SPORT RESOLUTIONS

SR/065/2024

IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF WORLD ATHLETICS

Before:

Dr Anna Bordiugova (Chair)
Mr Hannu Kalkas
Mr Nick De Marco KC

BETWEEN:

WORLD ATHLETICS ***Anti-Doping Organisation***

- and -

MR THIAGO BRAZ DA SILVA ***Respondent***

DECISION OF THE DISCIPLINARY TRIBUNAL

I. INTRODUCTION

1. World Athletics ("WA") is the international federation governing the sport of Athletics worldwide. It has its registered seat in Monaco. In these proceedings, WA is

represented by the Athletics Integrity Unit (the "AIU") as per Rule 1.2.2 of the World Athletics Anti-Doping Rules in force from 31 March 2023 (the "ADR").

2. The Respondent, Mr Thiago Braz Da Silva (the "Athlete" or "Mr Braz") is a 30-year-old athlete from Brazil, specialised in pole vault. Mr Braz has been competing in elite Athletics events since 2012. He won a gold medal at the Olympic Games in Rio de Janeiro in 2016 and a bronze medal at the Olympic Games in Tokyo in 2021.

3. Hereunder WA and the Athlete are referred to collectively as the "Parties".

II. FACTUAL BACKGROUND

4. On 2 July 2023, the Athlete provided an In-Competition urine Sample at the "Bauhaus Galen" Diamond League meeting held in Stockholm, Sweden, which was given code 1197073 (the "Sample").

5. Analysis of the Sample was performed by the World Anti-Doping Agency ("WADA") accredited laboratory in Cologne, Germany (the "Cologne Laboratory") and revealed the presence of ostarine glucuronide, a metabolite of enobosarm (ostarine), thus resulting an Adverse Analytical Finding ("AAF"). The estimated concentration of ostarine glucuronide in the A Sample was reported to be 58 pg/mL (i.e., 0.058 ng/mL).

6. Ostarine (and its metabolites) is a Prohibited Substance under the WADA 2023 Prohibited List in the category S1.2 Other Anabolic Agents. It is a non-Specified Substance, prohibited at all times.

7. The AIU reviewed the AAF in accordance with Article 5 of the WADA International Standard for Results Management (the "ISRM") and determined that:

   a) the Athlete did not have a Therapeutic Use Exemption ("TUE") for the ostarine glucuronide found in the Sample;

   b) there was no apparent departure from the WADA International Standard for Testing and Investigations (the "ISTI") or from the WADA International Standard for Laboratories (the "ISL") that could reasonably have caused the AAF.

8. On 28 July 2023, the AIU issued a Notice of Allegation of Anti-Doping Rule Violations ("ADRVs") (the "Notice of Allegation"), imposing a Provisional Suspension (effective immediately) on the Athlete, and invited him to confirm his position and steps forward regarding several matters, including any challenge to the Provisional Suspension, B Sample analysis, and his explanation for the AAF.

9. On 29 July 2023, the Athlete, via his legal counsel, responded to the Notice of Allegation stating that, at that stage, he believed the AAF to be due to (i) laboratory error, (ii) sabotage, or (iii) contamination of supplements. The Athlete requested a copy of the Laboratory Documentation Package relating to the AAF (the "A Sample LDP") and requested the B Sample analysis.

10. On 2 August 2023, the Athlete personally delivered three of his Scienza Farma manufactured supplements to Avrok Biosciences Laboratory in the Los Angeles, California area of the United States of America ("Avrok Biosciences").

11. On 3 August 2023, the AIU provided the Athlete with a copy of the A Sample LDP. On the same day, the supplements were analysed by Avrok Biosciences and returned a positive result for ostarine.

12. On 4 August 2023, the Athlete wrote to the AIU indicating that (i) he required further time to submit the A Sample LDP and the result of the B Sample analysis for review by an expert before ruling out laboratory error as the cause of the AAF, (ii) the sabotage theory had been advanced on the basis that the Athlete had recently terminated a contract with his former coach, and (iii) the estimated concentration of ostarine glucuronide strongly suggested contamination. The Athlete further requested the analysis of several supplements be conducted by the Cologne Laboratory.

13. On 8 August 2023, the Athlete confirmed that he would not challenge the Provisional Suspension imposed and that if the B Sample analysis confirmed the AAF, he would request that supplements be analysed by a WADA-accredited laboratory and an expedited hearing on the merits of the case.

14. On 9 August 2023, the AIU provided the Athlete with the results of the B Sample analysis, which confirmed the AAF in the A Sample and on 10 August 2023, confirmed

that the estimated concentration of ostarine glucuronide in the B Sample was approximately 81 pg/mL (i.e. 0.081 ng/mL).

15. On 11 August 2023, the Athlete confirmed his request for the analysis of supplements by the Cologne Laboratory.

16. On 14 August 2023, the Athlete wrote to the AIU noting that the estimated concentration of ostarine glucuronide in the B Sample (81 pg/mL) was 33.09% above the estimated concentration of ostarine glucuronide in the A Sample (58 pg/mL) and asked the AIU to seek an explanation from the Cologne Laboratory for how such variation was possible.

17. On the same day, the Cologne Laboratory confirmed that, on 11 August 2023, it had received eight (8) supplements from the Athlete for analysis.

18. On 15 August 2023, the AIU provided the Athlete with the Cologne Laboratory's response to his request for an explanation for the differences in the estimated concentrations of ostarine glucuronide in the A and the B Samples as follows:

> "*The reported values represent roughly estimated concentrations for both, the A- and the B-sample. The analytical method used for the detection and confirmation of the ostarine metabolite is a qualitative assay and, hence, roughly estimated urinary concentrations can exhibit differences as seen in the case of this sample".*

19. On the same day, the AIU asked the Athlete to provide confirmation of the supplements that were to be analysed for the presence of ostarine.

20. On 16 August 2023, the Athlete confirmed that he had requested the Cologne Laboratory analyse eight (8) supplements, which the Cologne Laboratory had already received, plus a further sealed container from the same batch as one of the eight supplements. This sealed container would be sent to the Cologne Laboratory upon his return from Brazil, where he had gone to retrieve the sealed container from the same batch. The Athlete also provided details of his scheme of supplements' ingestion in the lead up to 2 July 2023.

21. On 4 September 2023, the Cologne Laboratory confirmed that it had received two (2) additional supplements. The AIU therefore wrote to the Athlete on 5 September 2023,

noting that one (1) of these supplements had already been sent to the Cologne Laboratory, and requested confirmation of the supplement to be analysed. The Athlete responded on the same day providing the requested confirmation.

22. On 6 September 2023, the AIU wrote to the Cologne Laboratory confirming the nine (9) supplements that were to be analysed for the presence of ostarine:

#	Opened	#	Sealed
1	Now Sports Double Strength HMB 1000mg	2	Now Sports Double Strength HMB 1000mg
3	Scienza Farma Bicarbonato Sodio Tamponnate 500 mg	4	Scienza Farma Bicarbonato Sodio Tamponnate 500 mg
5	Scienza Farma Hiperhomocis Teinemi A / Outros Micronutrientes	6	Scienza Farma Hiperhomocis Teinemi A / Outros Micronutrientes
7	Scienza Farma Energia Mi Tocondrial	8	Scienza Farma Energia Mi Tocondrial counterproof envelope
9	Centrum Men		

23. On 11 October 2023, the Cologne Laboratory confirmed that no ostarine had been detected in any of these supplements.

24. On 14 October 2023, the Athlete provided the AIU with extracts of analytical results from Avrok Biosciences, asserting that ostarine had been detected in three (3) supplements that had been analysed.

25. The three (3) supplements in which ostarine had been detected were produced by Scienza Farmácia ("Scienza Farma"), and they were, specifically, (1) Bicarbonato Sodio Tamponnate 500mg (the "Bicarbonate Supplement"), (2) Hiperhomocis T einemi A/Outros Micronutrients (the "Hiperhomocis Supplement") and (3) Energia Mitocondrial (the "Energia Supplement") (together, the "Scienza Farma Supplements").

