

**ULTIMATE FIGHTING CHAMPIONSHIP
ANTI-DOPING POLICY**

Chi Lewis-Parry)
(Athlete),)
Applicant,)
)
and)
)
United States Anti-Doping Agency)
(USADA),)
)
Respondent.)

AWARD

1. INTRODUCTION

1. The United States Anti-Doping Agency (“USADA”), alleges that Chi Lewis-Parry, a mixed martial arts fighter (“CLP”), violated the Ultimate Fighting Championship (“UFC”) Anti-Doping Policy (“UFC ADP”) by failing, as required, to disclose his prior use of prohibited anabolic agents (“PAA”) upon being added to the USADA Registered Testing Pool (“RTP”) and for the presence of those same substances in his 12 September 2019 and 19 September 2019 urine samples which, as is common ground, tested positive. USADA has charged him on 18 December 2019 and 23 March 2020 respectively, with the offences of Presence and Tampering as defined in the UFC ADP and sought the sanction provided by the UFC ADP for such offences.

2. CLP disputes the allegation and sanction on two main grounds. First that the PAA in his samples were the result of innocent ingestion of a contaminated supplement (“the Contamination Defence”). Second that he was not fully informed by USADA as to the risks of sanctions, if he joined the RTP, for the presence of PAA resulting from ingestion in the previous 12 months and it would therefore be inequitable for USADA to rely on the positive tests (“the Estoppel Defence”).
3. On 5 November 2020 USADA sought an additional sanction based on aggravating circumstances.
4. CLP disputed the additional sanction on the basis that he has not been accorded a fair opportunity to rebut the facts on which it is based and sought an adjournment to enable him to do so.

2. THE UFC ADP

5. The UFC ADP provides, so far as material, as follows:

Programme objectives

This Anti-Doping Policy is a central and integral part of *UFC*'s efforts to protect the health and safety of its *Athletes*, and their right to compete on a level playing field. *UFC*'s goal for this Anti-Doping Policy is to be the best, most effective and progressive anti-doping program in all of professional sport.

This Anti-Doping Policy is modeled on the World Anti-Doping Code (the “Code”) and, except as provided otherwise herein, should be interpreted and applied in a manner consistent with the *Code*.

This Anti-Doping Policy consists of sport rules governing the conditions under which *UFC* sport is conducted. It is distinct in nature from criminal and civil laws, and is not intended to be subject to or limited by any national requirements and legal standards applicable to criminal or civil proceedings. When reviewing the facts and the law of any given case, all judicial or other adjudicating bodies should be aware of and respect the distinct nature of this Anti-Doping Policy and the fact that the *Code* upon which it is based represents the consensus of a broad spectrum of stakeholders around the world as to what is necessary to protect and ensure fair sport. *UFC* may delegate all or any part of its responsibilities and authority under this *Program* to the United States Anti-Doping Agency, other *Anti-Doping Organizations*, or other third-party providers of anti-doping services. Other than where express rights are reserved or delegated to *UFC*, references to *UFC* in this *Program* shall include *USADA*....

.....

21. 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 Policy Violation under Article 2.1 (subject to the other express provisions of this Anti-Doping Policy that do incorporate concepts of intent, knowledge, *Fault*, *No Fault* or *Negligence* or other evidentiary standards).
- 2.1.2. Sufficient proof of an Anti-Doping Policy Violation under Article 2.1 is established by any of the following: presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in the *Athlete’s A Sample* where, after notice to the *Athlete* is provided in Article 7, the *B Sample* is not

analyzed (including due to the *Athlete's* waiver of its right to have to the B Sample analyzed); or, where the *Athlete's* B Sample is analyzed and the analysis of the *Athlete's* B Sample confirms the presence of the *Prohibited*

Substance or its *Metabolites* or *Markers* found in the *Athlete's* A Sample or in the conditions described in the *WADA International Standard For Laboratories*, where the *Athlete's* B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the *Prohibited Substance* or its *Metabolites* or *Markers* found in the first bottle.

2.1.3. Except for those substances for which a quantitative threshold or *Decision Concentration Level* is specifically identified in the *UFC Prohibited List*, and as provided in Articles 2.1.3.1 and 2.1.3.2, the presence of any quantity of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's* Sample shall constitute an Anti-Doping Policy Violation.

2.1.3.1 Solely for those *Prohibited Substances* for which a *Decision Concentration Level* is specifically identified in the *UFC Prohibited List*, if the A or B Sample is below the applicable *Decision Concentration Level*, then such finding shall be treated as an *Atypical Finding* under this Anti-Doping Policy.

2.1.3.2 Solely for those *Prohibited Substances* for which a *Decision Concentration Level* is specifically identified in the *UFC Prohibited List*, if both of the *Athlete's* A and B Samples are at or above the applicable *Decision Concentration Level*, then the *Athlete* shall not be permitted to challenge, in a hearing or otherwise, that the *Athlete's* A and/or B Sample was below the applicable *Decision Concentration Level* (provided that, this provision shall not limit the *Athlete's* right to challenge, in a hearing or otherwise, whether the *Prohibited Substance* was present in the *Athlete's* A and/or B Samples).

2.1.4. As an exception to the general rule of Article 2.1, the *International Standards* and *WADA Technical Documents* or the *UFC Prohibited List* may establish special criteria for the evaluation of specific *Prohibited Substances* and *Prohibited Methods*.

2.1.5. In the event an *Athlete* entering the *Program* voluntarily and promptly discloses to *USADA*, prior to testing by *USADA*, the *Use* or *Attempted Use* of any *Prohibited Substance* or *Prohibited Method*

included on the *UFC Prohibited List*, then the presence or evidence of *Use* of such disclosed substance or method in an *Athlete's Sample*, shall not be considered an Anti-Doping Policy Violation if it is determined by *USADA* to have resulted from *Use* of the *Prohibited Substance* or *Prohibited Method* which occurred prior to the *Athlete* entering the *Program*.

