BEFORE THE AMERICAN ARBITRATION ASSOCIATION

United States Anti-Doping Agency, Claimant, v. Mark Block, Respondent.	)	AAA No. 77 190 00154 10 FINAL REASONED DECISION AND AWARD

AWARD OF ARBITRATORS

WE, THE UNDERSIGNED ARBITRATORS ("Panel"), having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs, arguments and allegations of the parties, and after a hearing held on December 1, and 2, 2010, in New York City, do hereby render the Panel's full award pursuant to its undertaking to do so and with the consent of the parties by March 17, 2011. [*fl*]

1. SUMMARY

1.1 This case involves Respondent's first alleged anti-doping violation. Claimant has alleged Respondent assisted or incited others to use a prohibited substance or prohibited technique, thereby committing a doping offense in violation of the World Anti-Doping Agency Code ("WADA Code") or International Amateur Athletic Federation ("IAAF") rules and regulations. Claimant has also alleged Respondent traded, trafficked, distributed or sold prohibited substances in violation of the applicable WADA and IAAF rules and regulations. Claimant has also alleged that Respondent engaged in

covering up his rule violations during these proceedings thereby violating additional rules. Claimant seeks a lifetime ban of Respondent as an Athlete Representative, or any other sport affiliation.

1.2 The WADA Code provides that it is within this Panel's jurisdiction to determine the "appropriate Consequences" of the allegations of violations made against Mr. Block if established. A provision of the WADA Code, Article 10.3.2, dictates that the penalty Mr. Block can suffer for the offenses with which he has been charged is from a minimum of four years up to lifetime ineligibility from the sport of track and field.

1.3 For reasons given more fully below, the Panel has determined that Claimant has met its burden of proof and established that Mr. Block was subject to and has violated Article 7.2 of IAAF Rule 19 and has violated IAAF Anti-Doping Rules 32.2(h), 56.3, and 56.4.

1.4 For reasons given more fully below, the Panel has determined that as a result of his violations, Respondent should be declared ineligible to participate in track and field-related activities for a period of 10 years. Regarding the starting date of his period of ineligibility, the WADA Code provides that this Panel has the discretion to start Respondent's period of ineligibility earlier under certain conditions. For reasons given more fully below, the Panel has determined to start Respondent's period of ineligibility from January 1, 2009.

2. PARTIES

2.1 Claimant, United States Anti-Doping Agency ("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 United States Anti-Doping Agency Protocol for Olympic Movement Testing, effective as revised August 13, 2004 ("USADA Protocol").

2.2 Claimant was represented by William Bock, III, Esq., General Counsel, and Stephen Starks, Esq., Legal Affairs Director, of USADA, 1330 Quail Lake Loop, Suite 260, Colorado Springs, CO 80906.

2.3 The Respondent, Mark Block, is an experienced and accomplished track and field coach, manager, event manager, athlete representative, and agent. Mr. Block has a B.A. in sport management from Old Dominion University and a M.Ed. from East Tennessee State University, and he has coached, managed, or run events in track and field at Clemson (7 times ACC champion and twice finished second in NCAA Championships during his tenure), University of California-Berkeley, and East Tennessee State. Respondent was registered with the IAAF as an athlete representative from 1997 through 2009. Mr. Block has served as President of Total Sports Management, representing well-known track and field athletes, since 2003, after previously serving as an athlete agent at Flynn Management from 1993. *See generally* http://www.totalsportsus.com/staff.html.

2.4 Respondent was represented by Brian Maas, Esq. and Cameron Myler, Esq., both of the firm Frankfurt Kurnit Klein & Selz, 488 Madison Ave., New York, NY 10022.

2.5 The record in this matter was voluminous, comprising at least 5 linear feet of documents, exhibits, and party submissions, and covering multiple CD-ROMs of evidence storage. The parties were also given the opportunity to provide pre- and post-hearing briefing covering their key arguments and exhibits, of which both parties availed themselves. Suffice it to say, the Panel is of the view that the record is very complete and the parties had ample opportunity to augment the record in various ways at various times. The Panel appreciates and commends the excellent briefing and oral presentations of counsel for both parties in this matter through the course of the proceedings and at the Hearing.

3. JURISDICTION

3.1 This 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, ... 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 . . . any 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 . . .[1]

3.2 Under its authority to recognize an NGB[2], the USOC established its National Anti-Doping Policies, the relevant version of which was effective August 13, 2004 ("USOC Policies"), which, in part, provide:

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[1] 36 U.S.C. §220521.
[2] 36 U.S.C. §220505(c)(4).

> . . . NGBs shall not have any anti-doping rule... inconsistent with these policies or the USADA Protocol, and NGB compliance with these policies and the USADA Protocol shall be a condition of USOC ... recognition.[3]

3.3 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. [4]

3.4 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 the Supplementary Procedures."[5]

3.5 Both USADA and the USOC are Signatories to the WADA Code and must comply with the mandatory provisions of the WADA Code. As such, the USOC in partnership with the USADA established the arbitration system referenced above to be in compliance with Article 8.1 of the WADA Code, and the Act. Under Article 8.1 of the WADA Code, this Panel and the hearing it conducted, represents the hearing process required by the WADA Code.

