

**AMERICAN ARBITRATION ASSOCIATION**  
**Commercial Arbitration Tribunal**

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In the Matter of the Arbitration between

UNITED STATES ANTI-DOPING AGENCY (USADA),

**Claimant**

and

AMY HAY,

**Respondent**

Re: AAA Case No. 01-17-0002-4676

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**AWARD OF ARBITRATORS (AS CORRECTED AND REDACTED)**

Pursuant to the American Arbitration Association's (AAA) Commercial Arbitration Rules as modified by the AAA Supplementary Procedures for the Arbitration of Olympic Sport Doping Disputes (the **Supplementary Procedures**) as set forth in the USADA Protocol for Olympic and Paralympic Movement Testing effective as revised January 1, 2015 (the **USADA Protocol**), pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 USC §220501, *et seq.* (the **Act**), a hearing was held in Santa Monica, California on September 22, 2017, before arbitrators Christopher L. Campbell, Walter G. Gans and Maidie E. Oliveau (the **Panel**) with Claimant's legal counsel in attendance, Respondent and her legal counsels in attendance and offering argument and evidence. The Panel does hereby AWARD as follows:

**I. THE PARTIES**

1. Claimant, USADA, as the independent anti-doping agency for Olympic sports in the United States, is responsible for conducting drug testing and for adjudicating any positive test results and other anti-doping violations pursuant to the USADA Protocol. Jeffrey T. Cook, Director of Legal Affairs of USADA appeared and represented USADA.
2. Respondent, Amy Hay (**Hay**) is a 26-year-old world class weightlifter, and has been a competitive weightlifter for the past eight years. Recently, she earned a silver medal at USA Weightlifting Nationals, won the American Open Series 1, and made the U.S. National Weightlifting Team. She has been in the national testing pool (**NTP**) since the spring of 2017.

She is currently ranked Number 1 in her weight class. Hay was represented by Howard L. Jacobs and Lindsay Brandon of the Law Offices of Howard L. Jacobs. Claimant and Respondent shall be referred to collectively as “the parties” and individually as a “party”.

## II. PROCEDURAL HISTORY

3. Respondent’s first place finish at the American Open Series 1 on March 18, 2017 resulted in her submitting to doping control by USADA. This was the third sample she had ever provided to an anti-doping organization, with the previous two also in competition. USADA sent Respondent’s sample to the WADA-accredited laboratory in Los Angeles, CA for analysis. The laboratory reported that the Respondent’s A and B samples contained a prohibited substance, ostarine – in the class of Anabolic Agents on the World Anti-Doping Agency Prohibited List (**Prohibited List**), adopted by both the USADA Protocol and the International Weightlifting Federation (IWF) Anti-Doping Policy.
4. USADA sent the Respondent a letter notifying her of her positive test on April 11, 2017, and a letter on April 12, 2017 indicating her B sample would be opened and analyzed April 13, 2017. That same day, April 11, 2017, Respondent informed USADA that she believed among two other possible theories that her boyfriend, referred to herein as **DF**, may have put a prohibited substance in her water the weekend she tested positive. Respondent provided USADA with a signed provisional suspension form on April 11, 2017 (the **Provisional Suspension**). The next day, she requested an expedited hearing so that she could potentially compete at a national competition on May 13, 2017.
5. On April 12, 2017, Respondent provided USADA with pictures of the protein powder she borrowed from **DF** as well as names of the pre-workout supplements he used.
6. On April 19, 2017, USADA notified Respondent that her B sample results confirmed the presence of ostarine, and charged her with her first anti-doping rule violation. On April 20, 2017, Respondent requested a hearing. The following day, she withdrew her request that the hearing be expedited. On May 1, 2017, Howard Jacobs entered his appearance in the case.
7. Once the composition of the Panel was confirmed, a preliminary hearing conference call was held on June 28, 2017. The hearing was scheduled for September 22, 2017.
8. Due to **DF**’s work-related travel prior to the scheduled hearing, the parties agreed to a video recorded deposition of **DF** on August 5, 2017 in San Diego, California. A video and a transcript of this deposition were made available to the Panel, along with the audio recordings of one of the USADA investigators’ conversations with **DF** and one conversation with Hay in April 2017.
9. Respondent’s request for relief is: that the default sanction be two years, based on her having taken the ostarine unintentionally; that she be found to have no fault or negligence and thus her sanction be eliminated; or, if the Panel finds she did have some fault, that it was not significant fault and the two year default sanction be reduced to one year (the maximum reduction); and that her sanction be reduced for substantial assistance, up to 75% of the otherwise applicable period of ineligibility.
10. USADA’s request is a default sanction of four years or if the Panel accepts Respondent’s sabotage theory, a two year sanction.

11. Since Respondent is not contesting the positive test result, or the anti-doping rule violation, the issues before this Panel relate solely to the determination of the appropriate sanction applicable to the Respondent's anti-doping rule violation under the Code.
12. A hearing was held on September 22, 2017 in Santa Monica, California.
13. In Respondent's prehearing brief and prior to the hearing, Respondent requested that the name of her boyfriend who was her only witness not be disclosed in full in this Award. USADA objected to this request.
14. Accordingly, the Panel had to determine prior to the commencement of the hearing whether to use her sole witness/boyfriend's full name or his initials.

### **III. JURISDICTION AND APPLICABLE LAW**

#### **A. Jurisdiction**

15. The Panel has jurisdiction over this dispute pursuant to Paragraph 17 of the USADA Protocol, which provides, in pertinent part, that, "all hearings under the Protocol . . . will take place in the United States before the AAA using the Supplementary Procedures." In their stipulation the parties agreed that the USADA Protocol governs all proceedings involving Hay's specimen; and that the mandatory provisions of the 2015 World Anti-Doping Code (the Code) are applicable to this matter. This proceeding conforms to Article 8 of the Code.
16. Further, this arbitration was initiated by the parties pursuant to the Claimant's letter to Respondent, dated April 19, 2017, in which it advised Respondent of her right to take this matter to arbitration, followed by Respondent's email of April 20, 2017 which states "Yes I would like to move forward with the hearing."
17. Neither party disputed the Panel's jurisdiction and, in fact, both parties consented to it and participated in these proceedings without objection.

#### **B. Applicable Law**

18. The rules related to the outstanding issues in this case are in the IWF Anti-Doping Policy, which implement the Code. As the IWF Anti-Doping Policy is virtually identical to the Code, the applicable Code provisions will be referenced throughout this Award and all references to "Articles" are to provisions of the 2015 Code unless otherwise noted.
19. The relevant Code provisions are as follows:

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

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

**2.1.2** Sufficient proof of an anti-doping rule 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 the Athlete waives analysis of the B Sample and the B Sample is not 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, 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.