22. *Tampering or Attempted Tampering with any part of Doping Control*

Conduct which subverts the *Doping Control* process but which would not otherwise be included in the definition of *Prohibited Methods*. Without limitation, *Tampering* shall include the following:

- 2.2.1., providing fraudulent information to *UFC* or *USADA*....
- 2.2.2. Absent a compelling justification, the failure to disclose to *USADA*, prior to entering the *Program*, the *Use*, *Attempted Use* or *Possession* within the previous one year of clomiphene, a *Non-Specified Method*, or a *Non-Specified Substance* prohibited at all times by the *UFC Prohibited List*. The past *Use*, *Attempted Use* or *Possession* of a *Prohibited Substance* or *Prohibited Method* shall not constitute a violation of these Policies...if disclosed prior to entering the *Program*; however, the admission of such conduct shall subject the *Athlete* to the notice period requirements outlined in Article 5.7.4.

3.1. *Burdens and Standards of Proof*

USADA shall have the burden of establishing that an Anti-Doping Policy Violation has occurred. The standard of proof shall be whether *USADA* has established an Anti-Doping Policy Violation with *Clear and Convincing* evidence. Where this Anti-Doping Policy places the burden of proof upon the *Athlete* or other *Person* alleged to have committed an Anti- Doping Policy Violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a preponderance of the evidence except as otherwise provided herein.

3.2 *Methods of Establishing Facts and Presumptions*

Facts related to Anti-Doping Policy Violations may be established by any reliable means, including admissions...

5.7 Notice Requirements for New AFC Athletes...

...

5.7.4. A new or returning Athlete who admits or has an established and verifiable history of the Use, Attempted Use or Possession of..., a Non-Specified Method, or a Non-Specified Substance prohibited at all times by the UFC Prohibited List while the Athlete was not subject to an Anti-Doping Policy, shall not be permitted to compete in UFC Bouts until he/she has made him/herself available for Testing for a minimum period of six months before competing or one year after the Athlete's last established Use, whichever is shorter. At USADA's discretion, such Athletes may also be required to provide a minimum of two negative Samples during the minimum six-month notice period before being cleared for competition....

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

The period of *Ineligibility* for a violation of Articles 2.1, 2.2 ... shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 or potential increase in the period of *Ineligibility* under Article 10.2.3:

- 10.1.1 The period of *Ineligibility* shall be two years where the Anti-Doping Policy Violation involves a *Non-Specified Substance* or *Non-Specified Method*.
- 10.1.2
- 10.1.3 The period of *Ineligibility* may be increased up to an additional two years where *Aggravating Circumstances* are present.

.....

10.4 No Violation where there is *No Fault or Negligence*

- 10.4.1 If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Fault or Negligence*, then there shall be no violation of this Anti-Doping Policy, subject to the right of *UFC* or an *Athletic Commission* to disqualify bout results with the resulting consequences.
- 10.4.2 Without limitation of other evidentiary methods, an *Athlete* shall bear *No Fault or Negligence* in an individual case where the *Athlete*, by *Clear and Convincing* evidence, demonstrates that the cause of the *Adverse Analytical Finding* was due to a (i) *Contaminated Product* or (ii) *Certified Supplement*. In such a case, there will be no Anti-Doping Policy Violation based on the *Adverse Analytical Finding* and the *Athlete* will not be permitted to compete in a *Bout* until, based on follow-up *testing*, the *Prohibited Substance* is no longer present in the *Athlete's Samples* (or below the applicable *Decision Concentration Level* for such *Prohibited Substance*, if any) or no appreciable performance advantage is obtained from the presence of the substance.

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10.12 Status during Ineligibility

10.12.1 Prohibition against Participation during Ineligibility

No *Athlete* or other *Person* who has been declared *Ineligible* may, during the period of *Ineligibility*, participate in any capacity in connection with a *UFC Bout*, or any match or competition sanctioned or licensed by an *Athletic Commission*, or participate in any capacity in a competition or activity (other than authorized anti-

doping education or rehabilitation programs) authorized or organized by any *Code Signatory*, *Signatory's member organization*, or a club or other member organization of a *Signatory's member organization*. An *Athlete* subject to a period of *Ineligibility* shall remain subject to *Testing* in accordance with this *Anti-Doping Policy*.

Definitions

Aggravating Circumstances: *Aggravating Circumstances* exist where the *Anti-Doping Policy Violation* was intentional, the *Anti-Doping Policy Violation* had significant potential to enhance an *Athlete's Bout* performance, and one of

the following additional factors is present:; the *Athlete* or *Person* engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an Anti-Doping Policy Violation.

Consequences of Anti Doping Policy Violation (“Consequences”)

An athlete’s....violation of an anti doping policy violation may result in one or more of the following ... (b) ineligibility means the Athlete ..is barred on account of an Anti-Doping Policy Violation for a specified period of time from participating in any bout or competition as provided in Article.10.12.1..

Contaminated Product: A product (other than a supplement) that either (i) contains a *Prohibited Substance* due to environmental or other innocent contamination, such as the contamination of water, food (including food that may have crossed applicable country borders notwithstanding laws or regulations in the country of origin or country of ingestion) or prescription medication or (ii) contains a *Prohibited Substance* that is not disclosed on the product label and all circumstances considered, a reasonable person using due care would not have suspected that there is a material risk that the product contains a *Prohibited Substance*...

No Fault or Negligence: The *Athlete* or other *Person* establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method* or otherwise violated an Anti-Doping Policy. Except in the case of a *Minor*, for any violation of Article 2.1, the *Athlete* must also establish, how the *Prohibited Substance* entered his or her system.

3. FACTUAL & PROCEDURAL HISTORY

Applicant’s USADA Onboarding

6. CLP is a mixed martial arts (“MMA”) competitor from England who competes in the heavyweight division.

7. On 20 August 2019, shortly after his last fight on 5 July 2019, CLP signed a contract with the UFC and was added to the USADA RTP.
8. On 21 August 2020 USADA sent CLP an email that explained the RTP onboarding process and his obligations, including submitting declarations of his prior use of prohibited substances (“onboarding declarations”) to USADA.
9. On 27 August 2019 CLP submitted his first onboarding declaration online. The form stipulates, inter alia *“In the event that you have used attempted to uses or possessed a substance or method that is prohibited at all times on the WADA prohibited list within the previous 12 months, and you disclose such a substance on this form, it will not be considered an anti doping rule policy violation (ADPV) if the presence or evidence of use of such disclosed substance or method is found in your sample, so long as it is determined to have resulted from the use of the prohibited substance or method which occurred prior to entering this program. However, the disclosure of substances or methods may subject you to a longer period in the testing pool prior to being allowed being allowed to compete. The failure to disclose the use, attempted use or possession of substances and methods that are prohibited at all times on the WADA Prohibited List within the previous 12 months may result in an ADPV.”*

10. CLP declared numerous supplements on this form specifying the Manufacturer, Product, Dose, Route and Date Last Taken.