3.6 Accordingly, the Panel is appropriately seized of jurisdiction over this matter.

4. RULES APPLICABLE TO THIS DISPUTE

4.1 According to USADA rules and by stipulation, the IAAF rules provide the

[3] USOC Policies, ¶13.
[4] Id. at ¶12.
[5] The supplementary procedures refer to the American Arbitration Association Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes, as approved by the USOC's Athletes' Advisory Council and NGB Council. 36 U.S.C. §220522.

substantive law in this case. The applicable rules can be found in Divisions II and III of the IAAF's Official Handbook 2002-2003, except for Rule 32 (which can be found in IAAF Competition Rules 2010-2011):

> RULE 19 [IAAF REGULATIONS CONCERNING FEDERATION/ATHLETES' REPRESENTATIVES ("AR")]:
>
> 7. RESPONSIBILITIES OF AN AR
>
> 7.1 The scope of the responsibilities of an AR shall include a knowledge of, and compliance with these Regulations as well as such responsibilities as may be provided in the contract between the AR and the athlete. Whenever an AR contracts with an athlete, the AR must assume all duties included in the following paragraph.
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> 7.2 The duties of an AR must include:
>
> (i) to comply with all applicable IAAF Rules and the Rules of the Member Federation;
>
> * * *
>
> (xiii) to discourage any represented athlete from using any substance or technique prohibited by IAAF Rules and to include in the representation agreement a provision compelling the AR to withdraw from such representation and to report such a breach of the rules in the event that any such circumstances become known to the AR;
>
> RULE 56.3:
>
> Any person assisting or inciting others, or admitting having incited or assisted others, to use a prohibited substance, or prohibited techniques, shall have committed a doping offense and shall be subject to sanctions in accordance with Rule 60. If that person is not an athlete, then the Council may, at its discretion, impose an appropriate sanction.
>
> RULE 56.4:
>
> Any person trading, trafficking, distributing or selling any prohibited substance otherwise than in the normal course of a recognized profession or trade shall also have committed a doping offense under these Rules and shall be subject to sanctions in accordance with Rule 60.

RULE 60.1:

For the purpose of these Rules, the following shall be regarded as "doping offenses"...

(i) the presence in an athlete's body tissues or fluids of a prohibited substance;

(ii) the use or taking advantage of forbidden techniques;

(iii) admitting having taken advantage of, or having used, or having attempted to use, a prohibited substance or a prohibited technique.

* * *

(vi) assisting or inciting others to use a prohibited substance or prohibited technique, or admitting having assisted or incited others (Rule 56.3);

(vii) trading, trafficking, distributing or selling any prohibited substance.

RULE 60.2:

If an athlete commits a doping offense, he will be ineligible for the following periods:

* * *

(c) For an offense under Rule 60.1 (vii) involving any of the substances listed in Schedule 1 of the "Procedural Guidelines for Doping Control" – for life.

RULE 32.2(h):

32.2 Doping is defined as the occurrence of one or more of the following anti-doping rule violations:

(h) Administration or Attempted administration to any Athlete In-Competition of any Prohibited Method or Prohibited Substance, or administration or Attempted administration to any Athlete Out-of-Competition of any Prohibited Method or Prohibited Substance that is prohibited Out-of-Competition or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation.

. . .

4.2 Under the principle of *lex mitior*, the Panel took into consideration the provisions of Articles 10.3.2 and 10.9.1 of the WADA Code, effective as of January 1, 2009:

Article 10.3.2

For violations of Articles 2.7 (*Trafficking or Attempted Trafficking*) or 2.8 (Administration or *Attempted* Administration of *Prohibited Substance* or *Prohibited Method*), the period of *Ineligibility* imposed shall be a minimum of four (4) years up to lifetime *Ineligibility* unless the conditions provided in Article 10.5 are met. An anti-doping rule violation involving a *Minor* shall be considered a particularly serious violation and, if committed by *Athlete Support Personnel* for violations other than Specified Substances referenced in Article 4.2.2, shall result in lifetime *Ineligibility* for *Athlete Support Personnel*. In addition, significant violations of Articles 2.7 or 2.8 which may also violate non-sporting laws and regulations, shall be reported to the competent administrative, professional or judicial authorities.

Article 10.9.1 Delays Not Attributable to the *Athlete* or other *Person*

Where there have been substantial delays in the hearing process or other aspects of *Doping Control* not attributable to the *Athlete* or other *Person*, the body imposing the sanction may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection or the date on which another anti-doping rule violation last occurred.

4.3 Appendix 1 to WADA Code (2009 Version) - Definitions

Trafficking: Selling, giving, transporting, sending, delivering or distributing a *Prohibited Substance* or *Prohibited Method* (either physically or by any electronic or other means) by an *Athlete*, *Athlete Support Personnel* or any other *Person* subject to the jurisdiction of an *Anti-Doping Organization* to any third party;...

Possession: The actual, physical *Possession*, or the constructive *Possession* (which shall be found only if the *Person* has exclusive control over the *Prohibited Substance or Prohibited Method* or the premises in which a *Prohibited Substance Prohibited Method* exists); provided, however, that if the *Person* does not have exclusive control over the *Prohibited Substance or Prohibited Method* or the premises in which a *Prohibited Substance or Prohibited Methods* exists, constructive *Possession* shall only be found if the *Person* knew about the presence of the *Prohibited Substance or Prohibited Method* and intended to exercise control over it. Provided however, there shall be no anti-doping rule

violation based solely on *Possession* if, prior to receiving notification of any kind that the *Person* has committed an anti-doping rule violation, the *Person* has taken concrete action demonstrating that the *Person* never intended to have *Possession* and has renounced *Possession* by explicitly declaring it to an *Anti-Doping Organization*...