26. On 13 November 2023, the AIU requested full details of the three Scienza Farma Supplements found to contain ostarine by Avrok Biosciences, including (i) confirmation of the products analysed with their specific batch number, expiry date (with photographs) and proof of purchase (including evidence), (ii) an explanation for when or how these products were obtained, including a full chain of custody, between point of purchase and receipt by Avrok Biosciences, and (iii) all analytical data, including the full details of the preparation and analytical methodologies used.

27. On 18 November 2023, the Athlete responded to the AIU's request for further details by e-mail enclosing a clarification letter and six (6) exhibits thereto. The AIU noted that the full analytical data that it had requested on 13 November 2023 had not been provided and therefore repeated its request for that data, by e-mail on 21 November 2023.

28. On 28 November 2023, the AIU received three (3) laboratory documentation packages from Avrok Biosciences.

29. On 12 December 2023, following review of the laboratory documentation packages, the AIU requested the estimated concentrations of ostarine that were detected in the Scienza Farma Supplements by Avrok Biosciences.

30. On 22 December 2023, Avrok Biosciences provided the estimated concentrations of ostarine detected in the three (3) supplements.

31. On 25 January 2024, the AIU requested additional information from Avrok Biosciences to assist with an independent expert review of the analysis conducted and the Avrok Biosciences laboratory documents provided in support of that analysis.

32. On 25 January and on 2 February 2024, Avrok Biosciences responded to the AIU's requests for further information.

33. On 22 February 2024, the AIU received an independent expert scientific opinion from Professor Martial Saugy ("Prof. Saugy") in relation to (i) the analysis of the supplements, (ii) the estimated concentrations of ostarine in the Scienza Farma Supplements, and (iii) whether the ingestion of the three (3) supplements found to contain ostarine by Avrok Biosciences could explain the AAF.

34. Prof. Saugy concluded that (i) there was intra-laboratory contamination of ostarine in the Avrok Biosciences analysis, (ii) the estimated concentrations of ostarine given by Avrok Biosciences had been calculated incorrectly and, (iii) the Athlete's asserted ingestion of the Scienza Farma Supplements could not explain the AAF, namely the concentration of ostarine found in the Athlete's A and B samples.

35. Following a review of the above, the AIU concluded that the information that the Athlete had submitted failed to explain the AAF.

36. By the Notice of Charge issued under the 2024 World Athletics Anti-Doping Rules on 23 February 2024 (the "Notice of Charge"), the Athlete was charged by the AIU with the following ADRVs:

a) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample (specifically the presence of ostarine glucuronide, a metabolite of enobosam (ostarine)) pursuant to Rule 2.1 ADR, and

b) Use of a Prohibited Substance (specifically ostarine) pursuant to Rule 2.2 ADR.

37. On 7 March 2024, the Athlete denied the charge and exercised his right to a hearing before the Disciplinary Tribunal.

III. PROCEDURE BEFORE THE DISCIPLINARY TRIBUNAL

38. On 11 March 2024, Dr Anna Bordiugova, Attorney-at-Law, Ukraine, was appointed as Chair of the Disciplinary Panel (the "Panel") to decide this matter.

39. On 18 March 2024, based on the Parties' written agreement, the Chair issued Directions for the Parties to submit their Briefs. A preliminary date for the in-person hearing was set.

40. On 3 April 2024, the AIU provided its Brief.

41. On 28 March 2024, Mr Hannu Kalkas, Attorney-at-Law, Finland, and on 11 April 2024, Mr Nick De Marco KC, Barrister, United Kingdom, were appointed as members of the Panel to sit alongside the Chair.

42. On 15 April 2024, the Athlete provided his Reply Brief.

43. On 29 April 2024, the AIU filed its Reply Brief.

44. On 3 May 2024, the in-person hearing was held in London, with both Parties in attendance. The Panel was assisted by Ms Xènia Campàs Gené, Sport Resolutions' Case Manager, representing the Secretariat to the Disciplinary Tribunal.

45. The following people attended the hearing:

For WA:

a) Mr Adam Taylor, External Counsel, Kellerhals Carrard, in person;

b) Mr Tony Jackson, AIU Deputy Head of Case Management, in person;

c) Mr Huw Roberts, WA General Counsel, remotely;

d) Mr Nicolas Zbinden, External Counsel, Kellerhals Carrard, remotely;

e) Professor Dr Martial Saugy, Anti-Doping Scientific Advisor, as an expert witness, remotely;

f) Professor Dr Mario Theviz, Director of the Cologne Laboratory, as an expert witness, remotely.

For the Athlete:

a) Mr Thiago Braz Da Silva, Respondent, in person;

b) Mr Howard L. Jacobs, Counsel, in person;

c) Mr Marcelo Franklin, Counsel, in person;

d) Ms Ana Braz, wife of the Athlete, as a witness, remotely;

e) Dr Gisele Martins Darós, the Athlete's nutritionist, as a witness, in person;

f) Professor Jean-Claude Alvarez, Medical Director of the University of Versailles St Quentin-en-Yvelines, as an expert witness, remotely;

g) Mr Paul Scott, Chief Executive Officer of Avrok Biosciences, as an expert witness, in person.

46. At the outset of the hearing, both Parties confirmed that they had no objections to the constitution and the composition of the Panel. No preliminary or procedural issues were raised.

47. During the hearing the Athlete gave his testimony. Ms. Ana Braz and Dr. Giselle Daros were heard as witnesses. Prof Thevis, Prof Saugy were heard as expert witnesses upon request of the AIU. Mr Paul Scott and Prof Jean-Paul Alvarez were heard as expert witnesses called by the Athlete. The Parties and the Panel had the opportunity to examine and cross-examine the people heard. The experts were heard simultaneously and besides being questioned by the Parties' counsel and the Panel, also had the possibility to pose questions to each other and have a direct exchange of opinions on the issues of interest for these proceedings.

48. Due to time constraints, and due to being behind on the schedule agreed by the Parties before the hearing, the hearing had to be adjourned and reconvened on 6 May 2024, remotely, in order for the Parties to present their oral closing submissions.

49. In summary, during the hearing, the Parties had the opportunity to present their case, comment on the evidence, submit their arguments, and answer the questions posed by the Panel. At the end of the hearing, the Parties stated that they were satisfied with the way the proceedings and the hearing were conducted and that they were satisfied with the way they were treated by the Panel.

50. The Panel confirms that it carefully heard and considered in its decision all submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in what follows.

IV. APPLICABLE LAW AND JURISDICTION

51. No jurisdictional issues arise in this matter.

52. In accordance with Rules 1.4.2(f)(i), (ii), and (iii) ADR, given that the Athlete is a member of the Confederação Brasiliera de Atletismo (the "CBA") at all material times, and that on the date of the Sample collection he was in the International Registered Testing Pool, it follows that he is an International-Level Athlete in the sense of Rule 1.4.4 ADR, as a consequence of which the ADR is applicable to him.

53. Pursuant to Rule 1.3 ADR in conjunction with Rule 8.2(a) ADR, the Disciplinary /Tribunal has jurisdiction over all matters where ADRVs are asserted.