11. Later the same day, CLP (and his representative) participated in an education phone call with Ms. McPherson, USADA's Training and Testing Support Lead. During the call, CLP requested a new form in order to declare an asthma medication he had previously not declared and shortly after the call USADA sent CLP a new onboarding declaration form with concurrent instructions.

12. On 28 August 2019, CLP's representative emailed USADA requesting that CLP voluntarily be placed in the six-month "testing pool" because he took unknown substances over a year ago after suffering from a knee injury. Ms. McPherson clarified that CLP was already in the "testing pool" i.e. RTP and reminded him of his obligations thereunder.

13. On 28 August 2019 CLP submitted his second onboarding declaration form which listed, inter alia, testosterone and "*potentially EQ (unsure).*" However, CLP wrote that the "*date last taken*" for each these substances was in July 2018 i.e. outside the 12-month period. This form contained warnings similar to that in his first declaration and stated in bold "**Failure to disclose the use, attempted use, or possession of substances and**

methods that are prohibited at all times on the WADA Prohibited List within the previous 12 months may result in an ADPV and a minimum two year period of ineligibility.”

14. Because (i) his last use of testosterone and “EQ” was stated to be more than twelve months prior to his entry into the RTP, (ii) no other prohibited substances prohibited at all times on the WADA prohibited list were declared, CLP did not meet the criteria under UFC ADP Article 5.7.4 barring him from competing for a minimum period of six months and requiring him to provide at least two negative samples before he can compete (the so called the “sit-out” period). Therefore, USADA did not place CLP in a six-month sit-out period.
15. On 10 September 2020, USADA sent CLP a courtesy letter (as distinct from a formal notice) regarding his onboarding declarations of testosterone, Ventolin, USN Anabolic Whey, corticosteroid, and USP Labs Jack3d.
16. On 18 September 2020 CLP’s representative replied asking why EQ was not mentioned in the courtesy letter.
17. On 20 September 2019, after ascertaining that EQ referred to “Equipoise” the brand name for a veterinary drug that included boldenone, a WADA prohibited substance, USADA replied that EQ is prohibited at all times.

18. USADA did not receive any further communications from CLP or his representative regarding onboarding declarations until **after** he received notice of his positive tests.

CLP's Adverse Analytical Findings

19. On 12 September and 19 September 2019 respectively CLP's first and second urine samples were collected.

20. Each sample was analyzed by the World Anti-Doping Agency ("WADA") accredited laboratory in Lausanne, Switzerland (the "Lausanne laboratory"), and was reported as an Adverse Analytical Finding ("AAF") for the presence of drostanolone and its metabolites (2a-methyl-5a-androstan-3a-ol-17-one and 2a-methyl-5aandrostan-3b,17b-diol), stanozolol metabolites (3'-hydroxy-17-epistanozolol-O-glucuronide and 3'-hydroxystanozolol-Oglucuronide), dehydrochloromethyltestosterone ("DHCMT") or another chlorine substituted anabolic steroid metabolites, and boldenone and its metabolite (5b-androst-1-en17b-ol-3-one) of exogenous origin.

21. Drostanolone, stanozolol, DHCMT, (“the Trio”) and exogenous boldenone and their metabolites are prohibited substances in the class of Anabolic Agents under the UFC Prohibited List.
22. On 1 November and 5 November 2019 respectively USADA notified CLP of his positive tests and imposed upon him a provisional suspension.
23. On 6 November 2019 CLP requested analysis of both of his B samples. The analysis, which was duly carried out by the Lausanne Laboratory, confirmed the presence of all prohibited substances found in CLP’s A samples.
24. On 18 December 2019, USADA formally charged CLP with anti-doping policy violations for the presence and use or attempted use of prohibited substances. and provisionally suspended him.
25. On 18 December 2019 at the CLP’s request, USADA extended the deadline to respond to the charging letter to 10 January 2020.
26. On 6 January 2020, in various emails CLP stated that he thought he was in the six-month sit-out period and that in haste he mistakenly wrote June 2018 as the date he last used the testosterone and EQ when, in fact, it was the date he started using them.

CLP also said that he did not know how the Trio entered his system, and that it must have been the result of supplement contamination. He also made various complaints (considered more fully below) about the information or lack thereof given to him by USADA which had led to his suspension and exposure to charges (“the Complaints”).

27. On 13 January 2020 USADA and CLP entered into a stipulation to stay the case for forty-five days i.e. until 26 February 2020 so that CLP could have his supplements tested.

28. On 21 January 2021 USADA notified CLP that, notwithstanding his error in noting the incorrect date on both his onboarding form and in an email to Ms. McPherson, USADA declined to treat his use of boldenone as an ADPV but, in accordance with Article 5.7.4 of the UFC ADP, barred him from competing in UFC bouts until he had made himself available for a minimum period of six months as from 20 August 2019), and provided at USADA's discretion at least two negative samples. It also required him to provide additional information, including supplement testing results, to explain the timing and date of his use of the Trio which he had never declared during his onboarding process.

29. On 11 February 2020 CLP was notified by USADA that his sit-out period was extended because prohibited anabolic agents were still present in CLP's urine sample collected in an out of competition test on 5 December 2019 albeit not considered as an additional ADPV. It reminded CLP of his need to provide the additional information already sought.

30. On 25 February 2020 the UFC rescinded CLP's contract and removed him from the RTP on the basis that his various test results of samples collected from him on 5 December 2019, 27 January 2020 and 17 February 2020 showed that he no longer met the criteria to be included in it.