5. BURDEN OF PROOF

5.1 The burden of proof rests with USADA to show that Block violated the foregoing Rules. At the hearing, following argument, the Panel determined that the applicable standard for the burden of proof should be beyond a reasonable doubt. This position is well-founded in case law, though the distinction between the "beyond a reasonable doubt" standard and the "comfortable satisfaction" standard embodied in the WADA Code is of no practical effect here. *See USADA v Gaines, CAS 2004/0/69*, which held:

> *"...in view of the nature and gravity of the allegation at issue in these proceedings, there is no practical distinction between the standards of proof advocated by USADA and the Respondents. It makes little, if indeed any, difference whether a "beyond reasonable doubt" or "comfortable satisfaction" standard is applied to determine the claims against the Respondents... Either way, USADA bears the burden of proving, by strong evidence commensurate with the serious claims it makes, ..."*

6. PROCEDURAL HISTORY

6.1 This matter commenced with the charging letter from USADA to Mark Block dated February 5, 2010. Thereafter, Mark Block, through counsel by letter of March 22, 2010, vigorously contested the allegations by USADA. That set the stage for the arbitration process, and its various hearings and submissions related to jurisdiction, scheduling and occasionally upon the merits of this matter. This Panel has ruled on

several occasions with respect to the scheduling of the hearing on the USADA claims. The following reflect the procedural history:

6.1.1 April 22, 2010 – Initial scheduling conference and subsequent order. Hearing scheduled for July 7, 2010.

6.1.2 May 26, 2010 – Time for submission of documents in connection with pre-hearing discovery ruled upon. The hearing remained set for July 7, 2010.

6.1.3 July 1, 2010 – Various discovery submission changes. The hearing was rescheduled for the weeks of October 18, 2010 or October 25, 2010.

6.1.4 July 31, 2010 – Panel ruled on various submissions. The hearing remained scheduled for the weeks of October 18, 2010 or October 25, 2010.

6.1.5 September 10, 2010 – Order setting hearing for October 25, 2010, with another preliminary hearing set for October 16, 2010.

6.1.6 October 5, 2010 – Motion to dismiss denied. The hearing was re-scheduled first for November 4 and 5, 2010, and thereafter for December 1 and 2, 2010.

6.1.7 November 12, 2010 – Motion to continue hearing date denied. The hearing heretofore scheduled for December 1 and 2, 2010, was ordered by the Panel to be held as scheduled.

6.2 This matter was accordingly heard by this Panel on December 1 and 2, 2010 in the New York City offices of the American Arbitration Association located in the Paramount Building, 1633 Broadway, 10th floor, New York, NY 10019. The panel deliberated on December 2, 2010, and on February 22 and 23, 2011 in Denver, CO, and held extensive e-mail drafting sessions to reach the conclusions and Award in this matter as set forth herein. The Panel gave the parties the opportunity to submit additional

briefing and the exhibits they believe are the most important to their respective positions, of which opportunity both sides took advantage with multiple binders and briefs. The parties agreed that the Panel should issue its decision on or before March 17, 2011.

7. BACKGROUND FACTS

7.1 The BALCO Conspiracy

7.1.1 The background of the BALCO Conspiracy was described thoroughly in *USADA v. Michelle Collins*, AAA No. 30 190 00658 04, portions of which are redacted and included in this section of the Arbitral Award. The Mark Block charges stem from the U.S. Justice Department's investigation of BALCO. According to USADA, BALCO was involved in a conspiracy, the purpose of which was the distribution and use of prohibited doping substances and techniques that were either undetectable or difficult to detect in routine drug testing. The president of BALCO, Victor Conte, was convicted of engaging in the distribution of illegal substances for which he has served time in prison. At the hearing, the Panel heard testimony from Jeffery Novitzky, Special Agent with the Internal Revenue Service from November 1993 to April 2008 and currently a Special Agent with the US Food and Drug Administration. Mr. Novitzky, the lead investigator in the BALCO conspiracy, described the searches conducted at the BALCO headquarters and the discovery of documents with reference to Mark Block and Zhanna Block.

7.1.2 BALCO distributed several types of prohibited doping substances to professional athletes in track and field, baseball and football. Among these were tetrahydrogestrinome ("THG"), otherwise designated as "the clear" or "L" by BALCO.

THG is a designer steroid that could not be identified in testing until 2003, when a track and field coach provided a sample of it to USADA. THG is administered by placing several drops under an athlete's tongue. It is undisputed that it is prohibited under the IAAF Procedural Guidelines as a "related compound." THG's chemical nature and history of use were fully discussed in at least three previous AAA Panel awards. *See USADA v. Michelle Collins, supra* (2004); *USADA v. McEwen,* AAA No. 30 190 01107 03 (2004); *USADA v. Price,* AAA No. 30 190 01126 03 (2004).

7.1.3 BALCO also distributed a testosterone/epitestosterone cream, usually called simply "the cream" and referred to in BALCO documents as "C". The cream contained testosterone, a prohibited substance under the IAAF Procedural Guidelines. IAAF Procedural Guidelines for Doping Control (2002), Schedule J, I, Part I9A)(I), Schedule 2(iii); IAAF Procedural Guidelines for Doping Control (2003), Schedule 1, Part 19a)(I), Schedule 2(b). The use of THG, or a similar steroid, reduces the amount of testosterone in an athlete's body; when the human body detects the higher levels of a steroid, it shuts down its own production of testosterone. *See, e.g., USADA v. Thomas,* AAA No. 30 190 00505 02 (2002). Therefore, the testosterone cream was applied by athletes using THG to mask its effects. The use of a masking agent such as the cream is also prohibited under the IAAF Procedural Guidelines.