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### **3.1 Burdens and Standards of Proof**

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

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### **10.2 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 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

**10.2.1** The period of Ineligibility shall be four years where:

**10.2.1.1** The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

**10.2.2** If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

**10.2.3** As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance



which is only prohibited In-Competition shall not be considered “intentional” if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

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#### **10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence**

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

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#### **10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence**

##### **10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1**

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person’s degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years.

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#### **10.6 Elimination, Reduction, or Suspension of Period of Ineligibility or other Consequences for Reasons other than Fault**

##### **10.6.1 Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations.**

10.6.1.1 An Anti-Doping Organization with results management responsibility for an anti-doping rule violation may, prior to a final appellate decision under Article 13 or the expiration of the time to appeal, suspend a part of the period of Ineligibility imposed in an individual case where the Athlete or other Person has provided Substantial Assistance to an Anti-Doping Organization, criminal authority or professional disciplinary body which results in: (i) the Anti-Doping Organization discovering or bringing forward an anti-doping rule violation by another Person, or (ii) which results in a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to the Anti-Doping Organization with results management responsibility. After a final appellate decision under Article 13 or the expiration of time to appeal, an Anti-Doping Organization may only suspend a part of the otherwise applicable period of Ineligibility with the approval of WADA and the applicable International

Federation. The extent to which the otherwise applicable period of Ineligibility may be suspended shall be based on the seriousness of the anti-doping rule violation committed by the Athlete or other Person and the significance of the Substantial Assistance provided by the Athlete or other Person to the effort to eliminate doping in sport. No more than three-quarters of the otherwise applicable period of Ineligibility may be suspended. If the otherwise applicable period of Ineligibility is a lifetime, the non-suspended period under this Article must be no less than eight years. If the Athlete or other Person fails to continue to cooperate and to provide the complete and credible Substantial Assistance upon which a suspension of the period of Ineligibility was based, the Anti-Doping Organization that suspended the period of Ineligibility shall reinstate the original period of Ineligibility. If an Anti-Doping Organization decides to reinstate a suspended period of Ineligibility or decides not to reinstate a suspended period of Ineligibility, that decision may be appealed by any Person entitled to appeal under Article 13.

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#### **10.11 Commencement of Ineligibility Period**

Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

##### **10.11.3 Credit for Provisional Suspension or Period of Ineligibility Served**

10.11.3.2 If an Athlete or other Person voluntarily accepts a Provisional Suspension in writing from an Anti-Doping Organization and thereafter respects the Provisional Suspension, the Athlete or other Person shall receive a credit for such period of voluntary Provisional Suspension against any period of Ineligibility which may ultimately be imposed. A copy of the Athlete or other Person's voluntary acceptance of a Provisional Suspension shall be provided promptly to each party entitled to receive notice of an asserted anti-doping rule violation under Article 14.1.

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#### **APPENDIX ONE: DEFINITIONS**

**Fault:** Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete['s] . . . degree of Fault include, for example, the Athlete's . . . experience, whether the Athlete . . . is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's . . . degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's . . . departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.

**No Fault or Negligence:** The Athlete['s] . . . 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 rule. . .

**No Significant Fault or Negligence:** The Athlete['s] . . . establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. . .

#### IV. ARGUMENTS AND SUBMISSIONS

##### A. Anonymization of Key Witness

20. Respondent asked the Panel to decide before the hearing commenced not to use the full name of her boyfriend and only witness, in order that she may evaluate whether she wishes to proceed with the hearing or determine other options. She argues that there is nothing under the applicable rules that requires the inclusion of all witnesses' full names. The Code does provide that before decisions are published where it is determined that the athlete did not commit an anti-doping rule violation, the decision may be publicly disclosed only with the consent of the athlete who is the subject of the decision (Article 14.3.3). She also submits there is Court of Arbitration for Sport (CAS) precedent for an opportunity to make submissions on confidentiality before an award is published.
21. Respondent argues as follows. This is a case where the witness made himself available for a video deposition with counsel for both USADA and Respondent able to question him. There is no issue as to his identity which is known to the Panel and the Panel can assess his credibility through his deposition and also take into account the request for anonymization. Not referring to him by his full name does not affect the Panel's ability to evaluate his testimony. Since he is a witness and not the athlete, there is no requirement to use his full name. His testimony is important, but not his identity.
22. In addition, Respondent is concerned regarding USADA's argument that the witness's employer would be interested to know about his role in this matter, because his co-workers' lives depend on him and he needs to be held accountable both in this proceeding and with his employer because of that position of trust. She argues further that is not the accountability that should be required of him as a witness. He is accountable to tell the truth for purposes of this case, based on his sworn testimony, but not such that it could threaten his employment. Respondent argues that this is an exceptional case and that the Panel has the authority to decide not to identify this witness by his name.
23. USADA asked the Panel to identify the witness by his full name for several reasons. The witness himself did not ask for his name to be anonymized. He showed no concern when his deposition was taken and he was asked about risks in giving testimony. The witness's actions are "material information that should not be hidden from his superiors." USADA is not opposed to redacting the witness's actual employer, but argues that as a policy, when the witness is taking the blame for the athlete, and his name is anonymized, it creates a situation where there are no consequences or accountability because his identity is not known. USADA does not consider that the right to a fair hearing includes the right to present anonymized witnesses in the reasoned decision of the Panel. The anonymization allows anyone to be a witness and say whatever they want, without it reflecting on them. Especially in this situation,

because this is the athlete's witness and is her entire case, there is no compelling reason not to use his name – his employment is not a compelling reason. Anyone could argue that their employment is threatened by the use of their name, after giving sworn testimony. The witness inserted himself in this case and that was his decision. The system of publishing witnesses' names creates incentives to tell the truth and disincentives to not tell the truth. If those are removed, then the system will fail. In addition, the default rule has been that witnesses are identified by their names in the awards. USADA is here to protect the credibility of these proceedings and simply providing anonymous testimony under oath is not good enough. The value of the story told by witnesses is based on it being in their name.

24. The Panel determined that it did have the authority to anonymize the witness's testimony in the award as there is no requirement to use a full name. The Panel also determined that USADA's view that the witness' employer ought to know about his testimony indeed does threaten his employment, which is outside the bounds of an anti-doping proceeding. The Panel has an implicit duty to insure no witness is intimidated from testifying. Discussing possible actions against a witness outside of these proceedings before that testimony is introduced raises legitimate concerns regarding intimidation of a witness. In addition, the Panel has had the opportunity to see the video deposition of the witness and to assess his testimony, knowing his identity. Thus, the Panel, though concerned about the accountability of a witness by virtue of his name being unidentified, holds that in this case under the specific circumstances of this witness's employment, and USADA's specific reference to his employer, his initials will be used in this award. This is not a precedential decision such that other witnesses can express concern about their employment and receive anonymity, but rather is based on USADA's position that this witness's employer should know of his testimony.

