

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION**  
**North American Court of Arbitration for Sport Panel**

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UNITED STATES ANTI-DOPING AGENCY,	)	
	)	
Claimant,	)	<b>ARBITRAL AWARD</b>
	)	
RICHARD MEEKER,	)	AAA No. 77 190 00335 13
	)	
Respondent	)	
	)	
	)	

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WE, THE UNDERSIGNED ARBITRATORS (“Panel”), having been designated by the above-named parties and having been duly sworn and having duly heard the allegations, proofs, and arguments of the parties and, after a hearing held on October 22, 2013, do hereby render the Panel’s full award pursuant to its obligation to do so by December 4, 2013.

**1. SUMMARY**

1.1 Respondent is a 51-year old member of USA Cycling who has been competing as an amateur cyclist for over 35 years. While working full-time, he has won nine national age-group titles. His most recent races have been in the 50-54 year old category.

1.2 On September 6, 2012 a urine sample (USADA number 1553250) was collected from Respondent following his participation in the Masters Road Nationals. It was the first anti-doping test sought from or provided by Respondent in his career. The results showed the presence of 19-norandrosterone above the threshold of 2 ng/mL and 19-noretiocholanolone,

which are considered metabolites of a Prohibited Substance in the class of Anabolic Agents on the World Anti-Doping Agency's ("WADA's") Prohibited List (*Claimant's Exhibit 2*), adopted by both the Claimant's ("USADA's") Protocol for Olympic and Paralympic Movement Testing, revised January 1, 2009 ("Protocol")(*Claimant's Exhibit 1*) and Part 14 of the International Cycling Union's ("UCI's") Regulations, January 2, 2012 version, which pertain to anti-doping ("UCI ADR")(*Claimant's Exhibit 4*). Following a similar result in the analysis of his B Sample, on November 6, 2012 Respondent and Claimant entered a "Stipulation of Uncontested Facts and Issues" ("Stipulation") (*Claimant's Exhibit 16*) which provided, among other things:

1. That the USADA Protocol for Olympic and Paralympic Movement Testing ("Protocol") governs all proceedings involving USADA specimen number 1553250;
2. That the mandatory provisions of the World Anti-Doping Code (the "Code") . . . , the Protocol, the International Cycling Union ("UCI") Anti-Doping Rules and the United States Olympic Committee ("USOC") Anti-Doping Rules are applicable to any hearing involving the doping offense based on USADA urine specimen number 1553250;
3. That Mr. Meeker gave the urine sample designated as USADA urine specimen number 1553250 at the 2012 USA Cycling Masters Road Nationals on September 6, 2012;
4. That each aspect of the sample collection and processing for the A and B bottles of USADA urine specimen number 1553250 was conducted appropriately and without error;
5. That the chain of custody for USADA urine specimen number 1553250 from the time of collection and processing at the collection site to receipt of the sample by the World Anti-Doping Agency ("WADA") accredited laboratory in Los Angeles, California (the "Laboratory") was conducted appropriately and without error;
6. That the Laboratory's chain of custody for USADA urine specimen number 1553250 was conducted appropriately and without error;
7. That the Laboratory, though accepted scientific procedures and without error, determined USADA urine specimen number 1553250 contained 19-norandrosterone above the threshold concentration of 2.0 ng/mL, which is a metabolite of a prohibited substance in the Class of Anabolic Agents on the 2012 WADA Prohibited List, and 19-noretiocholanolone, (the "Positive Test");
8. That Mr. Meeker agrees that the Positive Test constitutes a first doping offense;
9. That Mr. Meeker believes his Positive Test may have been caused by his use of a dietary supplement that he purchased and used prior to his Positive Test;
10. That USADA has agreed to suspend the proceedings against Mr. Meeker for a period of ninety (90) days from the date of the execution of this stipulation, in order to give Mr. Meeker the opportunity to have the dietary supplements he purchased and used prior to his Positive Test analyzed for the presence of a substance that could have caused metabolites of a prohibited anabolic agent to be present in his urine sample;

...

12. . . . and that a failure on the part of Mr. Meeker to contest the charges brought against him will result in a two (2) year period of ineligibility, which may be increased to four (4) years in the event that aggravating circumstances are established;

13. That the parties agree that if Mr. Meeker chooses to contest any charges brought against him by USADA . . . , the sole issue to be determined at the hearing will be the length of the period of ineligibility to be imposed on Mr. Meeker.

1.3 Respondent did contest this matter and did submit to Claimant a series of laboratory findings on various substances which Respondent contends he may have ingested on the day of the test. As stipulated, USADA has established a doping offense and the only issue to be determined in this arbitration is the length of the period of ineligibility to be imposed on Respondent. Claimant contends that "aggravating circumstances" apply and that the term of ineligibility should be extended to up to four years. Respondent contends that "exceptional circumstances" apply and that the term of ineligibility should be reduced or eliminated. The Panel finds that neither party has carried its respective burden of proof on the matters at issue.

## 2. PARTIES

2.1 USADA is the independent anti-doping agency for Olympic sports in the United States and is responsible for conducting drug testing and any adjudication of positive test results pursuant to the Protocol and the USA Cycling Code of Conduct, Section 3.

2.2 At the hearing, Claimant was represented by C. Onye Ikwaukor, Legal Affairs Director of USADA, and co-counsel Stephen Starks of the law firm of Kroger Gardis & Regas LLP. Claimant is located at 5555 Tech Center Drive, Suite 200, Colorado Springs, CO 80919-9918.

2.3 Respondent is a resident of Corona Del Mar, California, and holds an international license as a member of USA Cycling and UCI. He is an elite Masters cyclist with many road cycling championships to his credit.

2.4 At the hearing, Respondent was represented by Howard L. Jacobs, of the law offices of Howard L. Jacobs, 2815 Townsgate Road, Suite 200, Westlake Village, CA 91361.