CLP's Supplement Testing & Arbitration Proceedings

31. USADA approached three WADA-accredited laboratories in Europe to inquire about their ability to analyze supplements for the presence of anabolic agents to assist CLP's testing of his supplements. For different reasons, the laboratories in Cologne and Lausanne were unable to assist.

32. On 9 January 2020, the laboratory in Cologne, Germany indicated that it was unable to complete the analysis.

33. On 13 January 2020, King's College laboratory in London, United Kingdom ("King's Laboratory") indicated that they were unable to perform the analysis on a supplement "*unless [it] relates to a case where [they] analysed [the] urine sample,*" which in this case they had not performed.
34. On 30 January 2020, USADA advised CLP that the most viable option for the analysis to be conducted at a WADA-accredited laboratory was to send the supplements to the laboratory in Salt Lake City, Utah in the United States ("Salt Lake City Laboratory") for analysis. CLP did not take advantage of this opportunity, although he was in the United States from approximately 23 January 2020 until 4 February 2020.
35. On 4 February, 12 February and 19 February 2020 USADA sought again to ascertain whether CLP had shipped his supplements to the Salt Lake City Laboratory. CLP did not do so; nor did he respond to any of those inquiries.
36. On 26 February 2020, the date that the stipulation expired, USADA ascertained from CLP that he would still like to test supplements.
37. On 27 February 2020 USADA gave CLP a deadline of 2 March 2020 to make a firm decision on whether he would be testing supplements. CLP did not respond by 2 March 2020.

38. On 3 March 2020, USADA sent CLP a final notice letter with a deadline of 13 March 2020. CLP did not respond to the final notice letter.
39. On 13 March 2020, USADA was copied in on an email from King's Laboratory to CLP agreeing to CLP's request to have his supplements analyzed there.
40. On 17 March 2020 USADA inquired of King's Laboratory as to why it previously informed USADA that they were unable to conduct the supplement testing. On the same day King's Laboratory replied that there must have been a misunderstanding at its end.
41. On 20 March 2020, USADA completed and submitted the required documents to King's Laboratory to facilitate the request for CLP to have his supplements analyzed.
42. That same day, CLP advised that he would send the supplements to King's Laboratory "*straight away*." At that time, King's Laboratory was still functioning at full capacity.
43. On 23 March 2020, USADA sent CLP an amended charging letter to include a tampering charge.

44. On 23 March 2020 CLP submitted his application for Arbitration to McLaren Global Sport Solutions (“MGSS”) with a request for filing fee reduction.
45. On 9 April 2020, MGSS granted a full waiver of the filing fee.
46. On 13 April 2020, MGSS appointed me as the Arbitrator in this matter.
47. On 29 April 2020 after a preliminary conference call with representatives of both parties I issued Procedural Order No.1. including a timetable for submission of briefs and directions for their contents and setting 7 July 2020 as the date for a hearing by videoconference.
48. On 25 May 2020, pursuant to Procedural Order No.1. CLP submitted his Initial Brief which included a request for an adjournment of the hearing to enable CLP to submit tests results of his supplements. Contrary to CLP’s assertions in that brief that tests were “*on going*”, it appears from an email from King’s Laboratory to USADA dated 3 June 2020, he had not yet sent any supplements in for testing.
49. On 27 May 2020, the package containing a single supplement was shipped by CLP to King’s Laboratory.

50. On 3 June 2020, King's Laboratory received the single supplement (All-In-One Musciefuel Anabolic).
51. On 5 June 2020 USADA objected to CLP's request for an adjournment of the extent proposed , because of CLP's delays in sending in any supplements for testing but proposed in lieu a sixty day maximum from his pre hearing brief deadline to complete testing supplements and an adjournment of the hearing pro tem. I received further interchanges on the topic from CLP 2 June 2020 and USADA on 17 June 2020:the latter added that there was a need for early resolution of the case since CLP's provisional suspension would not be known to organisers of other MMA promotions or his opponents therein.
52. On 17 June 2020 to balance these respective interests (as explained in it) I issued Procedural Order No.2. with a revised timetable for submission of briefs and as revised hearing date of 1 October 2020.
53. On 13 July 2020 King's Laboratory reported the results of the All-In-One Musciefuel Anabolic supplement analysis as negative for the presence of any prohibited substances.

54. On 13 July 2020 USADA forwarded CLP the supplement analysis report and asked whether CLP planned to test any additional supplements so that USADA could facilitate the request as soon as possible.
55. On 21 July 2020, after receiving no response thereto from CLP, USADA further inquired whether he would be testing any additional supplements.
56. On 27 July 2020 USADA asked for the information as soon as possible given CLP's Amended Initial Brief pursuant to Procedural Order No.2 was due on 7 August 2020.
57. On 27 July 2020 CLP's representative responded that CLP would be testing another supplement and that he would reach out to CLP to see what supplement he wanted to test.
58. On 7 August 2020, the expiry date of CLP's deadline to file an Amended Initial Brief, CLP had made no such filing.
59. On 13 August 2020, I confirmed that CLP's 25 May 2020 Initial Brief was to be the document of record.
60. On 17 August 2020, after learning that CLP was scheduled to compete in a fight for the UAE Warriors Promotion on 25 September 2020, USADA filed

a Motion for an Expedited Hearing repeating that his positive drug tests and provisional suspension are not public information.

61. On 21 September 2020 after consideration of CLP's objection of 24 August 2020 and further interchanges I rejected the Motion in Procedural Order No.3 reconfirming the hearing date of October 1, 2020 and giving associated directions.

62. On 25 September 2020 CLP duly fought and won the bout in the UAE.

63. On 30 September 2020, the day before the date of the hearing fixed with the agreement of both parties for 1st October 2020, CLP requested a continuance on the basis that he had contacted Covid-19. After receiving representations from USADA critical of the request, I granted the continuance but directed CLP provide as soon as practicable medical confirmation of his affliction by the virus. This has not been provided.

64. On 22 October 2020 King's laboratory sent to USADA a letter which confirmed the presence of stanazolol in the supplement tested.