#### **B. Witness Testimony and Factual Matters**

25. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, we refer in this Award only to the extent of submissions and evidence considered necessary to explain and support the Panel's reasoning.
26. The parties entered into a stipulation dated September 1, 2017 that included:
- a. That the laboratory, through accepted scientific procedures and without error, determined that both the A and B samples of Hay's urine contained ostarine;
  - b. That, based on the foregoing, Hay acknowledges she has committed her first anti-doping rule violation.
27. In addition to Hay, the Panel heard testimony from DF, Hay's boyfriend, by video deposition, and from the following witnesses during the hearing:

##### **For Claimant**

- a. Matthew Fedoruk, Ph.D, USADA's Senior Managing Director of Science and Research
- b. Victor Burgos, USADA's Chief Investigative Officer



28. The Panel did not hear testimony from Hay's weightlifting coach, Greg Everett (Everett) and thus these factual determinations are based solely on the testimony and credibility of Hay and DF. Their testimony is summarized herein. Hay and DF testified that on the evening before the March 18 competition, DF took one of his ostarine capsules and emptied a small amount of its contents into one of Hay's water bottles that she drank that evening. DF sabotaged her supposing this would somehow implicate Everett, who DF thought was a terrible individual. Several months earlier, Hay had been the object of unsolicited inappropriate emails from Everett, and she had told her boyfriend about her coach's improper behavior.
29. Hay testified that she had been under the impression she was subject to out-of-competition testing by USADA prior to the spring of 2017, based on an email of July 2016 from the CEO of USA Weightlifting in response to her inquiry. She formally entered the NTP in the spring of 2017, when she started providing USADA with her whereabouts information.
30. Hay testified that she has not knowingly taken ostarine. Once she did enter the NTP, she started getting anti-doping education emails from USADA, including recently about ostarine. Everett also told her about certain pre-workout mixes to avoid due to contamination possibilities.
31. Hay lived in Portland, Oregon and started training with Everett and his gym, Catalyst, in January 2016. Things went well until approximately the last week of July/first week of August of that year when she actually trained on site with Everett at his gym in California and then went twice a month for 3-4 days at a time. She testified that Everett favored her a lot, texted her all the time. At first she was flattered, but after December 2016, she noticed he was crossing the line; he said "I love you" three times after her win at a competition. After Everett's inappropriate conduct persisted, it all just did not seem normal. She deleted all of the inappropriate text messages, as he told her to delete everything he sent her.
32. In January 2017, Hay asked to go to a seminar Everett and his wife were giving, but Everett told her she could not because his wife was jealous. In texts thereafter, he started venting about his marriage, saying he wished he and Hay could be something more. As Hay was going through counselling at the time, she suggested it for him. In retrospect, she said she believed that such a conversation should not happen between a coach and athlete. There were other inappropriate texts, such as Everett commenting on videos she sent of her lifts when she was not on site and he would video back with voice overs and images that were suggestive. She admired Everett, who in her eyes, could do no wrong as a coach, so she remained silent.
33. By February 2017, she was able to tell Everett to stop. She told him she wanted him just to be her coach and he acknowledged she was right.
34. Hay's relationship with DF started in October 2016, after they had known each other previously during college. Everett knew of DF during this period. Hay had to seek permission from Everett to visit DF in San Diego, which was granted while Everett admonished that she could not take any days off from her training. She and DF decided to date after Christmas 2016 and from that time their relationship went public online. DF came to Oregon after Christmas 2016, when they spent two weeks together. She saw him in February 2017, when she went to San Diego for 4 days and the week before the competition in March, for 3-4 days. They communicated at least every other day in the interim. During their conversations, they did talk about Everett a lot and argued about her weightlifting.
35. In the beginning of February 2017, she told DF over the phone what Everett had said as described above in Paragraph 32. DF did not immediately get mad. A couple of days later, he

called her back and said he hated Everett and said he did not understand how she could continue training with him. She wanted to keep improving with Everett and DF wanted her to have nothing to do with Everett and to leave him and Catalyst. Hay testified that her fights with DF were either about Everett or DF saying she did not make enough time for the relationship, such as her being too tired to talk at night.

36. During this period, Hay told DF that weightlifting was more important to her than their relationship. They argued about Catalyst and Everett every time they talked, mostly by phone. Hay testified that the Pan Am Games were her goal for the year and that weightlifting was her life, her number one priority.
37. Initially, Everett was simply advising Hay not to let the relationship with DF interfere with her weightlifting, but when she started to pull away from him, Everett noticed. He then said that DF does not care about her weightlifting and Everett's wife was attacking Hay's choice to move to San Diego – questioning her decision and calling DF a liar. Hay testified that she sent those emails to DF. DF testified that he did not see any emails from the Everetts.
38. DF accompanied Hay to the American Open Series 1 in Reno in March 2017. This was a new competition, for which she did not have to qualify, a "lower level competition" which she expected to win since her lifts were 30Kg higher than anyone else's. They went to the competition venue the day before the competition for Hay to work out which she did on her own. Her coach was not there with her (but on site with another lifter), as he normally would have been. She testified that although she and DF exchanged comments about how her coach had been rude that day, they were not fighting between themselves.
39. That night, while Hay and DF were hanging out in their room she testified that DF was bringing water bottles to her. DF testified that he brought her the one bottle he sabotaged. She was only drinking water and not eating as she needed to qualify at the weigh-in the next day, March 18, at 6 pm, with her competition set to go last, at approximately 10 pm. DF testified about his decision to sabotage her water bottle, which he made that evening: "It was just an accumulation of everything starting all the way back from when I found out about the stuff that happened in December; just everything kind of came together at once. There was a lot of anger and rage."
40. She won the competition on March 18 and was subject to doping control.
41. The next event was the notice letter from USADA dated April 11, 2017 which she learned of while in her car that same day. Upon learning of her positive sample, Hay called Everett immediately. He was mad and questioned her about what she had consumed in the two weeks before the competition. Urged to do so by Everett, Hay called USADA immediately. She testified that she learned in that call that ostarine is a SARM and an anabolic steroid and that she would be ineligible for four years as a result of her anti-doping rule violation.
42. Hay had previously trained at a gym where a few of the lifters used ostarine, and the owner of that gym who eventually became her boyfriend for 6-7 months, was sanctioned for eight years based on his possession of ostarine. She was thus aware of the name and the effects but insisted that she did not realize the substance was a SARM.
43. While still in her car after learning of her positive test, Hay spoke to DF who could not talk due to work, but she did tell him what happened and he said he was sorry. She knew from a conversation in October 2016 with DF and his room mate that they had taken SARMS, which she knew then were prohibited. She had also seen the SARM container in DF's bag in Reno.