### 3. JURISDICTION

3.1 The Panel has jurisdiction over this doping dispute pursuant to the Ted Stevens Olympic and Amateur Sports Act (“Act”), 36 U.S.C. 220501, *et seq.*, because this is a controversy involving Respondent’s opportunity to participate in national and international competition representing the United States. The Act states:

An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . an aggrieved amateur athlete . . ., conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation’s constitution and bylaws . . . (36 U.S.C. 220521)

3.2 Under its authority to recognize a national governing body (“NGB”) (36 U.S.C. 220505(c)(4)), the United States Olympic Committee (“USOC”) established National Anti-Doping Policies which provide, in part:

NGBs shall not have any anti-doping rule which is inconsistent with these policies or the USADA Protocol, and NGB compliance with these policies and the USADA Protocol shall be a condition of USOC funding and recognition. (*USOC Policies, Section 13*)

3.3 Regarding athletes, the USOC Policies provide:

By virtue of their membership in an NGB or participation in a competition organized or sanctioned by an NGB, Participants agree to be bound by the USOC National Anti-Doping Policies and the USADA Protocol. (*USOC Policies, Section 12*)

3.4 USA Cycling is such an NGB, and Section 3 of its Code of Conduct applicable to its members, including Respondent, provides that, “Violation of anti-doping provisions as established by WADA . . ., USADA . . . and the UCI . . .” “shall be considered violations of the USA Cycling Code of Conduct.”

3.5 In compliance with the Act, Article 10(b) of the USADA Protocol provides that hearings regarding doping disputes “will take place in the United States before the American Arbitration Association (“AAA”) using its” Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes, as approved by the USOC’s Athletes’ Advisory Council and NGB Council (“Supplementary Procedures”). (36 U.S.C. 220522)

3.6 This proceeding is conducted under and the Panel was appointed pursuant to the AAA Supplementary Procedures. Therefore, jurisdiction, which is not in dispute, lies with the Panel.

#### 4. **RULES APPLICABLE TO THIS DISPUTE**

4.1 The rules applicable to this dispute are the mandatory provisions of the WADA’s World Anti-Doping Code, revised January 1, 2009 (“WADA Code”) (*Claimant’s Exhibit 2*) and the UCI ADR (*Claimant’s Exhibit 4*). As the two sets of rules are virtually identical, the applicable WADA Code provisions will be referenced unless otherwise specified. They are as follows, in pertinent part:

##### **ARTICLE 2: ANTI-DOPING RULE VIOLATIONS**

*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:

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

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

[At this point, UCI ADR Section 21.1. adds the following:

*Warning:*

- 1) *Riders must refrain from using any substance, foodstuff, food supplement or drink of which they do not know the composition. It must be emphasized that the composition indicated on a product is not always complete. The product may contain Prohibited Substances not listed on the composition.]*

## 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, the standard of proof shall be by a balance of probability, except as provided in Articles 10.4 and 10.6, where the *Athlete* must satisfy a higher burden of proof.

### 3.2 **Methods of Establishing Facts and Presumptions.**

Facts related to anti-doping rule violations may be established by any reliable means, including admissions . . .

### 10.2 ***Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances and Prohibited Methods***

The period of *Ineligibility* imposed for a violation of Article 2.1 [Presence of *Prohibited Substance* or its *Metabolites* or *Markers*] . . . shall be as follows, unless the condition for eliminating or reducing the period of *Ineligibility*, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of *Ineligibility*, as provided in Article 10.6, are met:

First violation: Two [2] years *Ineligibility*.

### 10.5 **Elimination or Reduction of Period of *Ineligibility* Based on Exceptional Circumstances**

#### 10.5.1 *No Fault or Negligence*

If an *Athlete* establishes in an individual case that he or she bears *No Fault or Negligence*, the otherwise applicable period of *Ineligibility* shall be

eliminated. When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Sample* in violation of Article 2.1 [Presence of *Prohibited Substance*], the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* eliminated . . .

#### 10.5.2 *No Significant Fault or Negligence*

If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Significant Fault or Negligence*, then the otherwise applicable period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable. . . . When a *Prohibited Substance* or its *Markers* or *Metabolites* is detected in an *Athlete's Sample* in violation of Article 2.1 [Presence of a *Prohibited Substance* or its *Metabolites* or *Markers*], the *Athlete* must also establish how the *Prohibited Substance* entered his or her system in order to have the period of *Ineligibility* reduced.

[Comment to Articles 10.5.1 and 10.5.2: The Code provides for the possible reduction or elimination of the period of *Ineligibility* in the unique circumstance where the *Athlete* can establish that he or she had *No Fault or Negligence* or *No Significant Fault or Negligence* in connection with the violation. . . .

Articles 10.5.1 and 10.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

To illustrate the operation of Article 10.5.1, an example where *No Fault or Negligence* would result in the total elimination of a sanction is where an *Athlete* could prove that despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of *No Fault or Negligence* in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (*Athletes* are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination) . . . However, depending on the unique facts of the case, any of the referenced illustrations could result in a reduced sanction based on *No Significant Fault or Negligence*. (For example, reduction may well be appropriate in illustration (a) if the *Athlete* clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to *Prohibited Substances* and the *Athlete* exercised care in not taking other nutritional supplements.) For purposes of assessing the *Athlete's* or other *Person's* fault under Articles 10.5.1 and 10.5.2, the evidence considered must be

specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior . . .]

...

**10.6 Aggravating Circumstances Which May Increase the Period of *Ineligibility***

If the *Anti-Doping Organization* establishes in an individual case involving an anti-doping rule violation . . . that aggravating circumstances are present which justify the imposition of a period of *Ineligibility* greater than the standard sanction, then the period of *Ineligibility* otherwise applicable shall be increased up to a maximum of four [4] years unless the *Athlete* or other *Person* can prove to the comfortable satisfaction of the hearing panel that he or she did not knowingly commit the anti-doping rule violation.

An *Athlete* or other *Person* can avoid the application of this Article by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation by an *Anti-Doping Organization*.

[Comment to Article 10.6: Examples of aggravating circumstances which may justify the imposition of a period of *Ineligibility* greater than the standard sanction are: . . . the *Athlete* or *Person* engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation.

For the avoidance of doubt, the examples of aggravating circumstances described in this Comment to Article 10.6 are not exclusive and other aggravating factors may also justify the imposition of a longer period of *Ineligibility* . . .]

...

**WADA CODE 2012 PROHIBITED LIST, INTERNATIONAL STANDARD**  
(*Claimant's Exhibit 3*)

**Prohibited Substances**

**S1. ANABOLIC AGENTS**

Anabolic agents are prohibited.