4. ANALYSIS; OFFENCES

65. The area of debate is narrowed by the fact that CLP and USADA on 13 January 2020 signed the following document ("the Stipulation"):

**... STIPULATION OF UNCONTESTED FACTS
AND ISSUES BETWEEN THE UNITED STATES
ANTI-DOPING AGENCY AND CHI LEWIS-PARRY**

The United States Anti-Doping Agency (“USADA”) and Chi Lewis-Parry (“Applicant”), stipulate and agree for purposes of all proceedings involving USADA urine specimen numbers 1151715 and 1152194 as follows:

1. That the UFC Anti-Doping Policy (“UFC ADP”) governs all proceedings involving urine specimen numbers 1151715 and 1152194;
2. That the UFC ADP including, but not limited to, the definitions of doping, burdens of proof, Classes of Prohibited Substances and Prohibited Methods, and sanctions are applicable to any matter involving urine specimen numbers 1151715 and 1152194;
3. That USADA collected the urine sample designated as urine specimen numbers 1151715 and 1152194, out of competition, on September 12, 2019 and September 19, 2019, respectively;
4. That each aspect of the Sample collection and processing for the A and B bottles of urine specimen numbers 1151715 and 1152194 was conducted appropriately and without error;
5. That the chain of custody for urine specimen numbers 1151715 and 1152194 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 Epalinges, Switzerland (the “Laboratory”) was

conducted appropriately and without error;

6. That the Laboratory's chain of custody for urine specimen numbers 1151715 and 1152194 were conducted appropriately and without error;
7. That the Laboratory, through accepted scientific procedures and without error, determined that both the A and B bottles of urine specimen numbers 1151715 and 1152194 contain drostanolone and its metabolites 2a-methyl-5a-androstan-3a-ol-17-one and 2a-methyl-5a-androstan-3b,17b-diol, stanozolol metabolites 3'-hydroxy-17-epistanozolol-O-glucuronide and 3'-hydroxystanozolol-O-glucuronide, metabolites of dehydrochlormethyltestosterone ("DHCMT") or another chlorine substituted anabolic steroid, and boldenone and its metabolite 5b-androst-1-en17b-ol-3-one;
8. That drostanolone and its metabolites 2a-methyl-5a-androstan-3a-ol-17-one and 2a-methyl-5a-androstan-3b,17b-diol, stanozolol metabolites 3'-hydroxy-17-epistanozolol-O-glucuronide and 3'-hydroxystanozolol-O-glucuronide, metabolites of dehydrochlormethyltestosterone ("DHCMT") or another chlorine substituted anabolic steroid, and boldenone and its metabolite 5b-androst-1-en17b-ol-3-one are Prohibited Substances in the class of Anabolic Agents on the UFC Prohibited List;
9. That Applicant did not challenge the Provisional Suspension imposed on November 1, 2019, prohibiting him from participating in any

capacity in any Bout, competition or activity under the jurisdiction of the UFC, any Athletic Commission(s), or any clubs, member associations or affiliates of Signatories to the World Anti-Doping Code, until his case is deemed not to be an anti-doping policy violation, he accepts a sanction, he fails to contest this matter, or a hearing has been held and a decision reached in this matter;

10. Provided Applicant abides by the terms of the Provisional Suspension, the time served under the Provisional Suspension will be deducted from any period of ineligibility that Applicant might receive beginning on November 1, 2019, the date the Provisional Suspension was imposed;
11. That on December 18, 2019, USADA formally charged Applicant with an Anti-Doping Policy Violation for the presence of Prohibited Substances in his Sample and the Use or Attempted Use of a banned performance enhancing drug;
12. That Applicant believes his positive test may have been caused by his use of a dietary supplement or medication he was using prior to the Sample collection on September 12, 2019;
13. That USADA and Applicant have agreed to the suspension of the results management proceedings for a period of **forty-five (45) days** in order to give Applicant the opportunity to further investigate the source of the Prohibited Substances detected in his Sample and conduct the

testing of dietary supplements he claims he was using prior to the Sample collection on September 12, 2019; and

14. That should the testing facility detect the presence of drostanolone, DHCMT, stanozolol and/or boldenone in any of the products tested by Applicant or on Applicant's behalf, USADA is not conceding that the source of Applicant's positive test has been identified."

Presence

66. It follows from the Stipulation that the Presence charge is undisputed, and that CLP can only, on his own case, avoid the prescribed sanction by making good the Contamination Defence (or the "Estoppel defence").

67. In my view CLP's assertion that he must be the victim of supplement contamination is barely supported by anything other than his denial of any deliberate ingestion or use of any anabolic steroid in the Trio.

68. Such denial by itself is insufficient: as has been reiterated in the doping jurisprudence of the Court of Arbitration for Sport (CAS) "*the currency of [a] denial is devalued by the fact that it is the common coin of the guilty as well as the innocent.*" Meca-Medina v FINA CAS 99/A/234 para 10.17.

69. CLP further stated, to illustrate his bona fides that he would not have entered the RTP if he was aware that he had ingested any of the Trio in the 12 months preceding such entry because he would have known that, if he was tested, such ingestion would inevitably have been exposed.

70. This further statement itself begs a number of questions, including the correctness of CLP's understanding of the consequences of entering the RTP, his awareness of whether and when he might be tested, his evaluation of the degree of such risk balanced against the financial and reputational advantage of being in the future able to participate in competitions under the auspices of the UFC which, absent such entry, he would not have been able to do. In the exercise of evaluation, which is common to the judicial and arbitral function, the certainties of science must rank higher than the uncertainties of human behavior.

71. In this context it is noteworthy that CLP only corrected the date of his ingestion of boldenone when confronted with his adverse test results. This discourages any reliance on the accuracy of his assertion that at all times he was seeking to be, and thought he was, compliant with the ACF ADP.

72. Without prejudice to the matters raised under Aggravating Circumstances, I would acknowledge the problems caused by CLP's lack of funds and the

unanticipated Covid-19 crisis leading to various stages and degrees of lockdown in the United Kingdom from the third week in March 2020 onwards.

73. As against this I also note that:

- (i) CLP does not appear to have pursued his quest to ascertain the source of the prohibited substances admittedly found in his urine with all deliberate speed.
- (ii) CLP has had the benefit of two adjournments of the hearing which has given him more time for testing.