She had not then understood that ostarine was a SARM. During her April 11 phone call that she believed lasted about three minutes, she did ask him if he was taking a SARM at the time of the competition and he confirmed he was taking ostarine, a SARM.

44. Still on that same day, Hay then sent an email to USADA in which she posited a possible theory for her positive sample: that DF had sabotaged her water bottle the night before the competition. Everett advised her to mention this possibility to USADA so they could investigate it. She said in the email she had not asked DF about this. She suspected DF because it was too much of a coincidence that he had ostarine with him in Reno and she tested positive for ostarine.
45. She spoke to USADA's investigator, Victor Burgos (Burgos) the next morning and she told him that she had never taken ostarine. She provided him with DF's contact information. Burgos asked her why she suspected DF and asked for DF contact information. She told Burgos that she needed to talk to DF first, because she did not want DF to learn from Burgos that she suspected him. She never did tell him, as she was afraid to bring it up to him.
46. Burgos spoke to DF by phone on April 13 and April 14. Burgos testified that DF immediately volunteered that he had sabotaged Hay's water bottle. He said he did it because he was upset that Hay was having an inappropriate relationship with her coach, though he did not explain what was inappropriate nor did he have any direct evidence of this. He did say that Hay had asked him about SARMS and if they contained ostarine, but he did not admit to Hay that he put the ostarine in her water bottle. He said that he thought the focus would be on Everett, as Hay's coach, due to her positive sample. He thought it would damage the coach and his program.
47. Hay testified that DF had told her repeatedly he would "ruin her" if she hurt him and he testified he did not ever threaten her.
48. DF testified that he and Hay never talked about USADA testing or rules, that he did not know when or where she would be tested and did not know if she would test positive. He did not remember most of the details of his sabotage, other than that since Hay was drinking water, while he was refilling her water bottle, he opened a capsule of ostarine and dumped a small amount in it. He did not remember whether she drank the water or whether she had any side effects.
49. DF cared for and supported Hay and her love of weightlifting. He knew she would get into trouble but at the same time thought it would all fall on her coach. In his testimony, which was very short on specifics, he said he knew SARMS were prohibited but other substances like protein and creatine were not: "I – from my knowledge, just because I knew SARMS is not a – it's not like a well-known thing that people take. I know it's – you can buy it on the open market, but I know that most people don't take it so I just assumed, based off of my assumption, that it was the best thing I had at the time".
50. DF stated he hoped that if the Respondent tested positive "it would fall on Greg Everett and Catalyst Athletics" and that "Greg and Catalyst would, for the most part, not be able to coach and that company wouldn't exist anymore..." His basis for this was a reference to miscellaneous articles that he has read throughout the course of his "whole life" about coaches getting into trouble. He could not recall who the coaches were or what the coaches did, and when asked specifically whether the coaches were even in trouble for something related to doping, he responded, "I don't know." He "didn't really know anything" about how the

Respondent's coach would be adversely affected by her positive test. He did, however, know that the Respondent would suffer adverse consequences from testing positive.

51. Hay moved to San Diego to DF's apartment on April 22, 2017. She testified that she moved in with him before confirming the sabotage story, whereas DF testified that she knew about the sabotage prior to moving in with him though he could not recall the details of that conversation. During the first week of her stay with DF, she testified that he did not tell her about his sabotage of her water bottle - he told her right before he left on an extended work trip. DF testified that he did not remember how or when he told her about his sabotage: "I informed her of that, and then obviously a lot of emotions happened because of that and that's kind of where it started creating a lot more issues for us in the relationship." He said then that he thought she already knew and that he hoped she understood why he "had to do it". "I did not have a choice" is what he said. She just cried and said nothing. He was gone approximately five weeks. During that time, there was no internet service or other communication at his location. They did have one conversation on a satellite phone.
52. Hay testified that she stayed in San Diego because of money. She had decided to move three days before receiving notice of the positive sample. Upon her Provisional Suspension, her USA Weightlifting sanction was withdrawn, she had just quit her job to move, told her landlord she was leaving and she felt she had no other option. She also did not want to tell her parents what had happened.
53. While DF was still away, she quit Catalyst on May 25, 2017 so that Everett was no longer her coach. She provided the Panel with one text exchange with Everett in which he referenced his inappropriate emails.
54. Upon DF's return, she felt she had no way to leave as she was dependent on him. She did not trust him, did not know what he was capable of, but she stayed. Their meeting upon his return was awkward and frosty.
55. After she left Catalyst, her relationship with DF got better and it was easier for them to deal with their issues. He was the only person who supported her through these difficulties. She believes he did not mean to do anything to hurt her. She testified that he sabotaged her water to get her away from Everett and because she had said that weightlifting was more important to her than he was.
56. She moved back to Oregon to live with her parents in August 2017 and testified that she will move back to San Diego in April 2018 upon DF's return from a long work-related absence. She testified upon cross examination that she and DF became engaged in early July 2017.
57. At DF's deposition in August 2017, in response to the question about what his relationship with Hay was on that date, August 5, DF replied "Dating; girlfriend" even though they were engaged as of that date, according to Hay's testimony. In response to another question on the same subject, he replied: "We're still together."
58. USADA's witness, Matthew Fedoruk, testified that it is equally plausible that the ostarine was taken inadvertently or intentionally, i.e. the concentration of ostarine in Hay's urine is consistent with intentional use of multiple doses of ostarine over time, with the amounts being the tail end of the excretion of those doses or, a small amount taken closer to the time of the sample taking, consistent with Hay's positive sample being from a contaminated water bottle the night before the doping control.



59. Hay was tested out-of-competition on June 13, 2017 and the result of that test was negative for any Prohibited Substances.
60. Respondent has referred to USA SafeSport her issues with Everett. The USA SafeSport process is completely confidential, so no information is available to the Panel about the investigation or its results. Accordingly, with due respect to the confidential nature of that process, certain language in this Award has been redacted where the Panel determined it was appropriate.

### C. Applicable Default Sanction

61. Under Article 10.2, the Panel must first analyze the applicable “default sanction” before considering the elimination or reduction of that “default sanction.”
62. Pursuant to Article 10.2.1.1, the “default” or starting period of ineligibility is four years where the anti-doping rule violation does not involve a Specified Substance as in this case, unless the athlete can establish that the anti-doping rule violation was not intentional, in which case under Article 10.2.2, the period of Ineligibility is two years.
63. As used in Article 10.2, the term “intentional” is meant to identify those athletes who cheat. The term therefore requires that the athlete engaged in conduct which she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.
64. Therefore, if Hay can prove that her violation was unintentional, the default sanction in this case is two years. The burden of proof for Hay to establish that her anti-doping rule was not intentional is by a balance of probability as provided in Article Code 3.1.
65. The question for the Panel is whether Hay has established (by a balance of probability) that her positive test was caused by her boyfriend’s addition of ostarine to her water bottle. She argues that: (i) she did not intentionally violate the rules - her act of drinking water from a water bottle filled with tap water (whether done by herself or by her boyfriend) cannot constitute conduct which she knew might constitute or result in an anti-doping rule violation; and (ii) certainly, no such risk by Hay was manifestly disregarded.