1. Anabolic Androgenic Steroids (AAS)

...

b. Endogenous AAS when administered exogenously:

. . . . 7 $\alpha$ -hydroxy-DHEA; 7 $\beta$ -hydroxy-DHEA; 7-keto-DHEA; 19-norandrosterone; 19-noretiocholanolone.



**5. PROCEEDINGS IN THIS MATTER**

5.1 Following the taking of the urine sample on September 6, 2012, USADA sent notification to Respondent of his "A" sample positive test on September 21, 2012. (*Claimant's Exhibit 12*)

5.2 On September 27, 2012, Respondent requested that the "B" sample be tested. (*Claimant's Exhibit 13*)

5.3 On October 17, 2012, Claimant sent notification to Respondent that the "B" sample had confirmed the finding of Prohibited Substances 19-norandrosterone above the threshold of 2 ng/mL and 19-noretiocholanolone, which are considered metabolites of a Prohibited Substance in the class of Anabolic Agents. (*Claimant's Exhibit 14*)

5.4 On November 5, 2012, Respondent accepted a provisional suspension. (*Claimant's Exhibit 17*)

5.5 On November 6, 2012, the Stipulation was entered.

5.6 On or about November 16, 2012, Respondent received test results from Aegis Sciences Corporation, 515 Great Circle Road, Nashville, TN 37228, ("Aegis") analyzing the contents of several containers he had submitted to Aegis on October 10, 2012, labeled as containing three nutritional supplements: Hammer Nutrition Endurolytes (lot #1103991, exp. 02/2014), Hammer Nutrition Anti-Fatigue Caps, and Standard Processing Drenamin. (*Respondent's Exhibits 30 and 53*) Of the several containers submitted for testing all but one were negative for the presence of steroids. However, the remaining container labeled "Hammer Endurolytes" but containing three different types of capsules and some loose powder from one broken capsule tested positive for androstenedione (93000 ppm), testosterone (770 ppm), and 4-

androst-3, 6, 17-trione (170 ppm) in one of the three types of capsules. It tested negative for 19-norandrosterone above the threshold of 2 ng/mL and for 19-noretiocholanolone.

5.7 On or about January 11, 2013, Respondent received test results from Aegis analyzing the contents of three containers he had submitted to Aegis on December 3, 2012, labeled as containing three nutritional supplements: Hammer Nutritional Race Caps Supreme, Standard Process Pneumotropin PMG, and Premier Research Labs Premier Colostrum. (*Respondent's Exhibit 31*) All tested negative for the presence of steroids.

5.8 On or about February 17, 2013, Respondent received test results from Aegis analyzing the contents of three containers he had submitted to Aegis on January 17, 2013, labeled as containing four nutritional supplements: Ortho Molecular Products Ribooctane (lot #68110A, exp. 5/12), Ortho Molecular Products L-Carnitine Tartrate (lot #68912C, exp. 6/12), Ortho Molecular Products Acetyl L-Carnitine (lot 68292A, exp. 5/12), and Ortho Molecular Products CoQ-10 (lot #69711E, exp. 02/12). (*Respondent's Exhibit 32*) All tested negative for the presence of steroids.

5.9 On or about April 7, 2013, Respondent received test results from Aegis analyzing the contents of capsules in two containers he had submitted to Aegis on March 7, 2013, labeled as containing Hammer Nutrition Race Caps Supreme (lot #0824884, exp. 09/2011) and Hammer Nutrition Tissue Rejuvenator (lot #0832985, exp. 12/2011). (*Respondent's Exhibit 33*) The capsules in both tested negative for presence of steroids. Test results were also received on or about the same time for "loose white powder" in the container labeled Hammer Nutrition Race Caps Supreme (lot #0824884, exp. 09/2011). These results were positive for the presence of Prohibited Substances, as described in Paragraph 5.13 below.

5.10 On April 23, 2013, Claimant wrote a letter to Respondent asking if he would accept the sanction determined by Claimant or choose to contest the sanction. In due course, Respondent responded that he would elect to proceed to this hearing under the Protocol.

5.11 On June 3, 2013, Claimant notified AAA of Respondent's request for a hearing.

5.12 On June 24, 2013, Respondent wrote an e-mail to Claimant transmitting copies of Respondent's records of direct purchases from Hammer Nutrition and stating that, "The Endurolytes which tested as contaminated with 19-nor [*sic*] were in the November 2008 order. Mr. Meeker has stated that he only used the Endurolytes during road races, which explains why they lasted so long." (*Respondent's Exhibit 34*)

5.13 On or about July 1, 2013, Respondent received an amended report from Aegis amending a report issued by Aegis on April 24, 2013. Respondent provided this report to Claimant on July 2, 2013. Respondent had earlier informed Claimant of the gist of this report based on an earlier version of the findings. In this amended report Aegis states that it analyzed 4.32 grams of "loose white powder" that was found (along with intact capsules of yellow powder) in the container identified in paragraph 5.9 above as containing Hammer Nutrition Race Caps Supreme, and that it found the white powder to be positive for the presence of 19-norandrostenediol (33 ppm) and DHEA (10,400 ppm). (*Claimant's Exhibit 20 and Respondent's Exhibit 33*)

5.14 By letter of July 18, 2013 to the parties, AAA confirmed the appointment of this Panel as the arbitrators in this matter.

5.15 By e-mail from Respondent's counsel to Claimant's counsel on July 24, 2013, Respondent stated to Claimant as follows:

As discussed, Richard Meeker had combined Hammer Nutrition's race caps and e-caps (Endurolytes) in a "race caps" bottle, for easy storage. The e-caps contained a white

powder, whereas the race caps contained a yellow powder. The e-caps in the bottle that was tested by Aegis (described by Aegis as “white powder”) had been used by Meeker on the day of his positive test. The “white powder” was in capsules that were in the bottle that must have broken open in transit. The e-caps were purchased in November 2008, and he only used them during road races.