74. In CLP's initial brief it is asserted that had not "*a vital mistake*" been made when USADA told CLP that King's Laboratory would not test his sample, the testing would have been completed by the date fixed for the hearing. That too involves a measure of optimistic speculation, since in point of fact, even after the misunderstanding between USADA and King's Laboratory had been clarified, CLP was not exactly quick off the mark.

75. Moreover, I acquit any desire by USADA as CLP alleges to "*victimize and sabotage my career*". On the contrary the record set out above shows that at all material times it sought to assist CLP, inter alia, by prompting him to

accelerate his quest, and by providing relevant documentation to King's Laboratory. USADA is not responsible for the King's Laboratory misunderstanding of USADA's original approach for assistance.

76. The simple fact is that there is nothing which presently amounts to sufficient evidence to sustain CLP's Contamination Defence. There is at most a single sample which has been proven to contain stanazolol (though I flag up that the content, provenance and significance of that sample are considered later) and no sample which has been shown to contain the other two prohibited substances in the Trio.

77. Fairness is a necessary component of any arbitral proceeding; but fairness must be extended to both parties. There is a recognized interest in reaching decisions in an arbitration within a reasonable time. Moreover CLP, no longer under contract with UFC, is free to fight, as he has fought in the past, in other bouts unregulated under the UFC ADP. Those whom he fights and those under whose auspices he fights should be entitled to know whether he has in the past used prohibited steroids whose performance enhancing properties in combat sports are a matter of general knowledge. Safety is at stake.

78. I emphasise that on 25th September 2020 there had been no finding that the Contamination defence had not been made out. Once, as I explain in this Award, a finding has now been made to that precise effect, promoters and opponents in non-UFC fights may wish to take that finding into account.

79. On the most charitable interpretation of the facts (which, as will appear, I do not endorse) CLP would be like Mr Micawber, the Charles Dickens character in his novel the Pickwick Papers, who simply hopes that *“something will turn up”*. In my view CLP has run out of time to test the remainder of the 20 plus supplements he originally declared so as to try to prove that one of other was contaminated with one or other of the Trio.

80. It is therefore not necessary for me to consider whether CLP can also establish the other part of the definition of contaminated product i.e. that *“in all the circumstances a reasonable person using due care would not have suspected that there is a material risk that the product contained a prohibited substance”*. I content myself with observing that the risk that supplements may contain prohibited substances is notorious; I was addressed by neither party on the due care issue.

81. It is, in short, fatal to his Contamination Defence that CLP has provided no sufficient evidence in support of it. Without need to consider the formidable points made in the first report of Dr Fedoruk, USADA's Chief Science Officer dated 21 August 2020 designed to rebut such defence, I conclude that CLP's evidential cupboard is bare; his case no stronger than that unsuccessfully advanced in either USADA v Blazejackj AAA 01-16-0005-1873(2017) USADA v Da Silva UFC Arbitration 2020. This negative point may be accompanied by a positive point if USADA's case on Aggravating Circumstance, on which the burden of proof lies upon it, is made good an issue to which I later return. Subject to the Estoppel defence, the Presence charge is made out.

Tampering

82. There are two bases upon which a tampering charge can be made out under Article 2.5 UFC ACP. The first is if fraudulent information is provided to USADA. I would accept that in this context fraudulent means more than merely inaccurate.

83. However, USADA does not rely upon that element of a tampering charge but on the other element, i.e. non-disclosure without compelling justification. Article 2.5.2 ditto. CLP has tendered only what purports to be

evidence of how stanazolol entered his system but not even purportedly any evidence at all how Drostanolone or DHCMT did so. He cannot for that reason alone establish a “*compelling justification*”, itself a high hurdle, for his non-disclosure. Klein v ASADA CAS A4.2016 at para 128 - Subject to the Estoppel Defence, the Tampering charge is made out.

The Complaint

84. The Complaint was initially identifiable only through a glass darkly. As developed at the hearing, it was clarified as being not so much an allegation of positive misstatement but of insufficient provision of information as to the obligations attendant upon entry into the RTP and the risks of non-compliance therewith. It was suggested that had CLP been fully cognizant of the implications of such entry, he might have chosen not to enter the RTP at all and pursued his sport in areas unregulated by the UFC ADP as he had previously done (“the first point”). He also complained that, someone like he claimed to be a victim of contaminated supplements might, in making a disclosure of the supplements without knowing or therefore identifying their prohibited content, find himself unfairly guilty of an ADPV (“the second point”).

85. As to the first point I start with the documentation. In my view the onboarding email unambiguously provides that the fighter is immediately subject to a strict anti-doping program, and is further notified of his duty to submit an onboarding declaration wherein he is required to provide details regarding any prohibited substance(s) ingested within the previous year.

86. That CLP received the onboarding email is proven by the fact that he purported to do exactly what he was told to do, and his own two declarations contained statements, quoted above, which were crystal clear both as to his duty and to the consequences of its breach.

87. I find it most unlikely in the extreme that Ms McPherson would have said anything to obscure the clear meaning of the documents. She had dealt on a recurrent basis with around 200 entrants into contracts with the UFC and thereafter the RTP and there was no reason why she should deviate in CLP's case from her standard procedure (of which there is no record at all of any previous criticism).

88. In any event, I found Ms McPherson to be a truthful witness. It is possible that CLP or his representative misunderstood what she said; but that is quite insufficient to provide an Estoppel Defence which, in broad terms, enables a person who has relied on another's misstatement to his detriment

to stop that other from enforcing what might otherwise be that other person's right.

89. I accept that CLP was unclear as to **when** he had in fact entered the RTP; his request to do so after he had done so suggests as much; but it is abundantly clear on the documents that he wanted to enter into the RTP which he appears to have regarded as a potential get-out-of-jail free card cancelling any previous misuse of prohibited substance. But, I repeat, the documents he signed and submitted are quite unambiguous. It is the compliance with the duty of full disclosure which is the sine qua non of enjoyment of the benefits of Article 5.7.4.