### Respondent’s Submissions

66. Respondent argues further that if she has not met her burden of proving the source of her positive test for ostarine, this Panel may still find that Hay did not intentionally violate the Code, based on *Fiol v. FINA* (CAS 2016/A/4534). In that case, CAS squarely confirmed that an athlete need not definitively prove the source of a prohibited substance to establish that his violation was unintentional:

“The Panel finds the factors set out in paragraph 35 [that establishment of the source of the prohibited substance in an athlete’s sample is *not* a *sine qua non* of proof of absence of intent] more compelling than those set out in paragraph 36 [that establishment of the source of the prohibited substance in an athlete’s sample is a *sine qua non* of proof of absence of intent]. In particular, it is impressed by the fact that the FINA DC, based on WADC 2015, represents a new version of an anti-doping Code whose own language should be strictly construed without reference to case law which considered earlier versions where the versions are inconsistent. Furthermore, the Panel can envisage the

theoretical possibility that it might be persuaded by an athlete's simple assertion of his innocence of intent when considering not only his demeanor, but also his character and history (it is recorded if apocryphally, that the young George Washington admitted chopping down a cherry tree because he could not tell a lie. *Mutatis mutandis* the Panel could find the same fidelity to the truth in the case of an athlete denying a charge of cheating). That said, such a situation would inevitably be extremely rare. Even on the persuasive analysis of Rigozzi, Haas *et al.*<sup>30</sup>, proof of source would be "an important, even critical" first step in any exculpation of intent. Where an athlete cannot prove source it leaves the narrowest of corridors through which such an athlete must pass to discharge the burden which lies upon him." [Para. 37]

67. Hay asks the Panel to assess whether Hay and her boyfriend made up this story, to look at the mutual dislike between DF and Everett (and his wife), the fighting between Hay and DF regarding her work with Everett, and Everett's inappropriate behavior. DF knew about these incidents because Hay shared the stories with him. She did not need to share the texts with him. Hay submits that the Panel has to decide whether to believe Hay's version (that DF sabotaged her water) or USADA's version (that DF decided to take the fall for Hay out of a false notion of devotion).
68. In looking at the factors USADA has identified, Respondent argues that DF does have significant motivation to protect his girlfriend from a lengthy sanction, but that his job was clearly the foremost consideration for him. He is at potential risk at his job either way – if he is lying and giving false testimony, this is a breach of trust; if he is telling the truth, the act of sabotage would also expose him and his career. He had the option not to speak to Burgos, but he did. He could have withdrawn his story at any time – he did not have to submit to a sworn deposition. It would be much less likely for him to give evidence months after the event, if he is lying. It just seems much more likely that if DF did sabotage his girlfriend's water, he would own up to it than to say I know I did not do this and I will just take the fall for her. His action on March 17 was impulsive, not planned out – an irrational act.
69. Respondent argues that there was no need for a specific triggering event for DF to decide to sabotage his girlfriend's water. It is now indeed not understandable how he thought this act would bring down Everett, but at the moment, his attendance at her first competition, the triggering event was everything coming together – all the tension between them. He wanted her to leave Catalyst. At the same time, Everett and his wife were demanding that she leave DF. Though USADA argues that it is unreasonable for DF to believe the positive test would hurt Everett, in fact it did hurt Everett: he lost Hay as a lifter for his gym.
70. Respondent moved to San Diego before knowing that DF did this and she was embarrassed to move back home then. She did not want to tell her parents about these events. She knew DF was leaving for a while, so she stayed at his apartment.
71. Hay argues that if the Panel weighs the two versions – USADA's argument that she intentionally doped and DF is covering for her vs. the Panel weighing her credibility, the Panel will find that she was forthright, forthcoming, completely transparent. She argues that no one could believe she made this up, based on her demeanor.
72. Hay submits that the source of Hay's positive test has been established, on a balance of probability if the evidence is assessed fairly, to be the ostarine her boyfriend said he put in her water. She also argues that if the Panel disagrees, however, the failure to prove the source of the ostarine cannot be equated with a *per se* failure to prove a lack of intent to violate the anti-

doping rules. Rather, her positive test must be viewed under the totality of the circumstances presented. In either case, the default sanction is then reduced to two years.

#### **USADA's Submissions**

73. USADA agrees that Respondent bears the burden to prove by a balance of probability her lack of intent. USADA's focus is on the circumstances that led to her positive test in evaluating whether her ingestion was "intentional." USADA argues that Respondent has put forward a theory that is novel, far-fetched, and mutually exclusive of any other possible explanation for her positive test. USADA submits that the Respondent's sabotage theory is simply too convenient, incredible, and lacking corroboration to satisfy her burden.
74. In a case such as this one, a key issue for the Panel is a credibility assessment of the Respondent and her boyfriend, as it is their claims upon which the sabotage theory is built. USADA points the Panel to factors to assess the witnesses' credibility as well as the consistency or inconsistency of the evidence and whether the evidence is implausible on its face.
75. USADA argues that it is undeniable that DF has significant motivation to protect his girlfriend from a lengthy sanction. Both DF and Hay acknowledge being in a serious relationship. They moved in together since the notice of the positive test, their relationship has grown stronger and they have become engaged. DF further said he supported the Respondent in her love and commitment to the sport of weightlifting. USADA argues that DF has obvious bias and motive to favor his girlfriend.
76. USADA also asks the Panel to consider whether the Respondent not only staying in a relationship with DF but moving to San Diego to live with him is consistent with her recently learning that he had been caught surreptitiously trying to destroy her livelihood, intentionally putting both her health and sport career at risk.
77. USADA argues that extreme actions (such as sabotaging your girlfriend's water) are typically triggered by a circumstance which causes the actor to set aside caution and reason. The timing of the alleged act of sabotage does not seem to coincide with momentous circumstances in DF's relationship with the Respondent. DF testified that the handful of uncorroborated allegations the Respondent lodged at her coach were from months earlier. DF also admitted he never confronted the Respondent's coach about the allegations. DF's testimony is that the sabotage plan "just came to mind; more in the moment." The story told by the Respondent as to when and why DF allegedly sabotaged her drink does not add up, as there was no precipitating incident. The events of alleged inappropriate behavior by Everett took place in January, months before the sabotage and DF did not blame the coach for the sabotage when interviewed by USADA, despite saying his purpose in doing it was to point the blame at the coach.
78. USADA contends that DF's plan was illogical and improbable. There is no logical link connecting the sabotaging of Respondent's water to Everett facing a sanction, and it would have been unreasonable for a person in DF's shoes to have believed that spilling the partial contents of an ostarine pill in his girlfriend's drink would likely have any impact on Everett. DF testified that he did not know ostarine was prohibited, he and Hay never talked about USADA testing or rules, he did not know when or where she would be tested and did not know if she would test positive. DF cared for and supported Hay and yet he knew she would get into trouble but at the same time thought it would all fall on her coach. Thus, Respondent

cannot even demonstrate that DF knew ostarine was banned, which is obviously a necessary link in demonstrating he put ostarine in her drink intending to cause her to fail a drug test.