Mr. Meeker has advised that on the date of the test, he took 4 capsules of the e-caps 90 minutes before the race, and then took another 4 capsules that he had in a jersey pocket in the middle of the race. (*Claimant’s Exhibit 21*)

5.16 After receiving the latest Aegis analyses of the “white powder” containing both 19-norandrosterone and DHEA, Claimant submitted Respondent’s “A” urine sample #1553250 to the WADA-accredited laboratory in Los Angeles, California for analysis as to the presence of DHEA in the urine. The test result was received on August 8, 2013, and was negative for the presence of DHEA. (*Claimant’s Exhibit 22*)

5.17 The Panel conducted a preliminary hearing in this case attended by both parties by teleconference on August 26, 2013, resulting in the issuance of Scheduling Order #1. With the agreement of both parties, it was ordered that the hearing in this matter would commence before the Panel at 725 South Figueroa St., Suite 400, Los Angeles, CA 90017 on October 22, 2013 at 9:30 a.m. It was ordered that Claimant would file its pre-hearing brief (“Claimant’s Pre-Hearing Brief”), exhibits, supporting authorities, and witness list on or before September 20, 2013, Respondent would file its pre-hearing brief (“Respondent’s Pre-Hearing Brief”), exhibits, supporting authorities, and witness list on or before September 30, 2013, and Claimant would file its reply brief (“Claimant’s Reply Brief”), exhibits, supporting authorities, and rebuttal witness list on or before October 8, 2013. The Order provided that either party could raise any other matter not yet provided for if raised in writing by October 1, 2013. Neither party raised any additional matters.

5.18 The hearing occurred on October 22, from 9:30 am to 7:00 pm. All witnesses and the arbitrators were duly sworn. All exhibits offered by both parties with their briefs or at the hearing were taken into evidence without objection. Both parties declined to request a stenographic record be kept. At the end of the testimony and arguments on October 22, the proceeding was kept open so that the parties could provide certain additional documents pertaining to UCI membership documentation, which were provided on October 29, 2013 as Claimant's Exhibit 54 and Respondent's Exhibit 28, respectively. The Panel issued its order on October 31, 2013 accepting the two final exhibits into evidence and, absent any objection, closing the hearing as of November 4, 2013. No such objection was received and the hearing was closed as of that date.

5.19 At the hearing, both parties called the Respondent to testify; and the Respondent called the following two witnesses: Melinda K. Shelby, Senior Scientist for Sports Testing Services at Aegis (testifying by teleconference); and Paul Scott, President and Chief Science Officer of Scott Analytics, Inc., 201 S. Daisy Avenue, Pasadena, CA 91107.

5.20 The hearing proceeded in two phases: first, Claimant took direct testimony from Respondent, Mr. Meeker, in support of its contention that "aggravating circumstances" under WADA Rule 10.6 should be found to apply. Respondent's counsel followed with cross-examination. Neither party called any other witnesses on this issue. At the close of this testimony Respondent moved for dismissal of this claim. The motion was taken under advisement. Second, Respondent, Mr. Meeker, testified on his own behalf and called Melinda K. Shelby and Paul Scott to testify on his behalf relative to his claim that "exceptional circumstances" under WADA Rule 10.5.1 or 10.5.2 should apply. The witnesses were subjected to cross-examination by Claimant, who called no witnesses on this issue.

## 6. CONTENTIONS OF THE PARTIES AND THE EVIDENCE

6.1 As stipulated by the parties, “the sole issue to be determined at the hearing will be the length of the period of ineligibility to be imposed on Mr. Meeker.” (*Stipulation*)

### **First Phase: Claimant’s Contentions Concerning Aggravating Circumstances**

6.2 In its Pre-Hearing Brief Claimant wrote:

Respondent has yet to provide USADA with an explanation that is supported by persuasive evidence that would warrant a reduction in the standard period of ineligibility. Rather, far from suggesting a basis for reducing the standard period of ineligibility, USADA has received an explanation from the Respondent that has raised a concern that materials may have been deliberately tendered to mislead USADA in an attempt to obtain a reduction in Respondent’s period of ineligibility. In the event it is established that Respondent, either directly or through his representatives, tendered fabricated evidence to USADA in order to obtain a reduced sanction then it would be appropriate to increase Respondent’s period of ineligibility up to a total of four years pursuant to the “aggravating circumstances” provision. (*Claimant’s Pre-Hearing Brief, p. 6*)

Respondent affirmed to USADA through his representative that he had been taking the supplement at the time of his positive test and had in fact used the supplement on the day of his positive test. According to the Aegis laboratory report, however, the supplement which Respondent claims to have taken also contains DHEA, a prohibited substance. Therefore, if Respondent was taking the supplement as he claims his sample should have contained DHEA as well. (*Claimant’s Pre-Hearing Brief, p. 7*)

6.3 In its Reply Brief Claimant again pursued the matter of WADA Code Section 10.6, writing:

Where it turns out that an athlete’s explanation concerning how a prohibited substance entered his or her body is impossible, then that athlete should not be permitted to avoid the application of aggravating circumstances. (*Claimant’s Reply Brief, p. 4*)

6.4 At the Hearing, following opening arguments by both parties, the Panel inquired of Claimant as to whether it alleged that “aggravating circumstances” under WADA Code Section 10.6 applied. Claimant stated that it did contend that the substance which caused

Respondent's positive urine test was not the substance offered by Respondent in this proceeding as the source of his positive test and it would seek an extended sanction under "aggravating circumstances." Claimant stated that it would make no allegations of misconduct of any kind, whether legal or ethical, against counsel for Respondent. The Panel ruled without objection by either party that the issue of "aggravating circumstances" raised by Claimant and to be proven by Claimant would be considered separately and first; and that the issue of "exceptional circumstances" raised by Respondent and to be proven by Respondent would be heard thereafter.

6.5 Claimant called Respondent, Mr. Meeker, as its only witness on its allegation of "aggravating circumstances." Respondent testified concerning his long history in amateur cycling, and the events of September 6, 2012. He stated that he had used nutritional supplements for many years, and that the list of 14 types of supplements, including Hammer Nutrition Endurolytes, on page 10 of his Pre-Hearing Brief was an accurate list of the supplements he ingested before or during the race on September 6, 2012. He also testified that the 37 caplets of seven types of nutritional supplements that he declared he had taken before the race on his USADA Declaration of Use Form signed at the time of his urine sampling immediately after the race (*Claimant's Exhibit 10*) was accurate. He identified the four "calcium magnesium" pills on that form as representing Hammer Nutrition Endurolytes. He stated that he took Endurolytes--a treatment to prevent leg cramps--only in capsule form and that he took four about 90 minutes before the race and four more one hour after the beginning of the race. He could not state with certainty whether the Endurolytes he took on that day were purchased in 2008. He indicated he had purchased Endurolytes before, during, and after 2008 in bike shops and directly from Hammer Nutrition and had been given free samples at races. He stated that the two containers marked Hammer Nutrition Tissue Rejuvenator (lot #0832985, exp. 12/2011) and Hammer

