing, both in and out-of-competition, (ii) that there was no evidence of Rollins seeking to avoid testing, masking drug use, or using drugs, (iii) that Rollins’ national governing body did not involve itself in her compliance activities or problems, (iv) that one of Rollins’ missed tests was the result of her confusion about the workings of the whereabouts computer filing system and (v) that Rollins’ life at the time of her third missed test was outside its usual routine. *Id.* ¶ 8.4. Based on these factors the panel reduced the length of Rollins’ period of ineligibility to 12 months.
194. *Coleman* took a more limited approach, considering only “the specific and relevant matters that go to explain the Athlete's departure from the expected standard of behaviour in respect” of the missed test. *Id.* ¶ 174. Thus, *Coleman* did not consider (i) that this was Coleman’s first offense, (ii) that Coleman was frequently tested, (iii) that there was no evidence that Coleman sought to avoid being tested, or (iv) that there was no evidence that Coleman was masking drug use or using drugs. *Id.* ¶¶ 175-177. However, the panel in *Coleman* took into account Coleman’s “own particular experience ... because it is fair to say that such experience had an influence on the Athlete's decision on 9 December 2019 to be away from home during the specified time slot - and is therefore a matter that is both specific and relevant to explain the Athlete's conduct on 9 December 2019.” *Id.* ¶ 180. The panel went on to point out two particular experiences of Coleman. First, Coleman “had received on numerous occasions a call from the DCO during the 60-minute time slot and never before 9 December 2019 [the date of Coleman’s third whereabouts failure] had there been a no call instruction” *Id.* ¶ 181. Second, a close “examination of the training material in fact suggests that the training received by the Athlete reinforced the practice of a DCO placing a call before the expiry of the 60-minute slot.” *Id.* ¶ 181. Based on this analysis the panel in *Coleman* reduced the period of Coleman’s ineligibility to 18 months.
195. Respondent relies on the factors considered in *Rollins*, that Respondent has a long and frequent history of drug testing and has never once had a positive test, that there is no evidence Respondent has avoided testing, and that there is no evidence that Respondent has used drugs or masked their use. Respondent also looks to *Coleman*, stating that Respondent’s whereabouts failure was in part due to his having moved residences and his belief that he had changed his whereabouts information to reflect his new address. Respondent further explains that, like *Coleman*, it has been his experience that a DCO making a test attempt will make a call to Respondent if he cannot otherwise be located prior to concluding the test attempt.²⁶ Respondent specifically recounted a time when he was in California, away from the location specified on his whereabouts because he was walking his dog. In that instance the DCO called Respondent at the end of his 60-minute

²⁶ The Arbitrator notes that in both of Respondent’s missed tests on March 18, 2022, and on June 2, 2022, as shown on the UARs, the DCO attempted to call Respondent during the last five minutes of the sample collection attempts.

window. Respondent was able to return to his home, provide a sample and Respondent was not charged with a missed test.

196. USADA relies on and believes that the *Coleman* analysis should be followed. USADA states that looking to an athlete's test history and being clean are more appropriate as a pre-requisite to a fault analysis. By pre-requisite, USADA means determining whether the two- year period of ineligibility could be reduced at all pursuant to WAD Code Article 10.3.2 and the ITTF Anti-Doping Rules Article 10.3.2, which state that a reduction from two years "is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing." Thus, as the Arbitrator understands USADA's position, USADA would implement a two-step process in analyzing a reduction of the period of ineligibility. The first step is determining whether a reduction from two years is even available. Making that determination would hinge on whether there is evidence of the athlete's conduct that suggests doping or an attempt to avoid testing. In the second step, USADA would turn to *Coleman*, which looked to what caused the departure from the standard of care that led to the anti-doping rule violation. Here, USADA acknowledges that Respondent attempted to be diligent in providing accurate whereabouts information and understood his need to be on "high-alert" since he had two previous missed tests, but USADA points out that Respondent was not careful enough. USADA also acknowledges that prior to learning of his September 4, 2022, missed test, Respondent logged into and corrected his whereabouts for his 60-minute window to reflect his change of address to Uhlandstrasse 41. Finally, USADA states that even though Respondent may have expected a call, that is not a reason for his missed test, but if *Coleman* is followed, Respondent's expectations concerning a call could be considered in determining the length of Respondent's period of ineligibility.
197. It is incumbent on the Arbitrator to point out that all of the evidence in this case suggests that Respondent is a clean athlete and has not attempted to enhance his performance through the use of doping measures. This is Respondent's first anti-doping rule violation, and it does not involve use or attempted use of a prohibited substance. There is no evidence that Respondent sought to avoid being tested, used drugs, masked the use of drugs, or attempted to evade doping controls.
198. The Arbitrator finds that in accordance with WAD Code Article 10.3.2 and the ITTF Anti-Doping Rules Article 10.3.2 Respondent is eligible to have his period of ineligibility reduced from two years.
199. As to the amount of reduction, the Arbitrator follows the guidance of *Coleman* in terms of the factors to be considered in making that determination. The Arbitrator also understands that each case must be considered on its own merits, that each case is different and has its own considerations to be taken into account.