7.1.4 Because testosterone is produced naturally in the human body, its quantities are tested in conjunction with the amount of epitestosterone, another naturally occurring substance. As has been described in many AAA and Court of Arbitration for Sport ("CAS") Panels, a doping offense may occur if the testosterone/epitestosterone ratio ("T/E Ratio") exceeds 6:1. IAAF Procedural Guidelines for Doping Control (2003),

Schedule 1 Part I(a)(1); IAAF T/E Protocol (2003). Thus, the epitestosterone was added to BALCO's cream in order to keep the T/E Ratio within testing norms. As noted, such a masking technique is prohibited.

7.1.5 BALCO also distributed erythropoietin, otherwise known as "EPO" or, in BALCO's shorthand, "E." EPO increases the number of red blood cells capable of carrying oxygen in an athlete's circulatory system, thus enhancing performance. The use of EPO is a prohibited technique under the IAAF Procedural Guidelines. IAAF Procedural Guidelines for Doping Control (2002), Schedule 1 Part I(d), Schedule 2(i); IAAF Procedural Guidelines for Doping Control (2003), Schedule 1 Part (I)(d), Schedule 2(a)(ii); *see also IAAF v. Boulami*, CAS 2003/A/452 (2003); *Union Cycliste Internationale v. Hamburger*, CAS 2001/A/343 (2002).

7.1.6 USADA has also accused Mark Block of providing Modafinil, a stimulant that is banned under the IAAF Procedural Guidelines, to Zhanna Block, an IAAF track and field athlete and Mr. Block's wife, which substance was supplied by BALCO to Mr. Block. Finally, BALCO also distributed legal vitamins and supplements to be used in conjunction with these banned agents and techniques. The relevant facts in this case are described in more detail below.

8. ISSUES AND ANALYSIS

A. Charge of Violating IAAF Anti-Doping Rule 32.2(h)

8.1 USADA has charged Mr. Block with violating IAAF Anti-Doping Rule 32.2(h). USADA argues that Mr. Block conceded that he lied to USADA during the discovery process in this case and even in response to questioning at the hearing on

whether he recalled "the clear" and "the cream" at the time USADA propounded its discovery requests. Mr. Block argues that the covering up offense refers to covering up the conduct of others and not oneself, and that all of the conduct to which USADA is referring occurred in the context of Mr. Block defending himself against USADA's charges.

8.2 The Panel finds that Mr. Block violated IAAF Anti-Doping 32.2(h). At the hearing, USADA asked Mr. Block whether he recalled what the "clear" and the "cream" were at the time of USADA's first propounded discovery requests. He admitted in his testimony that he knew what they were, yet in his earlier response to the discovery request Mr. Block said he did not so recall. Counsel for USADA asked the following question of Mr. Block at the hearing:

> Q. "Tell me the truth. You did not forget about "the clear" or "the cream", did you?"
>
> A. "No."

See Tr.461:22 to 465:8. The Panel is of the view that Mr. Block was attempting to mislead the Panel and USADA on the true facts of this case as part of his efforts to cover up the conspiracy with Conte both in the early stages of discovery and up to and including his testimony at the hearing.

B. Charge of Violating IAAF Anti-Doping Rule 56.3

8.3 USADA has charged Mr. Block with violating IAAF Anti-Doping Rule 56.3.

8.4 USADA argued that Mark Block breached IAAF ADR 56.3 in several ways. First, Mark Block admittedly assisted Zhanna Block in the use of Modafinil purportedly to evaluate its impact upon her. Second, Mark Block admittedly engaged in a continuous doping dialogue with Victor Conte whom Mark Block knew to be providing drugs to other athletes. Through his correspondence with Conte, Mark Block specifically approved of Conte's drug trafficking and provided information which assisted Conte in carrying on the drug trade and assisting other athletes to use banned drugs. Mr. Block testified, for example, that he sent an email to Victor Conte on October 2, 2002, by which he forwarded an article entitled, "Untraceable Drug Worries Officials" (allegedly untraceable version of EPO known as Repoxygen). Mark Block also admitted paying BALCO/Conte for all the drugs received by Mark Block, including EPO, "the clear" and "the cream" and Modafinil. Mark Block was aware that his drug supplier, Victor Conte, was likely supplying prohibited substances to other athletes, yet he supported the drug trafficking of BALCO/Conte by continuing to purchase prohibited substances, thereby providing Conte with additional resources by which he could expand his trafficking.

8.5 Mr. Block argued that the IAAF Rules offer no definition as to the terms "assisting" or "inciting," so the Panel shall look to the ordinary meaning of such words. Dictionary.com defines assisting as "to give support or aid to; help" and inciting as "to stir, encourage, or urge on; stimulate or prompt to action." *See* Dictionary.com. Unabridged. Random House, Inc. http://dictionary.reference.com.

8.6 The Panel adopts the definitions set out and summarized above in paragraph 8.5. In addition, the Panel notes that Mr. Block provided regular updates to Conte about Zhanna Block and her use of the prohibited substances provided by Conte,

which updates included providing blood and urine samples to BALCO for analysis for purposes seemingly related to doping. Also, Conte maintained a series of calendars that were communicated at least orally to Mr. Block ostensibly for Zhanna Block's use in properly scheduling the use of the various prohibited substances provided by Conte to Mr. Block. There were conclusive similarities between the calendar and Zhanna Block's competitive appearances and travel schedule, including periods of time where they matched precisely. In testimony, Michelle Collins, an elite track and field athlete previously sanctioned in the BALCO Conspiracy, explained how such calendars were coded and used, and that her calendars and those of Zhanna Block had common notations for the scheduled uses of the various prohibited substances supplied by Conte. *See Tr. 128:24, et seq.* Accordingly, the Panel concludes that Mr. Block has violated IAAF Anti-Doping Rule 56.3.