Nutrition Race Caps Supreme (lot #0824884, exp. 09/2011) (found to contain Prohibited Substances, as described in Paragraph 5.13 above) were submitted for testing by Aegis on March 7, 2013, as described in Paragraph 5.9 above, following three prior submissions of other supplement containers because these containers were in his race bag which he kept in his garage. He testified that the prior submissions came from containers he had kept in his kitchen—the only place he searched when his attorney requested all his supplements for testing. He surmised that the loose white powder in the container marked Hammer Nutrition Race Caps Supreme (lot #0824884, exp. 09/2011) came from pouring the capsules from partly used containers into this container to conserve space, and that such capsules occasionally would break open. He testified that he had obtained annual licenses from USA Cycling for over 30 years. When shown the following language on the reverse side of a copy of the 2012 document from which a USA Cycling domestic member detaches the wallet-sized license, he stated that he had never seen this language:

**WARNING:** Using any form of dietary supplement may result in a positive test for prohibited substances leading to a suspension and/or other penalties. Vitamins, minerals, herbs, amino acids and other dietary supplements may contain prohibited or illegal substances that may or may not be listed on the label. Any athlete who takes a vitamin, mineral, herb, amino acid, or other dietary supplement does so at his or her own risk of committing a doping violation. (*Claimant's Exhibit 27 [Claimant later provided Exhibit 28, a similar form with identical language for international licensees such as Respondent]*)

Whereupon Claimant rested his case for a finding of “aggravating circumstances” under WADA Code 10.6 and Respondent moved to dismiss this claim. The Panel took the motion under advisement, and rules on it below.

### **Second Phase: Respondent’s Contentions Concerning Exceptional Circumstances**



6.6 Respondent contends that he ingested the prohibited substances inadvertently with no fault or negligence, or at least no significant fault or negligence, as an unknown contamination in Hammer Nutrition Endurolytes taken before and during the September 6, 2012 race, and therefore the standard sanction of two years ineligibility should be eliminated or reduced. (*Respondent's Pre-Hearing Brief*, pp. 15-30) He relies on the cases of USADA v. Jessica Hardy (AAA 77 190 00288 08) and Hans Knauss v. International Ski Federation (CAS 2005/A/847), among other cases, as precedents for reducing the standard sanction. He points to the test results of the "loose white powder" showing presence of 19-norandrostenediol (33 ppm) (Paragraph 5.13 above) as evidence that he unknowingly consumed contaminated Endurolytes. Respondent emphasizes the alleged absence of any anti-doping education provided to Respondent by USA Cycling or UCI. (*Respondent's Pre-Hearing Brief*, pp. 24-28)

6.7 The first witness for Respondent was Melinda K. Shelby, Senior Scientist for Sports Testing Services at Aegis. Claimant stipulated to her testifying as an expert. (*See also, Dr. Shelby's biography in Respondent's Exhibit 20*) On direct and cross-examination Dr. Shelby testified to the following:

6.7.1 The Aegis test results provided as Claimant's Exhibit 20 and Respondent's Exhibits 30, 31, 32, 33, and 53 are authentic reports from Aegis.

6.7.2 The container labeled Hammer Endurolytes tested by Aegis in the first batch of tested material in reported by Aegis on November 16, 2012, contained 37 large white capsules, 29 cream colored capsules with tan granules, and five small white capsules (that tested positive for other steroids), plus one capsule of unknown type that had broken open in the container. (*See Respondent's Exhibits 30 and 53*)

6.7.3 The “loose white powder” which was the subject of testing in Claimant’s Exhibit 20 and Respondent’s Exhibit 33 and for which testing showed the presence of 19-norandrostenediol (33 ppm) and DHEA (10,400 ppm) was found at the bottom of the container marked Race Caps Supreme among a large number of intact yellow capsules. (See illustrations at seventh through ninth pages of Claimant’s Exhibit 20) As stated on the sixth page of Claimant’s Exhibit 20, there were 4.320 grams of loose white powder, and that powder lacked any lot number, expiration date, or other identification. There were no broken capsule shells or empty capsules in the container.

6.7.4 Capsules generally contain no more than one gram of material, depending on the density of the material within the capsule.

6.7.5 The identification of the color of the powder as “white” would mean “white” in the normal understanding; and that other shades, such as “cream,” “yellow,” or “tan” would be so identified by Aegis as such when color identification is used.

6.7.6 In her almost six years of employment at Aegis reviewing and interpreting test results, it is a rare occurrence for Aegis to receive multiple pills and loose powder in the same container. “I don’t recall any other case that was similar to this.”

6.8 Respondent then called Paul Scott, President of Scott Analytics. Claimant did not stipulate to his being an expert. After testimony on his biography and his responsibilities at Scott Analytics and in consideration of his experience set forth on Respondent’s Exhibit 38, the Panel determined to admit his testimony and give it the weight appropriate to his experience. He testified as follows on direct and cross-examination:

6.8.1 Based on the testimony by Respondent that (a) he took four Endurolyte capsules 90 minutes before the race on September 6, 2012 and four more one hour into the race, and (b) his urine was taken about 2-1/4 hours after the race began (*See Claimant's Exhibit 10 and Respondent's Exhibit 36*); and based on the witness' research and the information on the Endurolyte label shown in Respondent's Exhibit 9, that Endurolyte capsules typically contain about 250 mg of material per capsule; the result of the urine test conducted by the UCLA Olympic Analytic Laboratory on behalf of WADA (*as shown on pages 39-41 of Claimant's Exhibit 11*) that Respondent had about 30 ng/mL of 19-norandrosterone in his urine is consistent with Respondent's contention that the "loose white powder" that tested positive for 19-norandrosterone (33ppm) was the substance within the Endurolyte capsules Respondent ingested.