79. USADA argues the Panel should consider whether it is credible that someone would attempt to sabotage another person by using a substance they did not even know was banned, and on the other hand, whether someone so enraged that he was moved to sabotage his girlfriend's career would only put a small amount of one capsule into one of her water bottles even though she would not conceivably be tested for another 24 hours.
80. It is also illogical and improbable that the relationship between Hay and DF grew stronger after this incident in which he sabotaged her water, she moved in with him and stayed with him though learning of his devious act and they later became engaged.
81. USADA concludes that in assessing DF's credibility and whether the Respondent has carried her burden of proof, the Panel will need to ask: does this all add up?
82. USADA points to inconsistencies in the testimony of Hay and DF. She testified that she moved in with him before confirming the sabotage story, whereas DF testified that she knew about the sabotage prior to moving in with him. She testified that he has told her repeatedly he would "ruin her" if she hurt him and he testified he did not ever threaten her.
83. USADA further argues that another logical inconsistency is that DF's alleged intent to get Everett into trouble (which was purportedly so powerful that it caused him to risk great harm to Respondent and her career) disappeared after the Respondent tested positive. The first time DF was interviewed by USADA and asked about the source of the Respondent's positive test, rather than point the finger at her coach or even suggest that her coach may be involved, he claimed full responsibility for the positive test. When confronted with this inconsistency, DF explained that he thought the focus would be on Everett even if he admitted putting the prohibited substance in the Respondent's water bottle. USADA argues DF's story is inconsistent and illogical, permeated with implausibility.
84. In light of all these inconsistencies, inaccuracies and failures of recollection, USADA argues that the Panel must determine whether DF's testimony can bear any weight whatsoever, and of course, the Respondent stakes her ability to meet her burden of proof to DF's testimony.
85. USADA believes the evidence to be most consistent with DF taking the blame upon himself for an action the Respondent either cannot or does not wish to explain to the Panel. Conversely, the Respondent asks that the Panel believe that DF was willing to risk causing his girlfriend potentially grievous harm by surreptitiously sabotaging her drink as part of a plan to undermine her coach.
86. Of the two alternative views of DF put forward in this case, USADA contends its view is more consistent and plausible. In USADA's view, DF is likely acting out of a somewhat misguided but chivalrous motive to help someone he cares about.
87. USADA further argues that Respondent's story is too convenient. Her boyfriend shoulders all the blame for her violation, with no corroborating testimony from any other person, and she requests that his name be removed from the decision, so he faces no repercussions and has no accountability for his alleged acts. It was also very convenient that Hay immediately upon learning of her positive test speculated to USADA and her coach that DF did the exact thing that he admitted to two days later. He immediately took the blame by admitting he sabotaged her water while in the same conversation saying he thought it would ruin the coach. She had



also requested in her conversation with the USADA investigator that she speak with DF first about her theory, but then both DF and Hay testified that she did not.

88. In *Fiol* the athlete's theory as to the source of his positive test was determined to be "unsound and depend[ant] . . . on a series of improbabilities none of which were established to the satisfaction of the Panel." *Fiol* at 39. The theory was also based on inconsistent testimony. *Id.* The athlete's theory proposed in *Fiol* is certainly very different from the Respondent's theory, but USADA highlights the reasoning in *Fiol* because it is equally applicable in this case. Here, DF's testimony is logically inconsistent as described above. In addition, the Respondent's theory is premised on a series of improbabilities at the time of the alleged sabotage: (1) that the Respondent would be tested; (2) that the small amount of ostarine put in her water would be detectable 24 hours later; and (3) that the Respondent's coach would face penalties despite DF immediately after learning of the positive test admitting that he caused the positive test.
89. Other than the Respondent's sabotage theory, there is no evidence, other than the Respondent's protestations of innocence, that the Panel can rely upon to discharge her burden of proving lack of "intentional" use. She cannot meet this burden as "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 ¶10.17. And as in the *Fiol* and *Blazejack* (*USADA v. Blazejack*, AAA 01-16-0005-1873) cases, when an athlete has failed to provide a plausible explanation for a positive test, and absent the rarest of circumstances not present in those cases or here, the default four-year sanction should be imposed.

#### **D. Reduction of Sanction**

##### **Source of positive sample**

90. In order to obtain a reduction in the default sanction, Hay must prove (on a balance of probability) the source of her positive sample. She contends that she has established the most likely source of her positive test: sabotage of her water bottle by her boyfriend.
91. USADA argues that if the Panel does not accept the sabotage of her water bottle as the source of her positive test, no reduction of her sanction can be considered.

##### **No fault or negligence**

92. Respondent argues that if she can establish that she bears No Fault or Negligence, then under Article 10.4, the otherwise applicable period of ineligibility is eliminated. The standard to establish No Fault or Negligence is as follows:

The athlete ... establishing that ...she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that ... she had used or been administered the Prohibited Substance ... or otherwise violated an anti-doping rule.

93. Hay had no reason not to trust DF in filling up her water bottle. Although she subsequently reflected upon her relationship with DF in suggesting he may have had something to do with her positive test, at the time of her competition, she had no reason to believe that he would carry out such an action.
94. Because Hay did not see DF add the ostarine to her bottle, she had no way of knowing it was there. Hay points the Panel to the decision in *USADA v. Roberts* (AAA No. 01-0003-4443),

the Canadian Doping Tribunal case re *Shawnacy Barber* (SDRCC DT 16-0249), *Adams v. CCES* (CAS 2007/A/1312) and *ITF v. Gasquet* (CAS 2009/A/1926) at para. 5.46-47:

“In continuation, the Panel states that under the given circumstances, even if the Player exercised the utmost caution, he could not have been aware of the consequences of kissing a girl who he had met in a totally unsuspecting environment. It was simply impossible for the Player, even when exercising the utmost caution, to know that in kissing Pamela, he could be contaminated with cocaine. The player therefore acted without fault or negligence.”