200. Based on both USADA and Respondent's evaluation that Respondent's period of ineligibility falls within the light category and considering the factors set out by Respondent and USADA above that fall within the *Coleman* guidelines, which take into account the specific factors that go to explain Respondent's departure from the standard of care expected of Respondent in updating his whereabouts information and being available for testing, the Arbitrator finds Respondent's degree of fault to be in the light category. Further, considering where, within the light category, Respondent's period of ineligibility should fall, the Arbitrator concludes, and finds, that Respondent's period of ineligibility should be 12 months.

B. Consideration of an Athlete's Career

201. Respondent and his coach commented at the hearing that any period of ineligibility would greatly affect Respondent's athletic career. They also stated that any period of ineligibility would, for a time, render it impossible for Respondent to compete professionally. Further, they stated that Respondent would be precluded from participating in various international competitions, including the 2023 Pan American Games and the 2023 ITTF World Championships. Also, Respondent's opportunity to qualify for and participate in the 2024 Olympic Games would be greatly curtailed, if not made impossible.

202. The Arbitrator is mindful of Respondent's situation. He is a gifted athlete. There is no evidence that he has ever taken performance enhancing drugs. Any period of ineligibility will affect his table tennis career negatively. However, these factors are not relevant in determining the length of Respondent's period of ineligibility.

203. As the WAD Code and the ITTF Anti-Doping Rules state quite clearly in defining "Fault":

In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in a career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.6.1 or 10.6.2.

Appendix 1 – Definitions of the WAD Code and Appendix 1 – Definitions of the ITTF Anti-Doping Rules

204. Accordingly, factors relating to Respondent's athletic career were not considered by the Arbitrator in analyzing Respondent's fault or in determining Respondent's period of ineligibility.

C. Credit for Provisional Suspension and Sanction Start Date

205. WAD Code Article 10.13 and ITTF Anti-Doping Rules Article 10.13 state that:

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.

206. Further, WADA Code Article 10.13.2.1 and ITTF Anti-Doping Rules Article 10.13.2.1 state:

If a Provisional Suspension is 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.

207. USADA imposed a provisional suspension on Respondent commencing on December 1, 2022.

208. Accordingly, the start date for Respondent's period of ineligibility is December 1, 2022.

209. Imposition of a one-year period of ineligibility results in the expiration of Respondent's ineligibility on November 30, 2023.

D. Disqualification of Results

210. WAD Code Article 10.10 and ITTF Anti-Doping Rules Article 10.10 provide that:

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of-Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

211. Respondent's third missed test occurred on September 4, 2022, and his provisional suspension was imposed on December 1, 2022.

212. Accordingly, Respondent's competitive results from the date of his whereabouts failure, September 4, 2022, through the date of his provisional suspension, on December 1, 2022,

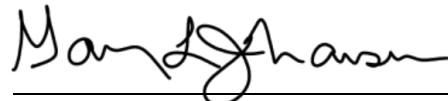
if any, are to be disqualified, and any medals, points or prizes earned during that period shall be forfeited.

XI. FINDINGS AND DECISION

The Arbitrator therefore rules as follows:

- A. Respondent has committed an anti-doping rule violation (whereabouts failure) under Article 2.4 of the WAD Code and Article 2.4 of the ITTF Anti-Doping Rules for having three missed tests within a twelve-month period.
- B. Respondent's period of ineligibility is for 12 months, as provided for in WAD Code Article 10.3.2 and the ITTF Anti-Doping Rules Article 10.3.2.
- C. The start date of Respondent's period of ineligibility is the date of his provisional suspension, December 1, 2022, and the period of his ineligibility expires on November 30, 2023, as provided for in WAD Code Articles 10.13 and 10.13.2.1 and ITTF Anti-Doping Rules Article 10.13 and 10.13.2.1.
- D. Respondent's competitive results from the date of his anti-doping rule violation (third missed test), September 4, 2022, through the date of his provisional suspension on December 1, 2022, if any, are to be disqualified, and any medals, points, and prizes earned during that period shall be forfeited, as provided for in WAD Code Article 10.10 and ITTF Anti-Doping Rules Article 10.10.
- E. The Parties shall bear their own attorneys' fees and costs associated with this Arbitration.
- F. The administrative fees of the AAA and the compensation and expenses of the Arbitrator shall be borne by the USOPC.
- G. This Award is in full settlement of all claims submitted in this Arbitration. All claims not expressly granted herein are hereby denied.

Dated: March 15, 2023



Gary L. Johansen, Arbitrator