6.8.2 The absence of the prohibited exogenous DHEA from the urine test results does not necessarily mean that the "loose white powder" that did contain DHEA was not the substance ingested by Respondent. Relying on Respondent's Exhibit 44, an article by Makato Ueki and Masato Okano, *Analysis of Exogenous Dehydroepiandrosterone Excretion in Urine by Gas Chromatography/Combustion/Isotope Ration Mass Spectrometry*, 13 Rapid Communications in Mass Spectrometry 2237-2243 (1999), Mr. Scott concluded that it is possible that the concentration of DHEA in the "loose white powder" is such that one gram (four 250 mg tablets) taken about 3-3/4 hours before the test and another gram taken about 1-1/4 hours before the test would not yet show up in urine. He stated that the aforesaid article shows that detected DHEA output in the urine peaked at 4 to 8 hours after ingestion, and some of the samples in the literature peaked in as little as 3 hours, but those samples were all involving consumption of five times the

amount of DHEA in the "loose white powder." He also testified that individual metabolism rates are variable, so that he would not be surprised by an excretion rate that peaked at two hours.

6.8.3 Mr. Scott declined to estimate the probability that someone who ingests DHEA would get a result of zero exogenous DHEA four hours after consumption. He said he could not say whether it was probable or improbable.

6.8.4 He also stated that he was not testifying that Endurolyte or the "loose white powder" caused the urine test results, saying that he did not know from where the prohibited substances in the urine derived.

6.9 Respondent's counsel then called Respondent Mr. Meeker to testify on the issue of "exceptional circumstances." On direct and cross examination he testified as follows:

6.9.1 Respondent has no scientific background and never received any training or information from USA Cycling or UCI about drug testing. As to the "WARNING" about supplements on the written material from USA Cycling accompanying his detachable annual license, he testified that it was in fine print and he never read it. "I just didn't think about the risk." He has read articles in the news on steroid use.

6.9.2 He has always used supplements because he "grew up with it." "I have always used a lot." In his estimation 95% of racers in cycling use supplements and 80% use Hammer Nutrition products. Hammer Nutrition targets its marketing at amateur, age-group cyclists, including sponsorship of teams. He "would be amazed" if Hammer Nutrition had a connection to matters pertaining to Prohibited Substances.

6.9.3 Respondent testified that he always consumed his supplements as capsules, rather than as loose powder. He would not ingest powder except inadvertently as a dusting on the outside of a capsule that had come into contact with powder. He stated that, contrary to prior representations, he may have taken as many as five Endurolyte capsule before the September 6, 2012 race. "I just put them in my palm and throw them into my mouth. I don't know for sure the amount." He stated that the pills taken before the race were from a large container, those taken during the race were from the "transfer container" labeled Race Caps Supreme. He would pour pills from one bottle to another to consolidate them in one container for use during the race. He believes that the contaminated "loose white powder" at the bottom of the Race Caps Supreme container must have been loose material from broken Endurolyte capsules that had spilled into the Race Caps Supreme container with the addition of Endurolytes from the Endurolytes bottle.

6.9.4 Respondent stated that capsules of supplements would occasionally open and spill their contents into the container, and that occasionally he would have to pick out an empty half capsule when taking a supplement. He did not recall picking any such pieces out on September 6, 2012.

6.9.5 Respondent testified that the three different types of capsules in the plastic bottle labeled "Hammer Endurolytes" tested by Aegis in accordance with the November 16, 2012 reports in Respondent's Exhibits 30 and 53 were all Endurolytes. *[Note that the Aegis' reports stated that this bottle contained 29 capsules of "cream colored powder and tan granules" that tested negative for steroids; 37 "large white capsules" that tested*

*negative for steroids; and "5 small white capsules" that tested positive for androstenedione and testosterone, but negative for 19-norandrosterone.]*

6.9.6 Respondent produced an unopened packet of Endurolytes that he had received as a free sample. It showed an expired "use by" date. He opened the package and opened one capsule, spilling out its contents on a white paper. The Panel observed the powder to be cream colored. Questioned by the Panel as to expired supplements in general, Respondent stated that he often consumed expired product.

## 7. ANALYSIS

### **Aggravating Circumstances**

7.1 To obtain the imposition of more than the standard sanction on Respondent Claimant must prove to the comfortable satisfaction of this Panel that "aggravating circumstances" apply. (WADA Code 10.6) As quoted in Paragraph 6.2 above, in the allegations in Claimant's Pre-Hearing Brief Claimant suggests that, "materials may have been deliberately tendered to mislead USADA in an attempt to obtain a reduction in Respondent's period of ineligibility. In the event it is established that Respondent, either directly or through his representatives, tendered fabricated evidence to USADA in order to obtain a reduced sanction then it would be appropriate to increase Respondent's period of ineligibility up to a total of four years pursuant to the 'aggravating circumstances' provision." "The supplement which Respondent claims to have taken also contains DHEA, a prohibited substance. Therefore, if Respondent was taking the supplement as he claims his sample should have contained DHEA as well." (*Claimant's Pre-Hearing Brief, p. 6*).

7.2 Claimant is relying on the Comment to WADA Code 10.6 that applies this penalty to “deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation” and to several cases in which false testimony resulted in the invocation of a longer term. (*E.g.*, IRB v. Roman Kulakivskiy; UKAD v. Bernice Wilson [National Anti-Doping Panel]; *and* UKAD v. Craig Windsor [National Anti-Doping Panel, SR/0000120093]). Claimant argued in its Reply Brief that, “Where it turns out that an athlete’s explanation concerning how a prohibited substance entered his or her body is impossible, then that athlete should not be permitted to avoid the application of aggravating circumstances.” (*Claimant’s Reply Brief, p. 4*)

7.3 While Claimant continued to assert in closing argument that it was seeking an “aggravating circumstances” penalty, it had failed to elicit any testimony of any kind or offer any other proof on the matter of DHEA detection in its briefs, in its exhibits, or in its examination of the only witness it called on this phase of the case. Further, apart from the DHEA issue, Claimant introduced no evidence and elicited no testimony that put into question the veracity of Respondent or of the evidence he introduced in this proceeding. Claimant did not present evidence to show that Respondent’s explanation was impossible.

7.4 In short, Claimant has not met its burden of proof on “aggravating circumstances” under WADA Code 10.6 and the Panel grants Respondent’s motion to dismiss this claim.<sup>1</sup>

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<sup>1</sup> Therefore, this Panel does not need to reach the question raised by the parties in their pre-hearing briefs concerning the applicability of the provision of WADA Code 10.6 concerning avoidance of its application by admitting the anti-doping rule violation.