V. THE PARTIES' SUBMISSIONS

A. The AIU

54. The AIU made the following requests for relief, which were defended at the hearing:

> *"(i) to find that the Athlete has committed ADRVs pursuant to Rule 2.1 and Rule 2.2 of the World Athletics Anti-Doping Rules;*
>
> *(ii) to impose a period of Ineligibility of four years upon the Athlete for the ADRVs commencing on the date of the Tribunal's award;*
>
> *(iii) to give credit for the period of Provisional Suspension imposed upon the Athlete from 28 July 2023 until the date of the Tribunal's award against the total period of Ineligibility, provided that the Provisional Suspension has been effectively served;*
>
> *(iv) to order the disqualification of any results obtained by the Athlete between 2 July 2023 and 28 July 2023 with all resulting consequences including the forfeiture of any titles, awards, medals, points and prizes and appearance money in accordance with Rule 9 and Rule 10.10 of the World Athletics Anti-Doping Rules;*
>
> *(v) to award World Athletics a contribution to its legal costs and expenses incurred in relation to this matter."*

55. In essence, the AIU's submissions can be summarised as follows:

a) The AIU considered that the presence of ostarine glucuronide in the Sample provided sufficient proof that the Athlete had committed ADRVs, pursuant to

Rule 2.1 and Rule 2.2 ADR. The Cologne Laboratory issued an AAF for the presence of ostarine glucuronide at an estimated concentration of 58 pg/mL in the A Sample, which was confirmed by the B Sample analysis that also detected ostarine glucuronide in the Sample, albeit at an estimated concentration of 81 pg/mL;

b) The Athlete did not identify any departure from the ISL (or from any other International Standard or other anti-doping rule or policy) or explain how any specific departure could reasonably have caused the AAF. The period of Ineligibility shall therefore be four (4) years pursuant to Rule 10.2.1(a) ADR, unless the Athlete can establish that the ADRVs were not intentional (on the balance of probabilities), in which case the period of Ineligibility shall be two (2) years;

c) The AIU also submitted that the Athlete cannot benefit from any mitigation of the Consequences under the applicable rules and that the mandatory period of Ineligibility of four (4) years should therefore be imposed for the following reasons:

    i. To reduce the period of Ineligibility of four (4) years, the Athlete must demonstrate an absence of intent, through objective, concrete, and persuasive evidence, by establishing the origin of the ostarine glucuronide in his Sample and a causative link between the established source of ostarine and the AAF;

    ii. The Athlete asserted that the source of ostarine glucuronide in his Sample was the Scienza Farma Supplements. However, the results of the analysis of the Scienza Farma Supplements, performed by Avrok Biosciences and submitted into evidence by the Athlete, were unreliable. As set out in the expert opinion of Prof Saugy, the Avrok Biosciences results demonstrated that there was intra-laboratory contamination of ostarine in its analysis. The Avrok Biosciences results are a false positive. Whereas the analytical results obtained from the Cologne Laboratory

demonstrated that the Scienza Farma Supplements did not contain ostarine (or any Prohibited Substances);

iii. As explained by Prof Saugy, in his expert opinion, based on the Athlete's own asserted ingestion of the Scienza Farma Supplements, the Athlete ingested circa 125pg of ostarine in the period leading up to the date of the Sample collection, on 2 July 2023. However, as was further set out in Prof Saugy's expert opinion, the ingestion of 125pg of ostarine would lead to a maximum concentration in urine of 0.025 to 0.040 pg/mL, which is approximately 1500 to 2000 times less than the lowest estimated concentration detected in the Athlete's Sample (58pg/mL in the A Sample);

iv. Even if the Panel accepts that the Athlete has demonstrated the origin of ostarine glucuronide in his Sample and a causative link between the source of ostarine glucuronide and the AAF, the AIU maintained that the appropriate sanction in this case is four (4) years, as the Athlete had not proven that the ADRVs were committed unintentionally. The AIU specifically alleged that the Athlete's conduct amounted to indirect intent;

v. Rule 10.2.3 ADR puts the burden on the Athlete to show that he did not have indirect intent (recklessness or *dolus eventualis*) in relation to the ADRVs. It is further made clear in the footnote to Rule 10.2.3 ADR that this special definition of intent, which allows for indirect intent, is a specific regulatory tool that applies to cases involving "*presence*" or "*Use*" of Prohibited Substance cases. The AIU argued that the rationale is as follows: athletes who accept significant risks of an ADRV in relation to notorious (e.g. non-Specified) substances do not deserve to benefit from reductions in ADRV sanctions;

vi. The AIU submitted that the inherent significant risk that supplements produced by compound pharmacies in Brazil, such as Scienza Farma, may contain Prohibited Substances has been well established considering the history of the jurisprudence of such cases. The Athlete's

case is neither exceptional nor rare. The specific problem of AAFs and ADRVs arising out of compound pharmacy supplement products has been significant and widespread in Brazil for over a decade. Most of the ADRVs were based on finding ostarine in athletes' samples;

vii. The AIU further submitted that the Panel can be comfortably satisfied that the Athlete was reckless and/or possessed the requisite *dolus evantualis*, such as to be found to have acted with indirect intent in this case. The Athlete knew that there was a risk that his ingestion of supplements produced by a compound pharmacy in Brazil might result in an ADRV and manifestly disregarded that risk;

viii. Against the string of cases arising from contaminated supplements made in compound pharmacies in Brazil, Brazilian athletes in the national team (like the Athlete) have been specifically warned against compounding pharmacies due to the heightened risk of contamination during production. In particular, in July 2017, the Brazilian Athletics Federation confirmed to the AIU that their "*medical and nutritionist staffs keep stressing out by all means to all members of the Brazilian Team, the participants of delegations and Training Camps the high risk associated to the use of local manipulation pharmacies and the mislabelled supplements by the athletes, in addition to the important role played by the prevention of unintentional doping";*

ix. In April 2020, the Brazilian Anti-Doping Agency (the "ABCD") published an article regarding the risks of using supplements. The article included a section on the risks of compounding pharmacies. In particular, it was stated that products manipulated via compounding pharmacies have a higher likelihood of contamination than pre-packaged prescriptions, that compounding pharmacies can manufacture products with little or no regulatory oversight, that use of compounded products is not recommended, and that if an athlete's doctor wishes to prescribe a compounded product, then an athlete should first ask if a commercially prepared product is available instead. It was also stated that

governmental pre-approval is not required for final blends and that compounded drugs can be contaminated with testosterone, Dehydroepiandrosterone (DHEA), or other hormones that can lead to a positive test. Finally, it was stated that compounding pharmacies may not consistently follow the same strict laws as followed by other manufacturers, that they may create unsafe mixtures, untested on humans, that they may buy contaminated raw materials, and that they do not have good quality control processes;

x. In January 2021, ABCD published a note that referred to the irregular use of the banned substance ostarine in compounding pharmacies. It reported five (5) cases to the Brazilian National Health Surveillance Agency (the "ANVISA") in the previous two (2) years, involving potential ADRVs where the source of the positive test was a product from a compounding pharmacy;

xi. On 12 February 2021, an article was published on the ABCD website (part of the official government website) explaining that a pharmacy had been investigated and fined for handling ostarine, as it is a Prohibited Substance, and that ABCD had warned the ANVISA about the use of ostarine in products. It is also stated that ABCD had made a survey of the pharmacies handling the substance and the professionals that prescribed the relevant products;

xii. Furthermore, on the Brazilian Olympic Committee website, there is a section on supplements that contains a video specifically addressing compounding pharmacies. This video is also reproduced on the CBA website;

xiii. In addition to these organisational warnings issued by Brazilian authorities generally, in December 2020, the Athlete attended an online AIU education session and was specifically warned by the AIU about the use of supplements from compound pharmacies;

xiv. Moreover, on 4 April 2022, the AIU issued an Athlete Advisory Notice by e-mail to all Athletes in the International Registered Testing Pool, including the Athlete, specifically on the risks of using supplements sourced from compound pharmacies in Brazil. The Advisory Notice advised the Athlete against taking any supplements sourced from compound pharmacies in Brazil due to the high risk of breaching the ADR. According to the AIU's information, the Athlete received the Advisory Notice and opened the e-mail a total of six times. According to the above, there is compelling evidence sufficient to demonstrate that the Athlete specifically knew that there was a significant risk that his Use of supplements produced by a compound pharmacy in Brazil might result in an ADRV;