C. Charge of Violating IAAF Anti-Doping Rule 56.4

8.7 USADA has charged Mr. Block with violating IAAF Anti-Doping Rule 56.4.

8.8 USADA argued that Rule 56.4 should be read broadly and that by barring "trading" in a prohibited substance, Rule 56.4, prohibits engaging in the commercial aspects of the drug trade. The term "trade" is defined in the Oxford American Dictionary (1980) as an "exchange of goods for money or other goods." The same dictionary defines "trading" as "to engage in trade, to buy and sell." Black's Law Dictionary (1979) similarly defines "trade," in part, as "[t]he act or the business of buying and selling for money; traffic; barter." According to Black's, "trade" "is not a technical word and is ordinarily used in three senses including "exchanging commodities by barter or by

buying and selling for money." Thus, the accepted definitions of "trading" reflect that "trading" in a prohibited substance refers to engaging in the commercial aspect of purchasing or acquiring prohibited substances through barter or an exchange of value. Therefore, proof of distribution of the prohibited substances to an athlete is not required to satisfy the definition of "trading." Accordingly, Rule 56.4 does not require that a particular athlete have received prohibited substances in order for a doping offense to have been committed under that rule. The offense of trading is complete when the prohibited substances are purchased. Rule 56.4 was violated when Mark Block, a track coach and IAAF authorized representative, purchased prohibited substances from BALCO/Victor Conte either by paying for them or by providing to Conte the substance ATP in barter return for them. Because Mark Block has admitted paying for all the substances he received from Conte, including EPO, "the clear," "the cream" and Modafinil, Mark Block has thereby admitted all elements of the offense of trading under Rule 56.4. For example, in an email from Mark Block to Victor Conte dated March 19, 2003, he said: "....I have always paid what you asked and fast..." *See also Tr. 255:21-25, and 256:1-25*

8.9 It was submitted by Mr. Block that the courts have regularly found that the receipt and possession of a prohibited substance does not constitute trafficking. *See, e.g., United States v. Maroquin-Bran*, 587 F.3d 214 (4th Cir. 2009) ("Mere possession does not constitute 'illicit trafficking' or a 'drug trafficking crime'." In *USADA v. Gaines/Montgomery, supra,* where the same IAAF Rules applied as in this case, the Panel held that "trafficking means something akin to trading, distributing, or selling." More specifically, the *Gaines/Montgomery* Panel stated that, "Just like 'assisting or inciting,'

'trading, trafficking, distributing or selling are but several sides of the same coin.'" Thus, as the *Gaines/Montgomery* Panel found, the words in Rule 56.4 are synonymous and should all be treated as having the active commercial element of "selling." Further support for a commercial interpretation of the trafficking offense is provided by looking at the ordinary meaning of the operative words. *See Lopez v. Gonzales*, 549 U.S. 47, 47-48, 127 S.Ct. 625 (2006). In *Lopez*, the US Supreme Court analyzed the meaning of the term "illicit trafficking," which was not defined in the statute at issue. The Court concluded that [t]he everyday understanding of "trafficking" should count for a lot here, for the statutes in play do not define the term, and so remit us to regular usage to see what Congress probably meant. *FDIC v. Meyer*, 510 U.S. 471,476,114 S.Ct. 996,127 L.Ed.2d 308 (1994). It was further argued that ordinarily "trafficking" means some sort of commercial dealing. *See Black's Law Dictionary* 1534 (8th ed. 2004) (defining "traffic" as to "trade or deal in (goods, esp. illicit drugs or other contraband)"). Mark Block argued that at most, USADA's evidence shows that he received and possessed EPO and substances that were similar in appearance to the "clear" and the "cream." However, he explained that while he received some prohibited substances from Conte, he also received large quantities of legitimate supplements and other SNAC products that comprised many of the shipments. As to EPO, Mark Block testified that some of the shipments from Conte contained that substance, but that he disposed of the EPO without even mentioning to Zhanna Block that he received it.

8.10 The Panel is of the view that USADA has the better of the arguments on the law here as articulated in both criminal law and the CAS cases interpreting the IAAF rules and definitions, and the Panel adopts USADA's arguments as set forth in paragraph

8.8 hereof. The IAAF Anti-Doping Rules and all other anti-doping rules do not have as their object preventing simply the sale or distribution of prohibited substances to athletes. Rather, rules like this exist, by their own terms, to prevent distribution or involvement in the chain of distribution of prohibited substances by the individuals prohibited from doing so under the rules. Putting that aside, Mr. Block admitted he paid consideration for the illicit substances, in the form of cash and the substance ATP that Mr. Block acquired for Mr. Conte in the Ukraine (see references in paragraph 8.8 to email and transcript), so even under Mr. Block's argument there is sufficient commercial activity here for his conduct to involve trafficking. Accordingly, the Panel concludes that Mr. Block violated IAAF Anti-Doping Rule 56.4.

D. Charge of Violating Article 7.2 of IAAF Rule 19

8.11 USADA has charged Mark Block with violating Article 7.2 of IAAF Rule 19. After a period of denial, and then upon presentation of evidence, it was stipulated by Mr. Block that for purposes of this proceeding and for all times relevant thereto he was a registered Athlete Representative with IAAF and subject to this article and rule. But even at the hearing Mr. Block insisted that he was not a registered Athlete Representative during the relevant period. *See Tr. 243:20-25, 244:1-25, and 245:1-24 for denial by Mark Block that he received payment from USA Track and Field for coaching Ramon Clay in 2002, and then later acknowledged such payment in testimony when shown a payment check.* USADA argued that Mr. Block violated Article 7.2 of IAAF Rule 19 by offering "the clear" and "the cream" to Zhanna Block, by keeping "the clear" and "the cream" in his home, and by encouraging Zhanna Block to use Modafinil.