## Exceptional Circumstances

7.5 Under the WADA Code, in order to establish the requisites for an elimination or reduction of the standard sanction of two years ineligibility under WADA Code 10.2, the athlete must demonstrate by a balance of probability (*WADA Code 3.1*) how the Prohibited Substance entered his or her system and that he or she has “no fault or negligence” or “no significant fault or negligence.” The bar is set high. The WADA Code is clear that it is the Athlete’s duty to ensure he or she is free of Prohibited Substances regardless of intent, fault, negligence, or knowing use. (*WADA Code 2.1*) The official Comment to Articles 10.5.1 and 10.5.2 states, among other things, that sanction reductions under these sections are for “unique circumstances” and are to occur only “where the circumstances are truly exceptional and not in the vast majority of cases.”

7.6 Respondent sought to fulfill his obligation to establish how the Prohibited Substance entered his system by asking this Panel to accept that the “loose white powder” that tested positively for 19-norandrosterone (33ppm) (and for DHEA) was residue from the Endurolyte pills that he said he took before and during the September 6, 2012 race. The panel in USADA v. Jessica Hardy (AAA No. 77 190 00288 08) stated that, “Respondent has to prove by a balance of probability exactly what she has done: how the Prohibited Substance entered her system and that the Prohibited Substance was also found in the nutritional supplement she was taking.” (*Id.* at Para. 7.13)

7.7 Respondent argues at pages 23-24 of his Pre-Hearing Brief that Respondent’s explanation of the cause for the positive test “must be accepted as explaining the cause of the positive test” if Claimant fails to offer any alternative explanation. Respondent cites UCI and



WADA v. Contador (CAS 2011/A/2384 and 2386) (*Respondent's Exhibit 45*) for this proposition. However, that case is inapposite since, unlike the instant case, WADA and UCI in that case did put into evidence opposing theories against which to balance the athlete's explanation. In relying on that case Respondent omits a crucial word from its quotation of the opinion. That word is inserted in bold italics in the following correct quotation:

The likelihood of alleged alternative scenarios having occurred is, however, to be taken into account when determining whether the Athlete has established, on a balance of probabilities, that the source he is alleging of entry into his system of the Prohibited Substance is *the* more likely. (*Id.* at Para. 263)

Thus, that opinion deals with a weighing of alternative explanations offered by the contesting parties as to their relative likelihoods. Here where only the Respondent has advanced a theory—that the positive test was caused by ingesting some of the “loose white powder” which was contained in Endurolytes—Respondent alone bears the burden of showing an explanation that is more likely than not for how the Prohibited Substances entered his system. If he fails to do so he has not met the requirement for relief under WADA Code 10.5.1 and 10.5.2. Claimant is not required to put forward its own speculative theory, and its failure to do so does not compel the acceptance of Respondent's theory.

7.8 The Panel finds that Respondent has failed to carry his burden to show by a balance of probabilities how the Prohibited Substance entered his system for at least the following additional reasons:

7.8.1 Respondent in his Pre-Hearing Brief at page 17 stated that “Mr. Meeker used 4 capsules of the contaminated Endurolytes 90 minutes before the September 6 race . . .” In the Declaration of Use Form signed by Respondent at the time of his urine sampling (*Claimant's Exhibit 10*) he declared that he took four calcium magnesium

capsules before the race. In his testimony at the Hearing Respondent testified that in declaring calcium magnesium capsules he was referring to the Endurolytes. He further testified at various times at the Hearing that this Declaration of Use Form that says he took four calcium magnesium pills was accurate; that he took four Endurolyte capsules before the race; that he might have taken five Endurolyte capsules before the race; and that he did not know how many he took before the race.

7.8.2 Respondent, in his e-mail of June 24, 2013 to Claimant (*Respondent's Exhibit 34*), stated that, "The Endurolytes which tested as contaminated with 19-nor [*sic*] were in the November 2008 order. Mr. Meeker has stated that he only used the Endurolytes during road races, which explains why they lasted so long." Respondent, in his e-mail of July 24, 2013 to Claimant (*Claimant's Exhibit 21*), reiterated that, "The e-caps were purchased in November 2008, and he only used them during road races." However, in his testimony at the Hearing Respondent testified that he could not determine from whom or when he acquired the Endurolytes he took on September 6, 2012.

7.8.3 Respondent, in his e-mail of July 24, 2013 to Claimant (*Claimant's Exhibit 21*), represented that, "The e-caps in the bottle that was tested by Aegis (described by Aegis as 'white powder') had been used by Meeker on the day of his positive test. The 'white powder' was in capsules that were in the bottle that must have broken open in transit." However, Dr. Shelby testified, and the photographs at the seventh through ninth pages of Claimant's Exhibit 20 appear to confirm, that there were no empty broken capsule shells in the bottle even though they would have necessarily been present if one or more capsules had broken open to yield the powder. Respondent's

explanation at the Hearing for the presence of the powder is also problematic. He stated while he only consumed intact capsules the “loose white powder” at the bottom of the bottle was accumulated by his pouring capsules plus debris from other containers to this Race Caps Supreme bottle in order to consolidate his pills for use during the race. The problem is that there was 4.32 grams of such powder in the bottle and not a single empty capsule shell. Respondent testified that he would “pick out” an empty capsule shell occasionally as he might encounter one in pouring out a pill. He had no specific recollection of picking any such shells out of this bottle. Mr. Scott’s testimony and Respondent’s Pre-Hearing Brief at page 20 say, “A single tablet of Endurolytes is 250 mg.” Therefore, 4.32 grams of powder would mean that at least 36 empty Endurolyte capsule shells had accompanied the powder in the original container and/or this container at one time. Picking this powder clean of no less than 36 little shells is an activity that would seem to this Panel to have taken some memorable effort.

7.8.4 Dr. Shelby found this combination of pills and a large amount of powder in a single container to be extraordinary. “I don’t recall any other case that was similar to this.” (Paragraph 6.7.6 above)

7.8.5 Mr. Scott’s testimony that the concentration of 19-norandrosterone in Respondent’s urine is consistent with the concentration of 19-norandrosterone in the “loose white powder” does show that the “loose white powder” could have been what Respondent consumed on that day, but it does not prove that the powder was the source. Mr. Scott did testify that the absence of DHEA in the urine test result while present in the “loose white powder” test result did not rule out the possibility that the “loose white powder” was the source. He said it was possible that the DHEA would not show up in the

urine after about four hours, but declined to put a probability on it. None of his testimony establishes whether the “loose white powder” entered Respondent’s system from a contaminated Endurolyte as Respondent contends. Mr. Scott’s declining to offer a likelihood of the absence of DHEA in Respondent’s urine fails to support Respondent’s obligation to dispel doubts as to the “loose white powder” by the balance of probabilities.