d) Given that the Athlete was aware of a significant risk of committing an ADRV by Using supplements from a compound pharmacy like Scienza Farma, no evidence has been provided that he did anything to mitigate that significant risk;

e) Although the Athlete's evidence is that the Scienza Farma Supplements were prescribed to him by a doctor, Dr Gisele Martins Darós ("Dr Darós"), he has not provided any explanation or evidence that Dr Darós was appropriately qualified or had the appropriate expertise to carry out all aspects of prescribing the Scienza Farma Supplements. The Athlete has also not suggested that he questioned Dr Darós at any point, or received any information from her, as to any concerns regarding supplement contamination and/or compound pharmacies;

f) Similarly, there was no evidence of which the AIU was aware of that the Athlete conducted any due diligence into Scienza Farma himself. He had not referred to any such checks or steps. It appeared that he did not have the Scienza Farma Supplements tested before he Used them and he appeared to have done nothing more than rely blindly on the instructions of Dr Darós, who was appointed by his management company, Neymar Sport & Marketing LTDA, ("NRSPORTS"), without making any enquiries or conducting any research (including a reasonable internet search) himself;

g) Moreover, there was no evidence of which the AIU was aware of that the Athlete sought any advice from the CBA, ABCD, or from the AIU in relation to his Use of the Scienza Farma Supplements. Had the Athlete made any such enquiry, which would have been very simple for him to do, he would have been strongly advised not to Use the Scienza Farma Supplements due to the significant risk of committing an ADRV by doing so;

h) This is a paradigm example of an Athlete who has run into the proverbial minefield, ignoring all stop signs along the way, and thereby accepting that an ADRV may materialise;

i) The Athlete therefore acted with indirect intent and a period of Ineligibility of four (4) years should be imposed upon him in accordance with Rule 10.2.1(a) ADR.

B. The Athlete

56. The Athlete has made the following requests for relief, which were defended at the hearing:

a) The ADRV was not committed by the Athlete neither intentionally nor with significant negligence;

b) The sanction should be no more than the period of the Provisional Suspension already served;

c) There are no competitive results to annul.

57. The Athlete's arguments can be summarised as follows:

a) Mr Braz did not knowingly use a banned substance – he was provided with supplements by his sports nutritionist, Dr Darós, and those were unknowingly contaminated with ostarine;

b) Mr Braz provided the supplements that he had been using to Avrok Biosciences whose testing revealed that the Scienza Farma Supplements he had been consuming were contaminated with ostarine. Another testing for supplement contamination was conducted by Professor Jean-Claude Alvarez ("Prof Alvarez")

in the Department of Pharmacology-Toxicology Forensic Laboratory of the Raymond Poincaré University Hospital (the "Raymond Poincaré Laboratory"), in Garches, France, which similarly revealed that seventeen (17) of the supplements being consumed by Mr Braz were contaminated with ostarine;

c) The Athlete entrusted his nutritional plan to Dr Darós, who recommended he start taking supplements in September 2021 to improve his health. Dr Darós researched compounding pharmacies – which are common in Brazil - that took precautionary measures to avoid contamination. Dr Darós then had the supplements produced for the Athlete by a first pharmacy. Due to some issues with the initial pharmacy, including a perceived risk of contamination, Dr Darós undertook further research, made a personal visit to Scienza Farma, and subsequently switched the production of the supplements to Scienza Farma in approximately September 2022. Dr Darós was made aware of this pharmacy by Dr Felix Drummond, Sports Doctor and doping control doctor for the Fédération Internationale de Football Association ("FIFA"), the South American Football Confederation ("CONMEBOL"), and the Brazilian Football Association ("CBF");

d) Dr Darós assured Mr Braz that none of the supplements that were being provided to him contained any substances that were banned by WADA. Mr Braz and his team (which includes three other medical sports doctors beside Dr Darós) took substantial precautionary measures to avoid the risks of contamination;

e) Scienza Farma also supplied supplements for two major Brazilian football teams with no record of contamination, and provided a "*doping free certificate*" for the raw materials that it used;

f) Mr Braz began taking supplements that were compounded at Scienza Farma in September 2022, and took most of them until 28 July 2023, when he received the Notice of Allegation from the AIU;

g) On 9 August 2023, Prof Alvarez collected a hair sample from Mr Braz, which was tested for the presence of ostarine. The hair testing was negative for ostarine, meaning that Mr Braz could not have been exposed to any significant quantity of ostarine;

h) Although the AIU argued that Mr Braz had the burden to prove, not only how the ostarine entered his system, but also that the source of the ostarine caused the concentration of ostarine found in his A and B Samples, which the Athlete did not prove because the alleged concentration of ostarine, if it is to be believed was calculated correctly, could not have caused the concentration found in his Sample. However, Article 10.6.1 (b) ADR does not require the Athlete to prove that the amount of the Prohibited Substance was sufficient to explain the concentration in the Sample. The ADR only requires an athlete to prove source and not the concentration;

i) With regards to the concentration of ostarine in the supplements Avrok Biosciences tested, Mr Paul Scott ("Mr Scott") said that his tests were qualitative – not quantitative – and as such, the concentration levels are just very rough mathematical estimates, that he (i) was hesitant to provide at all, and (ii) only provided (with extensive caveats) at the AIU's insistence;

j) Since no measure of uncertainty has been provided, it had been impossible to determine the accuracy or inaccuracy of the concentration estimates from Mr Braz's Sample. Additionally, the rough concentration estimates of ostarine in Mr Braz's Sample could not be considered even remotely accurate, as proven by the significant variance between the concentration estimates of the A Sample (58 pg/mL) and the B Sample (81 pg/mL), which presented a difference of 40%;

k) Mr Braz is entitled to a reduction of any applicable sanction based upon his very limited degree of Fault and Negligence. Ostarine has been banned in Brazil since February 2021. Therefore, the likely source of the contaminated supplement is in the raw materials that comprise the supplement, not the compounding pharmacy itself. The Athlete argued that the AIU's argument that compounding pharmacies in Brazil are *per se* dangerous for athletes to use and amount to reckless conduct was misplaced;

l) Each of the four cases cited by the AIU that involved the AIU charging a Brazilian athlete who allegedly had ingested contaminated supplements from compounding pharmacies in Brazil found the athlete's conduct was not

intentional. Although the athletes admitted to acknowledging the known risk, the AIU accepted that the starting point for each athletes' sanction should begin at *two years*, not *four years*, subject to a further reduction based on the level of Fault;

m) Mr Braz could not have engaged in conduct that he knew to be an ADRV, because the Prohibited Substance (ostarine) was not disclosed on the label and is banned in Brazil;

n) Mr Braz could not have known that consuming the Scienza Farma Supplements might constitute or result in an ADRV. Even if he had believed that consuming the supplements posed any risk, he did not manifestly disregard that risk. Specifically, Mr Braz took the following steps to ensure that the supplements were safe for him to Use: (i) he checked with his sports nutritionists and confirmed with two (2) of his doctors that the supplements were safe to Use; (ii) he was in communication with his sports nutritionist regarding the compounding pharmacies used to produce the supplements and received assurances that the pharmacies had protocols in place to avoid contamination; (iii) he Used the supplements for over one year without any adverse doping results; (iv) other reputable athletes at NRSPORTS used the same supplements without any doping violations; and (v) Scienza Farma sponsored and produced supplements for two (2) major Brazilian football teams with no record of contamination;

o) In case the Panel finds that the Athlete did not prove the source of the Prohibited Substance - numerous Court of Arbitration for Sport ("CAS") tribunals have held that an athlete can establish that he did not intentionally violate the anti-doping rules without proving how the Prohibited Substance entered his system - Mr Braz made considerable efforts to identify the source of his positive test and has been adamant that he did not intentionally Use a banned substance. Mr Braz has gone through a great deal of time and expense (personally hand-delivering the supplements to medical experts in the United States and France for testing) to determine the source of ostarine identified in his Sample. He consistently challenged the AAF from the beginning. The default or starting sanction (subject to possible further reduction) is two (2) years;