8.12 The Panel determines that the emails from Mark Block to Victor Conte and vice versa stated clearly that Zhanna Block was using "the clear" and "the cream" and that such use had certain very specific side effects; that Mark Block admitted to purchasing EPO from Conte and to purchasing ATP for Conte to exchange for among other things the EPO; that Mr. Block admitted that he stored prohibited substances in his dining room in his home (including "the clear", "the cream", and EPO), where an athlete, Zhanna Block, lived; and that he admittedly encouraged and caused Zhanna Block to use Modafinil, specifically out of competition, at least once. The Panel also concludes that Mr. Block was involved in covering up a doping offense when he caused a package containing banned substances to be sent from Victor Conte at BALCO under false pretenses as "business documents" to himself in Greece. *See* USADA hearing exhibit 39: e-mails dated 6/6/02 to 6/10/02 between Mr. Block and Victor Conte confirming the method of mail, the delivery of the mail, and description of the substance as Modafinil. The act of covering up does not require an overt act or a third party; simply failing to report can in itself constitute covering up. From the email traffic it is clear that Mr. Block was engaged in testing various substances in their use; witness the email wherein Mr. Block and Mr. Conte are exchanging views on a substance known as vitamin S (code for the stimulant, Modafinil) and its detectability, and Mr. Conte replies in an email dated July 17, 2002: "Dear Mark, I just got the news that someone using the vitamin S was recently tested by the IOC and everything in the vitamin S category was found to be negative. ***The coast is clear as I knew it would be***". (emphasis added). After Mr. Conte advised Mr. Block that Conte could find a doctor to backdate a therapeutic use exemption for Kelli White, Mr. Block failed to report that clear rule violation to the IAAF. In

further violation of this rule, Mr. Block knew Modafinil was a prohibited substance based on his email exchanges with Conte regarding testing for the substance and based on his decision to administer it to Zhanna Block out of competition to try it out. He admitted in his testimony that he gave Zhanna a half of a pill that she took, and there are emails suggesting that he later gave her a whole pill. Yet he never reported this to any anti-doping authority. The sheer act of testing Modafinil out of competition was an act designed to cover up its use. In an email dated August 8, 2002, Victor Conte confirmed the substances' presence on the prohibited list: "Dear Mark, Just a quick update regarding the vitamin 'S'. Remy [Korchemny – a coach convicted in the BALCO conspiracy and given a lifetime ban by USADA] went into the French anti-doping website...Guess what. Modafinil is on the list..."

8.13 Mr. Block, as a result of his status as a registered Athlete Representative with the IAAF, had an obligation to report these violations of the anti-doping rules to the IAAF and he did not do so. The Panel does not find credible Mr. Block's argument that he was lying in his emails to Victor Conte. Mr. Block is an educated man, with apparent confidence and with considerable experience as a coach and as an athlete representative for elite international track and field athletes. Mr. Block does not come across as a man who is easily cowed. Given the choice between the various statements and misstatements of Mr. Block, the Panel chooses to believe his contemporaneously written statements against his own interest.

8.14 Even if the Panel had been persuaded by Mr. Block's testimony that his contemporaneous email statements constituted lies to Mr. Conte, and that Zhanna Block was not really taking the substances that Mr. Block wrote to Mr. Conte that she was

taking, the Panel does not find persuasive Mr. Block's argument that he should not be found to have violated IAAF Rule 19 as a result. Mr. Block had an absolute duty to report to the IAAF the efforts of Mr. Conte to cause Zhanna Block and other athletes to violate the anti-doping rules, and he failed to so report[6]. As a result, the Panel concludes that Mr. Block violated Article 7.2 of IAAF Rule 19.

9. DETERMINATION OF SANCTION AND START DATE

9.1 USADA has requested that if the Panel finds a doping offense that the Panel declare Block ineligible for life from participating in track and field. USADA acknowledged in its opening brief that the appropriate range for a period of ineligibility to be issued by the Panel is from 4 years to life. Mr. Block's counsel has not suggested a time for any period of ineligibility but has remained steadfast that it should be substantially less than lifetime.

9.2 The Panel has reviewed the awards of other Panels with respect to the periods of ineligibility assessed against various athletes that arose from the BALCO investigation, including those involving athletes Chryste Gaines (2 years), Tim Montgomery (2 years), Michelle Collins (8 years initially, reduced to 4 years as the result of cooperation), and Calvin Harrison (2 years). The Panel has also reviewed the awards of other Panels in cases involving determinations of ineligibility for athlete support personnel arising from their involvement in doping. Those cases include *USADA v. Stewart*, AAA 77 190 00110 10 (lifetime ban for track and field coach), together with the

[6] As yet another example of his violation of his obligations as an Athlete Representative, during the hearing, Mr. Block was asked, "So essentially what you were told here by Victor Conte is that a bunch of his athletes were using modafinil at the U.S. Nationals (June, 2002), correct?", to which he answered, "Yes." See Tr.378:8-12. Yet Mr. Block did nothing to report this activity or otherwise fulfill his obligations as a registered Athlete Representative.

outcomes of stipulated punishments in athlete support personnel cases, including those of Trevor Graham (lifetime) and Remy Korchemny (lifetime). *See (1) USADA News Release dated July 15, 2008, in which it announced that, following Trevor Graham's conviction on May 29, 2008, of one count of lying to federal investigators for his participation in the BALCO conspiracy, he elected to withdraw his request for arbitration and thus the USADA recommended sanction of a lifetime period of ineligibility was imposed; and* (2) *USADA v. Korchemny,* AAA 30 190 01050 06, respectively. From this review, the Panel has been able to deduce certain basic principles concerning determinations of periods of ineligibility for athlete support personnel involved in doping.