90. As to the second point, this is based on a misunderstanding of Article 2.5.2. If there is a "*compelling justification*" for failure to make full disclosure it will not lead to a sanction but only to subjection to the notice period required in Article 5.7.4. In short if CLP can make good his Contamination Defence he would have a defence to the tampering charge; but not if not.

91. For those reasons I conclude that USADA is not estopped from relying on either the Presence or the Tampering charge which are, accordingly, both made out.

5. AGGRAVATING CIRCUMSTANCES

92. Under this heading USADA seeks a four-year period of ineligibility based on new evidence that it USADA had received in the wake and arising out of CLP's reliance on the King's laboratory letter of 22 October 2020.

93. USADA's charging letters to CLP (18 December 2019 and 23 March 2020) specifically referred to aggravating circumstances-as to which see Article.10.2.3 of UFC ADP and gave notice to CLP that if it were determined that he is subject to aggravating circumstances, his period of ineligibility could be increased from two to four years. The charging letters further explained that aggravating circumstances "*can be based either on conduct which occurred in connection with the violation or on conduct which occurred subsequently, through the conclusion of any disciplinary proceedings. For example, the Use of multiple Prohibited Substances, untruthfulness or other misconduct before a hearing panel constitutes aggravating circumstances, which can increase your period of ineligibility.*"

94. The UFC ADP itself explains in its Appendix 1 Definitions that "*Aggravating Circumstances exist where the Anti-Doping Policy Violation was intentional, the Anti-Doping Policy Violation had significant potential to enhance an Athlete's Bout performance, and . . . the Athlete or Person*

engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an Anti-Doping Policy Violation.”

95. By way of illustration of application of that provision in *USADA v. Rivera*, UFC Arbitration 19 July 2018 the arbitrator found that aggravating circumstances were present and imposed a four-year sanction because the athlete submitted fraudulent evidence during the arbitration proceeding.

96. As already mentioned, CLP objected to my entertaining the Aggravating Circumstances issue at the hearing at all because of the shortness of time available to him to respond to USADA’s case and sought an indefinite period to enable him to do so (USADA offered him an extension until end December 2020 which CLP rejected out of hand as inadequate).

97. I reject that objection for two main reasons. First because it is CLP who is himself responsible for the fact that the issue has been identified at so late a stage of the proceedings. Second, because I can see no reasonable basis for believing that CLP would ever be able to rebut the case advanced by USADA under this head.

98. As to the first reason:

- (i) CLP's case has been pending since November 2019, and he has received extensions to investigate the source of his positive tests and set forth his defense.
- (ii) Further to (i) the hearing date has been scheduled three different times (7 July 2020, 1 October 2020 and 10 November 2020).
- (iii) Specifically, CLP requested an extension on the date his Initial Brief was due so that he could test supplements (when he had already had two months to do so).
- (iv) CLP then failed to use the additional sixty days to test any additional supplement other than the single one of USN Muscle Fuel sent to King Laboratory on 27 May 2020 apparently,(as later explained,) obtained via the internet as an example of what CLP used rather than actual evidence of what he did use see (v) below.
- (v) On 16 September 2020, after the sixty-day window provided to test additional supplements and only two weeks before the second scheduled hearing date of 1 October 2020, King's Laboratory notified USADA that it had received another container of USN Muscle Fuel with the same reference number as the one tested in June/July. CLP claimed that this new container was "*the actual supplement he used not a copy from the internet*)[sic] his partner found it in a cupboard whilst cleaning, so he sent the original in to the lab."

- (vi) On 29 September 2020 less than two weeks after submitting the opened container and without having received the results from King's Laboratory, CLP requested an adjournment of the second hearing date because he was "*showing signs of covid 19.*"
- (vii) In spite of a request from me, CLP has never provided any proof of symptoms or diagnosis of Covid 19. The two negative Covid-19 tests he provided are from 21 September and 25 September 2020, before CLP competed in an event on 25 September 2020, which, USADA claim would have almost certainly required negative Covid-19 tests. Be that as it may, these negative tests were carried out *before* he claims he fell ill and requested an adjournment.
- (viii) The lack of corroboration provided by CLP as to his health issue together with the evidence of manipulation discussed below raise, at the very least, questions about whether CLP's request for an adjournment was prompted by his knowledge what the King's laboratory would find in the open supplement he had sent in so late for analysis.

99. I should add that CLP also argued at the hearing that King's Laboratory analysis, upon which USADA rely, was only procured for CLP's own benefit to increase his understanding of the possible source of his positive tests and

not for the purposes of providing evidence in the Arbitration. This argument is palpably without merit. First the whole basis of CLP's recurrent request for further time was to enable him to obtain evidence in support of his Contamination Defence. Second it was never previously suggested by CLP or his representative that the analysis was not intended to be considered in the Arbitration. On the contrary on 16 September 2020 CLP's representative himself notified USADA that the second supplement had been sent to King's Laboratory, and, (in my view dispositively) on 30 October 2020 sent the test result to me saying that it was required to give CLP "*a fair hearing*". As it turns out CLP has been hoist with his own petard.

100. I shall postpone consideration of the inability to rebut reason until after I have considered USADA's manipulation case on its merits.

101. The starting point is that USADA is not constrained by any rules as to evidence that may apply in national courts, whether criminal or civil. It is a characteristic of sporting disciplinary proceedings that issues relating to evidence go to weight not admissibility, and the touchstone in the UFC ADP, borrowed from WADC is "*any reliable means*". I am entitled accordingly to consider evidence in written rather than oral form, including

for present purposes, expert reports and other documentation and to consider the cumulative effect of such written evidence.

102. I therefore proceed to consider the cumulative effects of the written evidence relied upon by USADA.

(i) On 22 October 2020, the King's Laboratory reported that CLP's second container of USN Muscle Fuel contained stanozolol at ergogenic levels: .5 milligrams/gram.

(ii) On 23 October 2020, USADA sent CLP the laboratory report and a formal request for discovery including the request' *Please explain the circumstances as to how you located the open container of the USN Muscle Fuel for testing in September*"

(ii) On 29 October 2020 CLP gave no detailed or substantive responses, except to provide a new statement as to how he came to find this particular container of USN Muscle Fuel nearly a year later. *"Container packed in storage with belongings when moving property"*.