p) In assessing Mr Braz's degree of Fault, this Panel should assess (i) whether his delegation to Dr Darós was reasonable; (ii) whether Mr Braz properly instructed Dr Darós; and (iii) whether Mr Braz exercised control or supervision of Dr. Darós in ensuring that he did not ingest any Prohibited Substances;

q) Mr Braz consulted with Dr Darós regarding the compounding pharmacies that were selected to produce the supplements to ensure that they had quality control and procedures to reduce the risk of contamination;

r) In addition to relying on the expertise of Dr Darós, Mr Braz also confirmed the supplements that he was taking were safe for him to consume in accordance with anti-doping guidelines by confirming with his doctors, Dr Roberto Nahon ("Dr Nahon") and Dr Gilberto Kocerginsky ("Dr Kocerginsky"). Both doctors were well aware of the WADA guidelines and Dr Nahon served as a doctor for the Chief Olympic Committee of Brazil from 2014 to 2020;

s) The Athlete therefore submitted that he is entitled to a significant reduction from the default two (2) year period of Ineligibility, and that the sanction – under the delegation doctrine – should be at the lower end of the spectrum;

t) Mr Braz routinely took steps to ensure that the supplements and medications that he consumed, none of which can be reasonably characterised as *"risky"* supplements, were safe for him to Use. He routinely checked with his doctors, Dr Kocerginsky and Dr Nahon, to ensure that medications prescribed to him by third parties did not contain any banned substances;

u) Dr Nahon has worked with hundreds of athletes in his capacity as a doctor of the Olympic Committee of Brazil and believed that Mr Braz is more diligent than the average athlete in confirming with medical professionals that any medication or substance he ingested was safe to consume and did not contain any banned substances. Dr Darós informed Mr Braz of the inspection processes and assured him that the pharmacy had a doping protection system in place and was safe to use;

v) Applying the *"objective"* factors test outlined in *CAS 2013/A/2237, Cilic v. ITF*, to the Athlete's case, given the significant steps he took to ensure compliance with the WADA Code, it followed that a "*light*" degree of Fault should be applied to his case.

C. The AIU's rebuttal

58. In rebuttal to the Athlete's submissions the AIU, in its Reply Brief, maintaining its initial prayers for relief, responded as follows:

a) The AIU rejected the Athlete's further expert evidence, maintaining that there was insufficient proof of supplement contamination, and insisted that the Athlete needed to and had not proved the origin of the Prohibited Substance in his Sample;

b) The Cologne Laboratory found no ostarine contamination in any of the Scienza Farma Supplements that the Athlete was supposedly taking at the time of the Doping Control to a Limit of Detection (a "LOD") of 10 ng/g;

c) Further supplements had been tested by Mr Scott of Avrok Biosciences. However, his report of that testing did not identify what was tested with any detail: at most, there was a reference to the name of the supplement and the number of capsules sent in open packaging. There was no description of any relevant container or packaging, any manufacturing or batch date, or any reference to whether any container (if existing) was sealed or unsealed. It was not possible to link the supplement testing of Mr Scott to the supplements supposedly Used by the Athlete or the ones sent to the Cologne Laboratory;

d) Answering to Mr Scott's new report, Prof Saugy maintained his initial conclusion that there was intra-laboratory contamination. It was not appropriate to only look at the difference in the ratio between the Negative Quality Control (the "NQC") and the Positive Quality control (the "PQC") and on that basis suggested that there was no contamination. The more relevant comparison was instead between the NQC and the Sample, especially where contamination is being

suggested at low-level amounts. When the NQC was compared to the Sample, the abundances and ion ratios were similar;

e) There were clear peaks in the NQC chromatograms for the first two ion transitions, and the relative abundances of the peaks of the primary and secondary transitions were in the acceptable range, if compared to the PQC. Prof Saugy stated that Mr Scott ignored this and focused only on the third ion transition chromatogram: while this has a double peak, it still had a relevant peak at the right Retention Time for ostarine;

f) The numbers that were used for the calculation of the concentration were not "*pure*" estimates. Instead, they were derived specifically from the chromatographic data that was returned. The amount of the contaminated supplement (at the picogram levels found by Mr Scott) that would be needed to produce the concentration of ostarine found by the Cologne Laboratory in the Athlete's Sample was so large that it was appropriate to make the calculation and the resulting argument;

g) Similarly, the picogram levels that Mr Scott found in the supplements, even if an estimate, were: (a) comparable to the picogram levels supposedly found by Prof Alvarez in his supplement testing; and (b) less than the 10 ng/g LOD used by the Cologne Laboratory, as, otherwise, the Cologne Laboratory, if testing the same supplements, would have returned a positive result;

h) It is completely normal for laboratories to work with estimated concentrations. By validating a method (for example, to define the Limit of Quantitation (the "LOQ"), the LOD, and the Limit of Identification (the "LOI"), it is necessary for a qualitative method to *"estimate"* the concentration: it is necessary to have a positive control with a defined concentration to which a sample can be compared. Indeed, the ISL requires laboratories to record that data and report it upon request by a Results Management authority, including specifically where the concentration may be relevant to Results Management: see paragraph 5.3.8.4 of the ISL;

i) The testing performed by Prof Alvarez was unsafe and not adequate proof of contamination, in that the supplements described were of uncertain origin, there

appeared to be intra-laboratory contamination in Prof Alvarez's version of an NQC, and the concentration found in sample G20 was worryingly and unrealistically high, given that the supplement was found to be negative by the Cologne Laboratory, at a LOD lower than the amount supposedly found by Prof Alvarez.

j) Prof Alvarez found ostarine present in seventeen (17) of twenty-two (22) supplements analysed, which was shocking to the AIU, especially when the supplements come from two (2) different pharmacies, were manufactured at different times, and included contamination even between different forms of product (including capsules, ampoules, and powders). Even the negative samples met some or most of the positivity criteria, on Prof Alvarez's own results: this was explained by the fact that Prof Alvarez's testing was compromised by intra-laboratory contamination, which was further evidenced by the fact that the blank reagent at page twenty-four (24) of the report also appeared to contain chromatographic peaks at the Retention Time of ostarine;

k) It is extremely unclear what supplements were tested and how related they were to the supplements supposedly taken by the Athlete. The AIU noted that only samples G1, G2, G3, and G20 appeared to be the same substances as those allegedly Used by the Athlete before the Doping Control. It is not clear how the supplements tested by Prof. Alvarez related to those sent to the Cologne Laboratory. For example, sample G1 appeared to have been sealed upon arrival, so it could not have been the tub Used by the Athlete or the sealed tub sent to the Cologne Laboratory, and its manufacturing date was not visible. Sample G2 had no manufacturing date visible.

l) Sample G20 was the only supplement with a concentration of 10,000 pg/g or 10 ng/g, massively in excess of the contamination supposedly found in all of the other supplements tested. The concentration was so high that it would have been found within the LOD used by the Cologne Laboratory, but nothing was found for the Energia Supplement. Furthermore, no explanation of its provenance was given, and many questions arose on that subject, which were subsequently

raised at the hearing with the relevant expert witnesses. The AIU rejected the validity and relevance of sample G20;

m) Aside from sample G20, the concentrations found by Prof Alvarez were so low that the concentration calculation carried out previously by Prof Saugy applied generally here too: ingestion by the Athlete of the supplements tested by Prof Alvarez, even if they were the ones Used by the Athlete (which was not admitted) and even if they were found to be contaminated (which was denied) in low picogram amounts, could not have led to the AAF and the concentration in the A and B Samples reported by the Cologne Laboratory. The precise methods, including completed methods of validation, used and relied upon by Prof Alvarez were not clear. The validity of the testing and the results were thereby in question. It was noted that sample G20 was weighed and tested several days after all other samples, and sample G20 had a testing method all of its own.