9.3 The cases are clear that athlete support personnel owe a higher duty to the integrity of the anti-doping system than even do athletes. The athlete support personnel suspensions are generally far more severe than those for athletes because of the position of trust and commitment to integrity expected of athlete support personnel. The arbitrator in the *Stewart* case, in imposing a lifetime period of ineligibility, concluded his decision with the following:

> "Testimony provided evidence of a long-term relationship between a known drug dealer and coach with multiple transactions taking place. These facts plus his position of coach which presents him to young men and women as a trusted advisor and confidant; as one who knows the path to gold and glory places an inviolable responsibility on him to be a role model and leader. The rejection of this responsibility presents a personal affront to his athletes; a repudiation of USADA, WADA rules and the expectation of the sporting world, particularly when the practice involves multiple violations."

The Panel adopts these statements as its own for purposes of this case.

9.4 The cases are also clear that after determining that athlete support personnel have committed a doping offense the Panel has discretion in formulating an appropriate period of ineligibility on a fact-specific, case-by-case basis. The range of ineligibility periods conceded by USADA as the appropriate range for consideration by the Panel is very broad, ranging from 4 years to a lifetime suspension.

9.5 The cases, and frequently the relevant anti-doping rules, show that lifetime bans typically have involved multiple doping offenses regarding athletes and lengthy, substantial involvement in comprehensive doping activity, and efforts to cover up doping in cases involving athlete support personnel.

9.6 In reviewing the period of suspension, the cases that have addressed athlete support personnel suspensions *(Stewart, supra, and* CAS 2008/A/1513, *a case involving a coach of the Austrian national cross country skiing team)* have analyzed a number of factors, including the effect of the doping activities of the coach; the health and safety risk to the athletes involved; the intent of the coach; the extent of the doping activities; the extent of efforts to conceal the doping; the volume and type of communications between the athlete support personnel and the source of the doping materials or methods; whether doping has been established; the role of the athlete support personnel in the doping conspiracy; the number of athletes affiliated with the athlete support personnel who are implicated in doping; and the need to send a clear and deterring message to other athlete support personnel.

9.7 Here, the following facts were established at the Hearing, often through admissions from Mr. Block:

1. Mr. Block, as an athlete representative and coach, had regular communications with a known source of prohibited substances, Victor Conte;
2. Mr. Block was engaged in covering up international shipments of prohibited substances that he received from Mr. Conte and he admitted to falsifying customs documents related thereto;
3. Mr. Block received emails from Mr. Conte advising that Conte was sending EPO to Mr. Block, and Mr. Block did not object, and admittedly knew that EPO was a prohibited substance;
4. Mr. Block paid for and received EPO from Mr. Conte on multiple occasions;
5. Mr. Block stored EPO in his home that he received from Mr. Conte;
6. Mr. Block offered EPO to his spouse (an offer he and she testified she did not accept, but the results of blood tests from the BALCO file labeled "Block" and testimony from Michael Sawka, Ph.D, an expert in cardiovascular physiology, seemed to show the use of EPO by the tested individual);
7. Mr. Block paid for and received the prohibited substance Modafinil from BALCO/Victor Conte;
8. Mr. Block provided Modafinil to his wife and she used it during an out of competition period, with some evidence suggesting it was done on multiple occasions;

9. Mr. Block received the "clear" and the "cream" from Mr. Conte and stored those substances in his dining room of his home;
10. Mr. Block detailed in emails that his wife was using the "clear," the "cream," and EPO;
11. Mr. Block noted in emails to Mr. Conte that use of the "clear" and the "cream" made his wife bloated and tight;
12. Mr. Block did not request that Mr. Conte stop sending him EPO, the "cream," the "clear" and Modafinil; moreover, he admitted knowledge of the code names of the "clear" and the "cream";
13. Mr. Block emailed repeatedly with Mr. Conte about the accuracy of the anti-doping testing system with respect to substances supplied by Mr. Conte to Mr. Block and tests of other athletes;
14. Mr. Block reported to Mr. Conte on the outcome of various ingestions of prohibited substances by his wife that coincide with a calendar prepared by Conte and found in the BALCO files marked "Block";
15. Mr. Block failed to report the above instances to IAAF as required by the IAAF rules for athlete representatives and
16. Mr. Block, in discovery documents and through his oral testimony, demonstrated a pattern of prevarication, a fact that was acknowledged by his counsel, Mr. Maas, in his closing statement. *See Tr. 813:21-25 and 814:1-19*

These actions were diverse, substantial, regular, continuous, and spanned many months. Moreover, once a habit of lying is established lapses in integrity are rarely isolated, an

observation confirmed by Mr. Block through evidence presented in this case. Taken as a whole, Mr. Block's actions lead without doubt or reservation to the conclusion that he violated the Rules cited herein.

9.8 The Panel is also obligated to consider the length of penalty in other cases involving the BALCO conspiracy, where there was non-cooperation with the anti-doping authorities, and non-admission of guilt. In such cases involving athletes, an 8 year ban has been imposed. The Panel is guided by *Collins*, where the Panel stated:

> "Because Collins did not admit her guilt and has not agreed to cooperate, because her participation in the BALCO conspiracy amounted to a cover up of these activities, and because her doping took place over an extended period of time during which she competed in many events, we believe that it is appropriate to double the four years received by other BALCO athletes or those who engage in cover-ups, and to suspend her for eight years."