7.8.6 Respondent offered only two types of evidence to support an inference that the “loose white powder” was Endurolyte. Respondent’s Pre-Hearing Brief at page 23 states, “Endurolytes have been tested previously by other athletes and found to have similar contaminants.” Respondent’s Exhibit 37 is a laboratory report from 2007 in which Hammer Nutrition Endurolytes were found to contain 19-norandrostenedione, androstenedione, and DHEA. This might imply that a similar contamination is probative of the powder being from a similar source and of a similar nature. However, androstenedione was not found in the “loose white powder” and other Endurolytes tested by Aegis in this case showed no similar contaminations. The other point made by Respondent is that Endurolytes were frequently referred to in documents and testimony as “white,” as was the powder. But numerous chemical compounds come in the form of white powders. Further, the evidence from Aegis shows Endurolytes come in a variety of colors including cream with tan granules. (*Respondent’s Exhibits 30 and 53*) The Panel’s own inspection of a sample offered by Respondent revealed cream colored Endurolyte. No laboratory analysis was offered by Respondent (or Claimant) to show that the powder was Endurolyte.

7.8.7 No intact capsules of Endurolyte contaminated with 19-norandrosterone above the threshold of 2 ng/mL and 19-noretiocholanolone were provided for testing or

put into evidence by Respondent. Only the “loose white powder” exists as a remnant of the pills Respondent states he took at the race on September 6, 2012. The intact Endurolytes Respondent offered for testing by Aegis were either contaminant-free or contaminated with other Prohibited Substances, and are not the source from which Respondent claims the Prohibited Substance entered his system at the race. It also seems unusual to the Panel that the pills consumed at the race were, by happenstance, the very last intact capsules of the lot of Endurolyte presumably contaminated in the manner of the “loose white powder.” Of course, that is not impossible, but it does interfere with Respondent’s ability to establish credibly by a balance of the probabilities that such capsules were the source of the Prohibited Substance in his system.

In sum, the Respondent’s evidence on this essential issue was not consistent, reliable, or complete on whether he consumed the “loose white powder,” whether the “loose white powder” was contained in the Endurolytes he took, how many Endurolytes he took, where or when he obtained the Endurolytes he took on the day of the race. We do not find that he testified falsely; but just that he has failed to meet the standard of proof of showing how the contamination entered his system by the balance of probabilities, and therefore relief under WADA Code 10.5.1 and 10.5.2 is not applicable.

7.9 The failure to demonstrate how the Prohibited Substance entered his system is dispositive of the case and we do not reach the question of whether Respondent bears “no fault or negligence” or bears “no significant fault or negligence” under WADA Code 10.5.1 and 10.5.2. Not only is it logically and legally unnecessary to do so, but without knowing how the Prohibited Substance entered his system we cannot assess the level of fault or negligence in whatever behavior may have caused it to enter his system.

8. **SANCTION**

In the absence of a finding in favor of Claimant under WADA Code 10.6 or in favor of Respondent under WADA Code 10.5.1 or 10.5.2 the standard sanction of two years ineligibility under WADA Code 10.2 applies to Respondent. Under WADA Code Section 10.9.2, “Where the *Athlete . . . promptly . . . admits the anti-doping rule violation after being confronted by . . . the Anti-Doping Organization, the period of Ineligibility may start as early as the date of Sample collection . . .*” In view of Respondent’s Provisional Suspension of November 5, 2012 and his Stipulation of November 6, 2012 in which he stated he, “agrees that the Positive Test constitutes a first doping offense,” the Panel concludes that Respondent’s sanction of ineligibility shall be deemed to have commenced on the date of collection of his urine sample, September 6, 2012.

9. **DECISION AND AWARD**

On the basis of the foregoing facts and analysis, this Panel renders the following decision:

9.1 Respondent has committed a doping violation under WADA Code 2.1.

9.2 Respondent’s motion to dismiss Claimant’s claim under WADA Code 10.6 is granted.

9.3 Respondent’s motions for shortening of the standard sanction under WADA Code 10.5.1 and 10.5.2 are denied.

9.4 Respondent shall be sanctioned by imposition of a period of ineligibility for two (2) years, which period is deemed to have commenced on September 6, 2012 and shall expire on September 5, 2014. During the period of ineligibility Respondent may not compete in any competitions under the jurisdiction of the UCI, USA Cycling, the USOC, any other signatory of the WADA Code, any body which has accepted the WADA Code

or any body whose rules are consistent with the WADA Code, or any of the clubs, member associations, or affiliates of these entities.

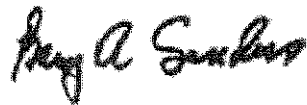
9.5 The parties shall bear their own attorney's fees and costs associated with this arbitration.

9.6 In accordance with USOC rules, the administrative fees and expenses of the American Arbitration Association, and the compensation and expense of the arbitrators shall be borne entirely by USADA.

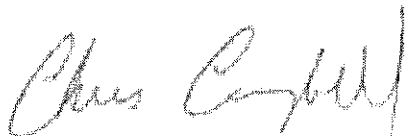
9.7 This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

9.8 This award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

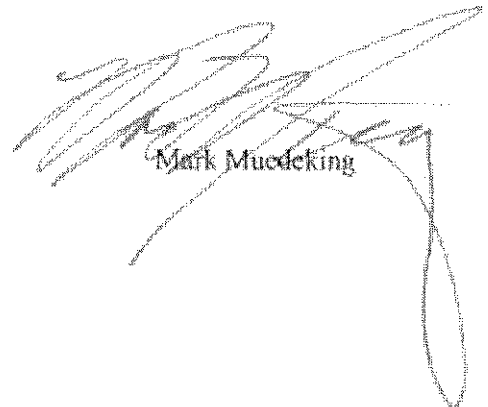
Dated: November 18, 2013



Barry A. Sanders, Chair



Christopher L. Campbell



Mark Muedeking