n) Prof Saugy's opinion was that the concentration was in the region of thousands of times out (1500 to 2000) from what was required to explain the AAF - the alleged contamination could not have caused the AAF. The relevance of pharmacokinetic calculations to prove the origin has been adopted in various Disciplinary Tribunal and CAS cases;

o) The AIU maintained its case on indirect intent, disputed the Athlete's interpretation of the previous compound pharmacy cases, and noted the lack of a full factual explanation on this issue; on the specific facts of the case on indirect intent, and on the case-comparison approach adopted by the Athlete. The present case involves additional education and warnings, including those given specifically to the Athlete, which were implemented in recent times as a result of the severity of the compound pharmacy problem and the need for anti-doping stakeholders to do more to combat it. All of the previous cases referred to by the AIU predate 2021, save for the AIU v. Fernanda Martins case. Therefore, all of those cases predate the warnings and information given in January and February 2021. That is a relevant difference. Similarly, Martins predates the advisory note on compound pharmacies issued by WA on 4 April 2022;

p) Most importantly, the Athlete in this case was specifically educated and warned not to use compound pharmacies. The AIU did this to try and stop athletes returning ADRVs from compound pharmacies, given how widespread the problem had become. The AIU argued that the Athlete ignored all of the AIU's efforts. It was noted that the Athlete chose not to set out any pleaded case at all as to his or his team's knowledge of previous cases, education, or warnings;

q) The AIU did not accept that the actions of the Athlete and/or his team in relation to compound pharmacies was sufficient to show that he did not manifestly disregard the risk. The AIU noted that paragraph twenty-two (22) of the Athlete's statement was light on detail regarding his own knowledge, involvement, and actions regarding compound pharmacies, both personally and of each of his three (3) doctors. Further, the AIU did not accept the assertion of Dr Darós that there was a "*doping protection system*" in place at Scienza Farma;

r) The AIU disputed the "*delegation*" approach to Fault relied upon by the Athlete - it was denied that the delegation doctrine was the relevant approach to issues of Fault. Instead, the correct approach is that any Fault of the Athlete's entrusted individuals within his surrounding team is to be attributed to the Athlete.

VI. MERITS

A. Issues to resolve

59. As a starting point, the Panel notes that the Athlete did not contest the AAF in the Sample. The Athlete is therefore found to have committed the ADRV, pursuant to Rule 2.1 ADR. The Panel will return to the question of whether he has also breached Rule 2.2 ADR below.

60. What is in dispute between the Parties, and the Panel is called to resolve, is these three questions:

a) Whether the Athlete has proven the origin of the Prohibited Substance in his system?

b) What is the level of the Athlete's Fault in committing the ADRVs he is charged with?

c) What are the Consequences to be applied to the Athlete for committing the ADRVs?

61. These questions will be answered in turn.

B. Did the Athlete prove the origin of the Prohibited Substance in his system?

62. The Panel notes that it is the Athlete's contention that the Prohibited Substance originates from the supplements manufactured by Scienza Farma, which he used to take on advice of his doctors to improve his health. After receipt of the Notice of Allegation from the AIU, the Athlete sent his Scienza Farma supplements to three (3) different laboratories – the Cologne Laboratory, Avrok Biosciences, and to the Raymond Poincaré Laboratory. The latter two (2) laboratories, engaged by the Athlete, found ostarine in the Scienza Farma supplements in different concentrations because the LOD in these two (2) laboratories was lower than the LOD in the Cologne Laboratory.

63. For the avoidance of any disputes, the Panel disregards all but the Scienza Farma Supplements that were tested, allegedly taken by the Athlete, and found to contain ostarine. The Scienza Farma Supplements were tested by all three (3) laboratories and, basically, were not discussed by the Parties during the hearing. Rather the entire argument focused on the Scienza Farma Supplements – the Bicarbonate Supplement, the Hiperhomocis Supplement and the Energia Supplement and the concentration of ostarine found in them.

64. Because the case is about contaminated products, the Panel notes that Rule 10.6.1(b) ADR, which the Athlete claims is applicable to his case, states as follows:

> "*In cases where the Athlete or other Person can establish both No Significant Fault or Negligence for the anti-doping rule violation(s) alleged against them and that the Prohibited Substance (other than a Substance of Abuse) came from a*

Contaminated Product, then the period of Ineligibility will be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

[Comment to Rule 10.6.1(b): In order to receive the benefit of this Rule, the Athlete or other Person must establish that the detected Prohibited Substance came from a Contaminated Product and must also separately establish No Significant Fault or Negligence. It should be further noted that Athletes are on notice that they take nutritional supplements at their own risk. The sanction reduction based on No Significant Fault or Negligence has rarely been applied in Contaminated Product cases unless the Athlete has exercised a high level of caution before taking the Contaminated Product. In assessing whether the Athlete can establish the source of the Prohibited Substance, it would, for example, be significant for purposes of establishing whether the Athlete actually Used the Contaminated Product, whether the Athlete had declared the product that was subsequently determined to be contaminated on the Doping Control form. This Rule should not be extended beyond products that have gone through some process of manufacturing. Where an Adverse Analytical Finding results from environment contamination of a 'non-product' such as tap water or lake water in circumstances where no reasonable person would expect any risk of an anti-doping rule violation, typically there would be No Fault or Negligence under Rule 10.5.]"

65. In accordance with Rule 3.1 ADR, *"*[…] *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 Rules 3.2.3 and 3.2.4, the standard of proof will be by a balance of probability"* [emphasis added by the Panel].

66. Having carefully heard the expert witnesses of both Parties, and studied the reports produced by the relevant laboratories, the Panel is satisfied, on the balance of probabilities, that the ADRV in question originates from the Scienza Farma contaminated supplements.

67. The Panel notes that it is not in dispute between the Parties that the estimated concentration of ostarine (to be precise, its metabolites) found in the Athlete's Sample is minuscule. Notably, there is a 33% difference in the estimated concentrations between Sample A and Sample B (58pg/ml and 81 pg/ml).

68. The estimated concentrations of ostarine found in the Scienza Farma Supplements, ingested by the Athlete, including on the day of the Sample collection, as found by two (2) laboratories, ranges between 13 pg/ml and 18 pg/ml. Further, it is not disputed between the Parties or between their expert witnesses that the results received by both laboratories were consistent, i.e. were identical.

69. The expert witnesses were initially in disagreement on whether the intra-laboratory contamination in both laboratories engaged by the Athlete could have caused positivity for ostarine. After a lengthy, detailed discussion between Prof Saugy, who raised this issue, Prof Alvarez, and Mr Scott, during the hearing, this allegation was no longer pursued.

70. The Panel also noted the concern raised by the AIU about the problematic chain of custody of the supplements tested by Mr Scott and Prof Alvarez. In the case of Mr Scott, all capsules tested arrived in IKEA zipped bags, i.e. not in the original pack/container and unsealed; and in the case of Prof Alvarez, some of the supplements arrived unsealed, even if in an original container. However, Ms Ana Braz, in her testimony, explained that she was the person who delivered the supplements to the laboratories, that they were coming from different batches, and that since none of the original closed containers were available anymore and those sent to the Cologne Laboratory were not returned, there was no other way but to send the capsules from the opened containers to Prof Alvarez.

71. On a side note, the Panel wishes to point out that the possibility of artificial purposeful contamination of the Scienza Farma Supplements, for the purpose of explaining the AAF was not actively advanced by the AIU. The Panel also understands that, in view of the extremely short time during which the testing of the supplements was organised (the Notice of Allegation was received on 28 July 2023, a Friday, the flight to LA with the supplements for testing was taken on 1 August 2023, a Tuesday, and the supplements were delivered to Avrok Biosciences on 2 August 2023 and tested on 3 August 2023 by Avrok Biosciences), such a possibility does not appear to be likely.

72. Therefore, the Panel is satisfied that the ostarine detected in the Athlete's Sample originates from the Scienza Farma Supplements.