(iii) On 29th September 2020, his representative had written with reference to the same container in somewhat different terms

“he sent in another package (this time the actual supplement he used not a copy from the internet) his partner found it in a cupboard whilst cleaning”.

- n “(iv) On 27th October 2020 King’s Laboratory described the second container as *“open and only a thin layer, enough to cover the bottom remained”*, whereas the first container Lot Number F94218 was sealed. It also sent photographs for the second product Lot Number F94217 in a container with a label with the following information:

ALL IN ONE

MUSCLE FUEL

ANABOLIC ALL IN ONE MUSCLE MASS CATALYST

- (iv) The products sent to King’s College Laboratory by CLP for analysis were not manufactured until October 2019 i.e. after CLP’s AAFs, see Statements from USN UK and Amino Labs the supplement manufacturer Aminolabs is *“ISO 22.000 and GMP certified, follow[s] the latest HACCP standards and work[s] in accordance with the international Informed-Choice quality assurance program and the International Food Standard (IFS).”*

- (v) This manufacturer's evidence contradicted CLP's statement that he consumed the product from this lot number prior to his September 2019 AAFs.
- (vi) A sealed container of the product from the exact next lot number, with the same formulation and manufactured in the same month at the same location, tested negative for the presence of any prohibited substances.
- (vii) CLP stated he has no record or receipt of his purchase of the supplement.
- (viii) Dr. Fedoruk, USADA's Chief Scientific Officer, notes in his supplementary report of 3 November 2020, which had the benefit of the King's Laboratory information about the second container(with photographs),its contents, that
 - (a) the level of stanozolol detected in the USN Muscle Fuel is extremely high and is not consistent with contamination during the manufacturing process.
 - (b) Levels this high are easily obtained through manual manipulation. For example, 50 mg stanozolol pills are readily available on the internet and are a common dosage for use to enhance performance. Crushing half of a 50 mg pill and putting it in 50 grams of powder (the amount of powder remaining in the

open container of the supplement) would yield the exact result reported by the laboratory.

- (c) There were striking differences between the contaminated supplement and the powder from a typical container. *“There are noticeable larger and darker granules in the supplement provided by the athlete, whereas the chocolate powder in a typical product container is totally homogenous in consistency . . .”*

103. In the U.S. Supreme Court opinion of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 562 (2007), Justice Souter criticized the court below for an approach to pleading that *“would dispense with any showing of a reasonably founded hope that a plaintiff would be able to make a case; Mr. Micawber's optimism would be enough”*.

104. Applying that authoritative approach, I cannot identify any reasonably founded hope that, if, given even more time, the CLP could rebut USADA's case on Aggravating Circumstances. He would have neither hope nor expectation.

105. I cannot see any basis upon which CLP could rebut (even if he sought to do so) the statement that the second container was open (so, obviously,

making the contents vulnerable to manipulation). King's Laboratory could not have made a mistake about what could be seen and have no conceivable motive to misrepresent that matter.

106. I cannot see any basis upon which CLP could rebut the certified Manufacturer's statement as to when the product in either container started to be marketed. The Manufacturer, with access to its own records, would not have made a mistake and had no conceivable reason to misrepresent the matter.

107. Had CLP retained a sale receipt which showed that he purchased either container at a time before the Manufacturer said that the product in it was marketed, that might have put a different complexion on the matter. But he has no such receipt (and moreover produced no evidence of his internet search for the first of the two).

108. It follows inexorably from those premises that CLP cannot be telling the truth about when he purchased either container. He is, therefore, condemned out of his own mouth.

109. CLP's version of how he chanced upon the second container, the analysis of whose content by King's Laboratory is the fragile foundation of his

Contamination Defence, is unconvincing, not least because on the face of it there are two discrepant versions.

110. It may be that the two versions are capable of reconciliation; but, if they are, CLP needed no adjournment to explain them, which he has not sought to do. In any event, in my view, any difference between these two versions is not an indispensable element of USADA's case.

111. Dr Fedoruk was tendered by USADA as a witness, but since CLP accepted that he had at present no material with which to contradict him, it would have been fruitless to call him simply to verify his detailed report. I recognize that, in theory, CLP might find some person to contradict what Dr Fedoruk opined but, in the light of the other indicia of CLP's manipulation, identified above, there is no purpose in permitting him to embark on what would not only be a wild goose chase, but a contrived and artificial one.

112. A Panel in *Tarnovchi v. ICF CAS 2017/A/5017* said. “[I]n the Panel's opinion it would be all too easy for an athlete to spike an open container of a food supplement with the prohibited substance for which he had tested positive, send such 'mix' to a testing institute which would obviously return a positive for that very substance, and then claim that this proves that it was

contamination of a product which he took in all innocence, which was responsible for the AAF.” That is self-evidently correct, and I am constrained by the evidence to conclude that this is what has actually happened in CLP’s case too. The evidence is both clear and convincing.

SANCTIONS

113. The sanctions are prescribed as follows

- (i) for the presence violation 2 years ineligibility¹ 10.2.1
- (ii) for the tampering violation, Article 10.2.1
- (iii) for the aggravated circumstances up the 4 years Article.10.2.3

114. Although the 4 year period where aggravating circumstances are present is a maximum, not a mandatory period I consider on the basis of the facts as I find them, that CLP has sought to muddy the waters from first to last both prior to and during this Arbitration by provision of false evidence. 4 years is therefore in principle proportionate and appropriate.

115. However, the starting point of the ineligibility must be, as USADA accept, back dated to 1 November 2019 when CLP was first provisionally

¹ i.e. cannot compete in bouts or exhibitions promoted or otherwise conducted by UFC. See UFC ADP Definitions of Ineligibility, Consequences of Anti-Doping Rules Violations and Bouts.

suspended, so that he will be ineligible for a period of a little less than 3 years

6. ORDER

116. Accordingly, I impose a sanction of 4 years ineligibility as from 1 November 2019.

Michael J Beloff QC

Michael Beloff QC Sole Arbitrator

4 December 2020

Blackstone Chambers

Temple

London EC4Y 9BW