USADA v. Collins, supra at ¶ 7.1.1. Many of the factors considered by the *Collins* Panel are present here. Block has not admitted his guilt and has in fact attempted to convince this Panel that he has no culpability for what was done for a variety of reasons. His interactions with Victor Conte were extensive and involved a variety of efforts to cover up or otherwise further doping activities, and his involvement spanned many months. In addition, Mr. Block was a coach, manager/athlete representative, and trusted advisor to a variety of very high level and accomplished track and field athletes during this time, some of whom later were found to have used prohibited substances.

9.9 In mitigation, the Panel took note of the fact that the findings, such as those set forth in paragraph 9.7 above, were not as extensive as in *Stewart*, *supra*. The Panel also considered the article in the recent CAS Bulletin with respect to various cases involving lifetime bans. *See CAS Bulletin, Lifetime ineligibility according to the WADA*

Code, pp 42-51, 1/2010. In this case, the evidence indicated that only one athlete, Zhanna Block, was involved. In addition, the Panel notes, despite the evidence provided by Mr. Block, that no anti-doping authority or tribunal has found that Zhanna Block committed a doping offense.

9.10 The Panel therefore determines that the appropriate period of ineligibility, based on all of the facts and circumstances of this case, is ten (10) years.

9.11 The Panel next must determine the start date of Mr. Block's suspension. USADA has requested that any suspension commence on the date of the start of the hearing in this matter. Mr. Block has requested that any suspension commence at the time USADA first became aware that there were BALCO records that suggested that Mark Block was involved with Victor Conte.

9.12 Under WADA Code Article 10.9, suspensions are to start on the date of the hearing decision, except as provided for in Article 10.9.1: "Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred."

9.13 A review of the reported BALCO-related cases involving doping that do not involve analytical findings show that those cases were all commenced relatively shortly after discovery by USADA of the facts underlying the offenses. For example, in Gaines, *supra*, USADA first notified the athlete of a charge on June 7, 2004, and then USADA issued its charging letter on June 22, 2004, arising from the initial BALCO labs raid by the US government on September 3, 2003, and the subsequent handover of certain

documents by the US Senate on or about May 7, 2004; the same dates applied in *Montgomery*. In *Collins, supra*, the athlete received her initial letter on May 10, 2004, and her charging letter on June 24, 2004, with the same BALCO labs raid and Senate action apparently forming the basis of the documents underlying the charges against her.

9.14 Here, USADA has not abused its process by commencing this matter several years after it could have been commenced, as it was clear USADA was within the appropriate limitations period for commencing its case against Mark Block. There does not seem to be a compelling reason, however, why USADA could not have brought this case much earlier. In this case, there has been no new evidence brought forward since 2004. There is nothing unique about this case or the evidence ultimately presented by USADA that would require it to sit for 6 or 7 years before being charged, and in fact it might perhaps have been presented more expeditiously at the time the other BALCO cases were brought, such as *Collins, Korchemny, and Harrison*. Under WADA Code Article 10.9.1, the Panel has discretion to modify the start date for its sanction. The Panel will avail itself of that discretion here because the conditions for doing so are present. The anti-doping system is benefited by having cases of this sort brought to a hearing or resolution sooner rather than later. This provides certainty to the accused and all of those affected, it eliminates the involvement in sport of those engaged in doping at the earliest reasonable opportunity, and it furthers the interest of athletes and governing bodies to have cases heard expeditiously. The Panel understands that often there are competing priorities and resource limitations bearing on the ability of an anti-doping agency to bring cases immediately. In addition, the system of anti-doping is benefitted by anti-doping agencies being able to present the strongest case they can against an accused, especially

where evidence is being developed for that case during the statute of limitations period. Having said that, the Panel is also of the view that the competing consideration of fairness to the accused dictates that in cases like this -- where there is seemingly no new facts or evidence developed for several years -- the period of time following investigation should properly be considered in determining the appropriate start date for any sanction under WADA Code Article 10.9.1.

9.15 Accordingly, the Panel determines that Mr. Block's ten year period of ineligibility should commence on January 1, 2009.

10. DECISION AND AWARD

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

10.1 Respondent has committed a doping violation under each of the following rules: IAAF Anti-Doping Rule 32.2(h), IAAF Anti-Doping Rule 56.3, IAAF Anti-Doping Rule 56.4, and Article 7.2 to IAAF Rule 19.

10.2. The following sanctions shall be imposed on Respondent:

10.2.1 The "appropriate Consequences" imposed by the Panel is a ten year period of ineligibility commencing January 1, 2009 and ending on January 1, 2019. Furthermore, all benefits, awards, titles, or remuneration from his involvement in track and field that flowed to Mr. Block as an Athlete Representative, from the period January 1, 2009 to the date of this ruling, shall be deemed forfeited and returned.

10.2.2 During his period of ineligibility, in addition to all other penalties or restrictions flowing from his ineligibility, Mr. Block is prohibited from participating in and having access to the training facilities of the USOC Training Centers or other programs and activities of the USOC including, but not limited to, grants, awards, or employment pursuant to the USOC Policies.

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

10.4 The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the Panel of arbitrators, shall be borne entirely by USADA and the United States Olympic Committee.

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

10.6 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: March 17, 2011.

Hon. Peter Lindberg, Chair

Jeffrey Benz, Esquire

Paul E. George, Esquire

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