73. The second point of disagreement between the Parties was whether the estimated amount of ostarine ingested by the Athlete on a daily basis for a lengthy period, including on the day of the Sample collection, could have caused the estimated concentration found in his Sample.

74. In this regard the Panel notes that, first and foremost, all concentrations are a mere approximate estimate, and the experts do not challenge this. The Scienza Farma Supplements were not always from the same batches which can explain why the Cologne Laboratory, with a LOD of 10 ng/ml, did not detect ostarine in the supplements, but the other two laboratories with lower LODs did.

75. The Panel notes that there exists but a few published studies focused on the excretion of ostarine, and the studies on the excretion rates for ostarine are, at best, generalisations due to the low numbers of study subjects.

76. Thus, based on the findings of Walpurgis K, Rubio A, Wagener F, et al. Elimination profiles of microdosed ostarine mimicking contaminated products ingestion. Drug Test Anal. 2020;12:1570-1580. https;//doi.org/10/1002/dta.2933, published in 2020, and calculating the amount of ostarine ingested by the Athlete daily, which could have been compatible with the estimated concentration found in the Athlete's Sample, Prof Saugy arrived at a concentration of 125 pg/ml, which, he agreed to after re-calculation of concentrations mistakenly calculated by Mr Scott, appeared to be the case here. His conclusion was that the amounts of ostarine allegedly ingested by the Athlete were not compatible and could not be the (only) cause of the AAF because 125 pg/ml, even if used daily, could produce only estimated concentration of ostarine in the urine in the amount 1500-2000 times lower than the ones found in the Athlete's Sample.

77. However, during the hearing, all experts, after a lengthy discussion, finally came to an agreement that the estimated concentration of ostarine found in the Athlete's Sample, was not incompatible with the intake of contaminated supplements. The experts further agreed that since all batches of the taken and tested supplements were different, it could not be excluded that at some points in time the Athlete was consuming higher concentrations of ostarine. And, finally, Prof Saugy agreed, that if he had used the findings of the Walpurgis et al., but not for one time intake as he initially calculated, but

for multiple intakes, even in concentrations lower than those experimented and discussed in the article (i.e. pharmacological doses of 1 mg and higher), the concentration of ostarine in the Athlete's urine would have been compatible with the findings of Walpurgis et al. Both the experts and the Panel have kept in mind, throughout this analysis, that all numbers are a mere rough estimation.

78. The Panel further and principally notes that, as rightly pointed out by the Athlete's counsel, the ADR does not require an athlete to go as far as to prove the compatibility, or the precise match, of the estimated concentrations of a Prohibited Substance in his/her sample and in the supplement(s) he/she claims to be contaminated.

79. Therefore, the Panel is satisfied that the Athlete has proven, on the balance of probabilities, that the origin of his ADRVs are the contaminated supplements produced by Scienza Farma, which he had been Using since, at least, 15 May 2023.

C. What is the level of the Athlete's Fault in committing the ADRVs he is charged with?

i. Indirect intent

80. Whereas the Athlete claims to have acted with No Significant Fault or Negligence, the AIU argues that the Athlete had indirect intent to commit the ADRV.

81. In this regard the Panel notes that, as held in numerous CAS cases, indirect intent is present where: "*the* [Athlete] *i) knew that there was a significant risk that his conduct might constitute or result in an anti-doping rule violation; and ii) manifestly disregarded that risk*." Put more colourfully: "*If – figuratively speaking – an athlete runs into a "minefield" ignoring all stop signs along his way, he may well have the primary intention of getting through the "minefield" unharmed. However, an athlete acting in such (reckless) manner somehow accepts that a certain result, i.e. AAF, may materialize and therefore acts with indirect intent*" (CAS 2012/A2822, Erkland Qerimaj v International Weightlifting Federation).

82. According to Rule 1.5 ADR, the responsibilities of athletes are determined as follows:

> "*Athletes must:*

(a) be knowledgeable of and comply with these Anti-Doping Rules at all times;

(b) know what constitutes an anti-doping rule violation and the substances and methods that have been included on the Prohibited List;

(c) be available for Sample collection at all times;

(d) take responsibility, in the context of anti-doping, for what they ingest and Use;

(e) carry out research regarding any products or substances that they intend to Use (prior to such Use) to ensure that Using them will not constitute or result in an anti-doping rule violation. Such research must, at a minimum, include a reasonable internet search of:

(i) the name of the product or substance;

(ii) the ingredients/substances listed on the product or substance label;

(iii) other related information revealed through research of points (i) and (ii).

(f) inform medical personnel of their obligation not to Use Prohibited Substances and Prohibited Methods, and make sure that any medical treatment they receive does not violate these Anti-Doping Rules.

[…]".

83. The Panel notes that the Athlete has been diligent in the discharge of his duty to avoid the Use or presence of Prohibited Substances in his system and has enjoyed a successful career without any incidents up until the present AAF.

84. According to the definition prescribed by the ADR, a Contaminated Product is: "*A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search*."

85. Having very carefully analysed the Parties' submissions and having questioned the witnesses called by the Athlete and the Athlete himself, the Panel concludes that the Athlete's conduct did not amount to indirect intent. The Panel is conscious that the Athlete was aware of the significant risk that his conduct (i.e. ingesting supplements manufactured by a compound pharmacy in Brazil) might result in an ADRV, however the Athlete did not manifestly disregard that risk - the Athlete unquestionably relied on his medical team in deciding to take the supplements and in choosing their

manufacturer. This, according to the Panel's view, shall be considered to have meant that the Athlete did not manifestly disregard the risk of committing an ADRV. Therefore, the Athlete has established that the ADRV was not intentional.

ii. Did the Athlete prove that he bears No Significant Fault or Negligence in committing the ADRV he is charged with?

86. In order to receive the benefit of Rule 10.6.1 (b) ADR, the Athlete must establish not only that the detected Prohibited Substance came from a Contaminated Product, but he must also establish that he bears No Significant Fault or Negligence. According to the Comment to Rule 10.6.1 (b) ADR, it should be noted that athletes are on notice that they take nutritional supplements at their own risk and that sanction reductions based on No Significant Fault or Negligence have been rarely applied in Contaminated Product cases unless the Athlete has exercised a high level of caution before taking the Contaminated Product.

87. Having established that the first part of the Rule 10.6.1(b) ADR applies to the Athlete's case and that he had no indirect intent, the Panel now turns their attention to analysing whether the Athlete has proven to bear No Significant Fault or Negligence in committing the ADRV he is charged with.

88. As a starting point in analysing the level of the Athlete's Fault, which is required under the above-quoted Rule 10.6.1 (b) ADR, the Panel wishes to refer to the definition of No Significant Fault or Negligence as provided by the ADR:

> "*The Athlete or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relation to the anti-doping rule violation*. […]"

89. There is no dispute between the Parties that relevant information about the high risk of contamination in the case at hand, i.e. in case of using supplements manufactured by compound pharmacies in Brazil (because of raw material contamination) was delivered to the Athlete personally by his international federation, WA, in December 2020 (during a dedicated webinar) and in April 2022 (by an e-mail containing a specific warning). Thus, it is the Panel's understanding that the Athlete did not even have to perform any

further *"reasonable internet search"* as he was personally informed of the high risk of contamination, i.e. commission of an ADRV, if ingesting supplements prepared by a compound pharmacy in his native country of Brazil and he ignored this risk as evidenced by him taking supplements manufactured by a compound pharmacy in Brazil.

90. In his own words, the Athlete *"just"* read the alert sent to him in an e-mail by the AIU regarding the high risk of contamination in the supplements produced by compound pharmacies in Brazil (and specifically in the raw material used by them). However, he did not forward it to any member of his medical team.