95. Under these circumstances, Hay argues that DF’s actions should not be attributed to Hay. The Comment to Article 10.4 states that No Fault or Negligence would not apply in the circumstances of sabotage of the Athlete’s food or drink by a spouse, coach or other Person within the Athlete’s circle of associates. Hay argues this Comment is not binding in every case. The Code comments are used to interpret the Code, but do not have the same force and effect as if they were the actual rules. She also argues that the Code includes a requirement that the sanction be proportionate, that holding her accountable for her circle of friends would be disproportionate.
96. USADA submits that the Respondent has not established the method of ingestion of ostarine and for this reason alone cannot receive a No Fault finding.
97. If, however, the Panel disagrees with USADA’s reasoning above, USADA argues that a No Fault finding is still inappropriate in this case. The Comment to Article 10.4 specifically states that “No Fault or Negligence would not apply in the following circumstances: . . . sabotage of the Athlete’s food or drink by a spouse, coach, or other Person within the Athlete’s circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink).”
98. USADA argues that the Comments in the Code govern how the IWF Anti-Doping Policy should be interpreted. The IWF Anti-Doping Policy states in Article 20.5: “These Anti-Doping Rules have been adopted pursuant to the applicable provisions of the Code and shall be interpreted in a manner that is consistent with applicable provisions of the Code.” The IWF Anti-Doping Rules specifically require “[t]he comments annotating various provisions of the Code and these Anti-Doping Rules shall be used to interpret these Anti-Doping Rules.”
99. In addition, USADA contends No Fault or Negligence is not appropriate because the Respondent had fault in relation to her positive test. The Respondent claims that she had no reason not to trust DF in filling up her water bottle, but she had reason to foresee this act of sabotage and, therefore, be wary of him handling or preparing her food or drink. According to the Respondent, DF had told her repeatedly that he would “ruin” her over disagreements about her lifting and her relationship with her coach. In addition, the Respondent knew that DF used SARMS and had them with him while they were in Reno before the competition. Thus, the Respondent had clear notice and evidence of DF’s ability and willingness to sabotage her because the Respondent immediately pointed the finger at him after being notified of her positive test. Accordingly, USADA argues that the Comments to Article 10.4 of the Code should be applied in this case, and the Panel should not make a finding of No Fault or Negligence.

**No significant fault or negligence**

100. Respondent argues further that should this Panel determine that Article 10.4 does not apply, Article 10.5.2 should apply, in which case the sanction range would be one-two years, if the default sanction is two years, depending on the degree of fault.
101. If the Panel accepts that the cause of Hay's positive test was the result of DF's act of sabotage, then her degree of fault, if any, is at the low end of the spectrum and Hay cites several cases for the Panel to consider and points again to the reasons outlined in the section above on No Fault or Negligence.
102. USADA submits that even if the Panel were to conclude that the Respondent has established how she tested positive, that her level of fault in relation to that positive test was significant, as referenced above and her sanction should be no less than two years.

**Substantial Assistance**

103. Respondent argues that under Article 10.6.1, where an athlete provides substantial assistance in discovering or establishing anti-doping rule violations to an anti-doping organization, criminal authority, or professional disciplinary body which results in a disciplinary body discovering or bringing forward a breach of professional rules committed by another person, the athlete may be entitled to reduction of up to 75% of the otherwise applicable period of ineligibility.
104. Hay averred that she has provided substantial assistance to USA SafeSport in the matter of Everett. [REDACTED]

Respondent made this information available to USADA.

105. Therefore, Hay argues that the requirements of Article 10.6.1 have been met, and that Hay is entitled to as much as a 75% reduction in her otherwise applicable sanction.
106. With respect to the Comment to Article 10.6.1, (see below, Para. 111) Respondent argues that it is to be narrowly construed as applying to a suspension rather than to the reduction of a sanction/period of ineligibility. The Code Comment is not specific in referring to the reduction she seeks, thus is not helpful in interpreting Article 10.6.1.
107. Respondent requested that the Panel retain jurisdiction after it has issued its Award until the conclusion of the USA SafeSport investigation, solely so that it might take into account a possible reduction in her period of suspension if there is a clear finding of a violation on the part of Everett.
108. Respondent provided the Panel two CAS cases to support the Panel's authority to apply Article 10.6 to the USA SafeSport investigation into Everett (*RFEA & Francisco Fernández Peláez*, CAS 2011/A/2678 IAAF, in which the Panel did look at the possibility of reducing the athlete's sanction so long as the athlete satisfied the requirements of Article 10.6.1 to receive a reduction; and *World Anti-Doping Agency & Fédération Internationale de Football*

*Association v. Cyprus Football Association*, CAS 2009/A/1817, in which a doping offense by another person was the subject of the assistance).

109. USADA argues that the Respondent's request for a sanction reduction based on substantial assistance should not be granted. No U.S. athlete, coach or athlete support person has ever received a substantial assistance reduction where USADA did not support it. The evidence submitted was not relevant to meet the requirements of Article 10.6. The substantial assistance provisions in the Code are intended to apply only in circumstances where the individual seeking a reduction has substantially advanced the fight against doping in sport.
110. USADA further argues that under Article 10.6.1 substantial assistance can be provided to a "professional disciplinary body" if it results in a "breach of professional rules." USA SafeSport is a newly created independent institution charged with handling claims of sexual misconduct and other forms of abuse amongst athletes and between athletes and athlete support personnel. USA SafeSport is not a professional disciplinary body envisaged by Article 10.6.1 because there is no "profession" associated with those individuals under its jurisdiction. Its disciplinary powers extend to all members of national governing bodies, not to a particular set of individuals with specialized training or expertise. In this way, USA SafeSport is substantively different from other professional disciplinary bodies like a state medical board that handles licensing and disciplinary actions for doctors licensed in that state.
111. USADA points to the Comment to Article 10.6.1 that substantial assistance applies to individuals who "are willing to bring other anti-doping rule violations to light" as "[t]his is the only circumstance under the Code where the suspension of an otherwise applicable period of ineligibility is authorized." This makes clear that substantial assistance, even if applied in the criminal or professional context, is to overlap entirely with an alleged anti-doping rule violation. USADA points out that this makes sense because anti-doping rule violations can also be crimes (e.g., distributing controlled substances) or constitute professional misconduct (e.g., a doctor prescribing himself testosterone).
112. USADA points out that the Respondent's Safe Sport allegations are not covered by the anti-doping rules and, therefore, cannot qualify for substantial assistance. For example, it cannot be the case that substantial assistance covers any allegation of a crime an athlete reports to the police around the time that the athlete also commits an anti-doping rule violation. Such an expansive view of Article 10.6.1 would lead to absurd results, e.g., an athlete reports a robbery that leads to an arrest and therefore gets a reduced sanction for a positive test around the same time.
113. Moreover, USADA comments that the USA SafeSport investigation process is confidential such that an athlete could say a report was made, and USADA would have no way to confirm the veracity of the athlete's statement until USA SafeSport concluded its independent investigation.