91. The Panel also notes that the Athlete did not declare any of his Scienza Farma supplements on his Doping Control Form of 2 July 2023, nevertheless claiming- that he was ingesting them without interruption up until he received the Notice of Allegation from the AIU. During the hearing, he explained that since those supplements were too many and he was tired after the competition and it was late (the Sample was collected after 10 p.m.), he just named them all together as *"Complex vitamin"*.

92. The Athlete has confirmed that he tried to minimise the risk of an accidental ADRV by engaging a group of doctors, two (2) of whom are well-known sports doctors in Brazil and by consulting with them with regard to each of the supplements he was Using. The Athlete stated that they had meetings and were discussing what was prescribed to him. He further maintained that since the nutritionist who prescribed him the supplements was provided to him by his sports agency, NRSPORTS, which worked with a number of high-level athletes and teams in Brazil (including the well-known football player, Neymar Jr) - he had no reason to doubt that the nutritionist was fit for purpose.

93. The Athlete further explained that he was comforted by being taken care of by the doctors from his native country despite the fact he used to live and train abroad, as he was able to remain in contact with them at all times and speak the same language. He further confirmed that he asked for assurances from the doctors on whether the supplements were safe and was not only assured by the three (3) of them that they were, but additionally was informed by Dr Darós that in view of some logistical problems and risks of contamination that appeared in relation to the first pharmacy

used, Essenzia Pharmacy, it had stopped producing supplements for sportsmen and she decided to change the pharmacy. Dr Darós also informed the Athlete, as per his testimony, that she chose and personally visited the Scienza Farma facilities and assured the Athlete that the raw materials used for producing the supplements there were two (2)-step tested, and that there were "*doping free certificates*" available.

94. Besides Dr Darós, there were also two (2) sports doctors engaged by the Athlete who were checking all the prescriptions she made for the Athlete and were also checking that no Prohibited Substance was prescribed to the Athlete via a specially dedicated software. This could partially explain the Athlete's trust in this exercise. However, the Panel notes that these checks, although necessary, were to no avail in this precise case because the issue was in the raw material which was contaminated with Prohibited Substances, and not in the list of substances used to prepare the Athlete's supplements.

95. The Athlete should have demonstrated more caution and control over his medical team and requested to be shown the labelled "*doping free"* certificates by Dr Darós". If he had done so, he should have realised that the certificates merely confirmed that the raw material (which was used in preparation of his supplements) originated from India and China and that there appeared to be barely any checking for the presence of heavy metals, bacteria, and fungi. The same goes for the certificates produced by Scienza Farma of its own quality control testing; those certificates demonstrate that the raw material used by the pharmacy to prepare supplements were only superficially checked, namely – its colour, smell, density, weight, solubility, pH, etc. Had the Athlete discharged his burden of curiosity, he should have realised this and should have investigated further about the safety of the raw materials and supplements produced using those raw materials.

96. The Athlete further explained that he needed "*tailored*" supplements because of his health problems. The Athlete was unable to specify the diagnosis he had. He also failed to provide any medical documentation, which would support the existence of any health problems. During her questioning, Dr Darós mentioned a number of medical conditions, from heart problems to tiredness. According to Dr Darós the supplements

prescribed by her were intended to address the various health problems that the Athlete had.

97. Under Rule 2.1.1 ADR: "*It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples.* […]"

98. An athlete's responsibilities are expounded under Rule 1.5.1 ADR. The Athlete appears to have an excellent understanding of his anti-doping responsibilities. It strikes the Panel as to why the three (3) doctors assisting the Athlete were so determined to make him Use supplements produced by a compound pharmacy, without any verified medical reason, rather than choosing a manufacturer, which is dedicated only to sport nutrition and where the risk of contamination is significantly lower, if not non-existent. The Panel was not convinced by the explanations given by the Athlete and Dr Darós that in centrally manufactured products sold by pharmacies, the risk of contamination is even higher than in compound pharmacies.

99. Therefore, for the reasons above, the majority of the Panel finds that even though the Athlete should have been more cautious in his trust of his medical team, should have requested more specific information and documents, and should have made reasonable searches himself, he acted with No Significant Fault or Negligence.

D. What are the Consequences to be applied?

i. Period of Ineligibility

100. The Panel, by majority, has found that the Athlete bears No Significant Fault or Negligence in committing the ADRV. Having carefully weighed up all the facts, the majority of the Panel finds that the level of the Athlete's Negligence is normal.

101. With regard to the alleged violation of Rule 2.2 ADR by the AIU, the Panel notes that since the Athlete is not found to have committed an intentional ADRV, the Use of the Contaminated Supplement cannot be seen as Use in the sense of Rule 2.2 ADR. The Panel therefore did not find any evidence of an alleged violation of Rule 2.2 ADR.

102. The Panel, by majority, is satisfied that the proportionate and adequate length of the Period of Ineligibility to be applied to the Athlete shall, therefore, be set at sixteen (16) months.

ii. Commencement of the period of Ineligibility

103. According to Rule 10.13 ADR, the period of Ineligibility shall come into force and effect on the date of issuance of this decision. The Provisional Suspension served by the Athlete shall be credited towards the period of Ineligibility. The period of Ineligibility is, therefore, ordered to run from 28 July 2023 (the starting date of the Provisional Suspension) and shall end at midnight on 27 November 2024.

iii. Disqualification of results and other Consequences

104. Rule 10.10 ADR provides that:

> "***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 that produced the positive Sample under Rule 9, all other competitive results obtained by the Athlete 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, will, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes*".

105. Pursuant to Rule 10.10 ADR, the Panel concludes that all competitive results obtained by the Athlete from 2 July 2023 through the beginning of the Athlete's Provisional Suspension on 28 July 2023, if any, shall be Disqualified with all of the resulting Consequences, including the forfeiture of any titles, awards, medals, points, prizes, and appearance money.

VII. COSTS

106. The AIU has requested the Panel award WA a contribution to its legal costs and expenses incurred by the AIU. According to Rule 10.12.1 ADR, the Panel *"may require the Athlete or other Person to reimburse WA for the costs that it has incurred in bringing the case"* where an Athlete or other Person is found to have committed an ADRV.

107. Costs are a matter for the Panel's discretion pursuant to Rule 8.9.1 (j) ADR.

108. As the ADRV has been established and this was a complex case, Mr Braz is ordered to pay the total amount of 3000 US Dollars to WA, as a contribution towards the legal fees and other expenses incurred in connection with these proceedings.

109. The Athlete shall bear his own costs.

VIII. DECISION AND ORDERS

110. The Disciplinary Tribunal has jurisdiction to decide on the subject matters of this dispute.

111. The Athlete has committed an ADRV under Rule 2.1 ADR.

112. A period of Ineligibility of sixteen (16) months is imposed upon the Athlete by decision of the majority of the Panel, commencing on the date of the Decision. The period of the Provisional Suspension imposed on the Athlete from 28 July 2023 until the date of the Decision shall be credited against the total period of Ineligibility, which will end at midnight on 27 November 2024.

113. The Athlete's results from 2 July 2023 until the date that the Provisional Suspension was imposed, on 28 July 2023, shall be Disqualified with all resulting Consequences, including the forfeiture of any titles, awards, medals, points and prize and appearance money.

114. The Athlete is ordered to pay the total amount of 3000 US Dollars to World Athletics, as a contribution towards the legal fees and other expenses incurred in connection with these proceedings.

115. All other prayers for relief are dismissed.

IX. RIGHT OF APPEAL

116. This Decision may be appealed exclusively to the Court of Arbitration for Sport, located at Palais de Beaulieu, Avenue Bergières 10, CH-1004, Lausanne, Switzerland (procedures@tas-cas.org), in accordance with Rule 13.2 ADR.

117. Pursuant to Rule 13.6.1(a) ADR, the deadline for filing an appeal with the CAS is 30 days from the date of receipt of the present decision by the appealing party and where the appellant is a party other than WA, a copy of the appeal must be filed on the same day with WA.

Anna Bordiugova

Nick de Marco KC

Hannu Kalkas

London, UK

20 May 2024