## **V. MERITS**

### **A. Applicable Default Sanction**

114. The Panel notes that its factual determinations are based on the testimony and credibility of two witnesses, the live testimony at the hearing of Respondent and the video deposition of DF, who was unable to attend the hearing. The Panel had no opportunity to examine DF and



Everett was not called to testify. While certain text messages which were alleged to be from Everett were admitted in evidence, needless to say he had no opportunity to provide his side of the relevant issues or testify about his alleged behavior at the hearing. Under Article 10.2, the applicable "default sanction" must be determined before that default sanction can be subject to any reduction. The Panel must determine if Hay has met her burden of proof by a balance of probability that the anti-doping rule violation was not intentional. The term "intentional" is meant to identify those athletes who cheat. The term, therefore, requires that the athlete engaged in conduct which she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

115. The only explanation put forth by Respondent with respect to her anti-doping rule violation is that it was caused by her boyfriend's sabotage of her water bottle. If the Panel concludes that she has met her burden by a balance of probability of proving that this is what happened, then her violation was not intentional and her default sanction is reduced to two years.
116. If the Panel does not believe the sabotage story, then the Panel could still find that Respondent's anti-doping rule violation was not intentional. The Respondent however has provided no evidence other than the sabotage story from which the Panel can determine her intentions. As stated in *Meca-Medina v. FINA*, to meet her burden requires more than a denial, as "the currency of a denial is devalued by the fact that it is the common coin of the guilty as well as the innocent." As stated in *Fiol*, "the Panel can envisage the theoretical possibility that it might be persuaded by an athlete's simple assertion of his innocence of intent when considering not only his demeanor, but also his character and history .... That said, such a situation would inevitably be extremely rare." Respondent's simple denial is not adequate to meet her burden of proof.
117. The Panel looks solely to Respondent's assertion of innocence based on the story told by her boyfriend that he sabotaged her water bottle with his ostarine. Respondent offers no other explanation and other than DF's testimony, there is no corroboration for this story.
118. As argued by USADA, the story is far-fetched and very difficult to believe. DF is either telling a lie to protect his girlfriend, or he committed an odious act in sabotaging her water. The Panel did not find DF to be a convincing witness, and it is troubling that Respondent did not want his name associated with his testimony in this Award. The lack of corroborating evidence for the details of DF's version of events is also troubling.
119. Nevertheless, the Panel found Respondent's demeanor, transparency, her detailed testimony and the details of her story combined with DF's less convincing testimony to be sufficient to meet the balance of probability standard, which is not the more stringent burden, i.e. "to the comfortable satisfaction" of the Panel, but rather "more likely than not". Based on the testimony of Respondent, the rationale for DF to sabotage her water is the part of the story that makes it more likely than not: he clearly did not like her association with weightlifting which took her time away from him, or her work with Everett whom he disliked and considered a potential rival and thus he had a motive to hurt Everett and terminate his girlfriend's weightlifting career with one step. Whether his act was rational, in hindsight, it is still believable that he could think it made sense, in that time and place. He also could have chosen to withdraw from testifying in this proceeding, but instead elected to testify, knowing his story was not an honorable one. He would be unlikely to place himself in the position of

lying for his girlfriend. The timing of Hay's theory of sabotage and then the immediate admission of DF upon questioning by Burgos is consistent with the truth as much as it is consistent with their concocting the story together. The Panel found Respondent's testimony about the circumstances of his disclosure to her of his act, believable (and tragic). Respondent's decision to stay with DF after his disclosure was consistent with the rest of the circumstances surrounding this couple: Hay's commitment to weightlifting and to her coach was in the way of the relationship and once removed, the relationship settled. This is an extremely unusual set of circumstances, and a troubling story, but the Panel does find it plausible and finds that Respondent has met her burden.

**B. No Fault or Negligence/No Significant Fault or Negligence**

120. The Panel having found that Respondent has established the source of her positive test, must determine whether she meets the standard for No Fault or Negligence set forth in Article 10.4. Based on DF being in her inner circle, she bears responsibility for his actions in relation to what she consumed. Therefore, she has fault for her anti-doping rule violation.
121. In addition, since she immediately suspected him of sabotaging her upon learning of her positive test, she had Significant Fault in allowing him to fill her water bottle the night before a competition. She knew he took SARMS, she saw them in his bag while they were at the competition and she was aware that he was not pleased with her relationship with her coach and so had every reason to be wary and attentive under the circumstances. This is distinct from the *Gasquet* case where the athlete had no way of knowing he could be contaminated. Respondent knew DF and ultimately suspected he was capable of this very act. This is Significant Fault as defined in the Code.
122. The Panel finds that Respondent bore Significant Fault in relation to her anti-doping rule violation and her default sanction is not subject to reduction under either Article 10.4 or 10.5.

**C. Substantial Assistance**

123. Article 10.6.1 requires, among other things, that for the athlete to obtain credit for substantial assistance her disclosure must result in "a criminal or disciplinary body discovering or bringing forward a criminal offense or the breach of professional rules committed by another Person and the information provided by the Person providing Substantial Assistance is made available to the Anti Doping Organization. . ." There has been no such showing by the Respondent in this case and the Panel rejects Respondent's request that it retain jurisdiction until the SafeSport investigation is concluded. Therefore, the Panel does not have to rule on the issue of whether notification of a SafeSport violation would satisfy 10.6.1.


**D. Disqualification of Results**


124. Respondent's competitive results are to be disqualified from the date of her positive test, March 18, 2017, through the date she accepted a Provisional Suspension, April 11, 2017. The Panel understands that Respondent has only competed in the American Open Series 1 during this time and thus those results are the only ones to be disqualified.

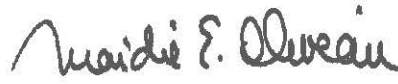
**VI. FINDINGS AND DECISION**

The Panel therefore rules as follows:

- A. Respondent has committed an anti-doping rule violation under Article 2.1 of the Code, for Use of a Prohibited Substance;
- B. The period of ineligibility for the anti-doping rule violation under Article 10.2.1. of the Code is two years, starting on April 11, 2017 and ending April 10, 2019, including ineligibility from participating in and having access to the training facilities of the United States Olympic Committee Training Centers or other programs and activities of the USOC and NGBs including, but not limited to, grants, awards or employment pursuant to the USOC Anti-Doping Policies only during the period of ineligibility;
- C. Respondent's competitive results from the date of her positive test, March 18, 2017 through her acceptance of Provisional Suspension, on April 11, 2017 are to be disqualified, and any medals, points and prizes earned during that period shall be forfeited;
- D. The parties shall bear their own attorneys' fees and costs associated with this Arbitration;
- E. The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the Panel, shall be borne by USADA and the United States Olympic Committee; and
- F. This Award shall be in full and final resolution of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.
- G. 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.

  
Christopher L. Campbell

  
Walter G. Gans

  
Maide E. Oliveau  
Chair

Dated: November 7, 2017

