SR/171/2023

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

Before:

Ms Anna Bordiugova (Chair)

Mr Peter Koh

Mr Paul Ciucur

BETWEEN:

World Athletics ***Anti-Doping Organisation***

and

Mr Divine Oduduru ***Respondent***

DECISION OF THE DISCIPLINARY TRIBUNAL

I. INTRODUCTION

1. World Athletics ("WA") is the international federation governing the sport of Athletics worldwide. It has its registered seat in Monaco. In these proceedings, WA is represented by the Athletics Integrity Unit (the "AIU") as per Rule 1.2.2 World Athletics Anti-Doping Rules in force from 31 March 2023 (the "ADR").

2. The Respondent, Mr. Divine Oduduru (the "Athlete" or "Mr. Oduduru") is a 26-year-old athlete from Nigeria, specialized in sprints. Mr. Oduduru has been competing in elite athletics events since 2013.

3. The WA and the Respondent are each referred to individually as a "Party" and collectively as the "Parties".

4. These proceedings concern charges filed by WA against the Athlete for two alleged Anti-Doping Rule Violations ("ADRVs"), namely of Rule 2.6 ADR (Possession of a Prohibited Substance or a Prohibited Method by an Athlete) and Rule 2.2 ADR (Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method). WA, *inter alia*, seeks the imposition of a six-year period of Ineligibility on the Athlete.

II. FACTUAL BACKGROUND

A. BLESSING OKAGBARE CASE AND ERIC LIRA CRIMINAL INVESTIGATION IN USA

5. On 20 June 2021, less than a month before the Tokyo Olympic Games, an Out-of-Competition urine Sample was collected from Ms. Blessing Okagbare, a Nigerian athlete, in Lagos, Nigeria.

6. On 19 July 2021, an Out-of-Competition blood Sample was collected from Ms. Okagbare in Samorin, Slovakia.

7. On 31 July 2021, Ms. Okagbare was notified that analysis of the blood Sample had revealed the presence of Human Growth Hormone (the "hGH") and she was Provisionally Suspended with immediate effect, including from the Tokyo Olympic Games.

8. On 20 August 2021, the AIU further notified Ms. Okagbare that analysis of the urine Sample had revealed the presence of recombinant erythropoietin ("EPO").

9. On 15 September 2021, Ms. Okagbare was interviewed by representatives of the AIU during which she denied all knowledge of doping and of the hGH and EPO findings, and she further refused to comply with the AIU's Demand for her electronic storage devices to be copied and/or downloaded.

10. On 20 September 2021, having satisfied itself that Ms. Okagbare had committed ADRVs pursuant to Rules 2.1 and 2.2 ADR (as well as further breaches of the ADR for her refusal to comply with the Demand at interview), the AIU issued Ms. Okagbare with a Notice of Charge ("the Okagbare Charge").

11. On 2 October 2021, Ms. Okagbare denied the charges and requested a hearing before the World Athletics Disciplinary Tribunal ("Disciplinary Tribunal").

12. On 12 January 2022, the United States Department of Justice issued a public release announcing the unsealing of the first Federal criminal charge under the Rodchenkov Anti-Doping Act, signed into law in the US on 4 December 2020, which proscribes doping schemes at international sports competitions, including the Olympic Games. This document is publicly available online.

13. The public release included a copy of a Complaint, signed by Special Agent Ryan Serkes of the Federal Bureau of Investigation ("FBI"), which alleged that a person called Eric Lira ("Lira"), a "naturopathic" therapist operating principally in El Paso, Texas, USA, had obtained various performance enhancing drugs ("PEDs") and distributed those PEDs to certain athletes in advance of, and for the purpose of cheating at, the Tokyo Olympic Games ("the Complaint").

14. In addition to Mr. Lira, the Complaint also referred to two (2) athletes, identified as "Athlete-1" and "Athlete-2".

15. Specifically, in relation to "Athlete-1", the Complaint confirmed that:

    - Athlete-1 had provided a blood sample Out-of-Competition on 19 July 2021 in Slovakia that reflected Athlete-1's use of hGH; and
    - Athlete-1 was Provisionally Suspended from the Olympic Games on or about 30 July 2021, including from the semi-finals of the women's 100m event set to take place later that same evening.

16. By comparing information in the Complaint to the facts of Ms. Okagbare's case, the AIU concluded that "Athlete-1" referred to in the Complaint was Ms. Okagbare and made that submission to the Disciplinary Tribunal.

17. On 31 January 2022, a hearing took place before a Sole Arbitrator of the Disciplinary Tribunal to determine the ADRVs and further breaches of the ADR asserted against Ms. Okagbare.

18. On 14 February 2022, the Sole Arbitrator of the Disciplinary Tribunal issued a decision in the matter and found that Ms. Okagbare had committed the ADRVs pursuant to Rules 2.1 and 2.2 ADR (for the presence and use of hGH and EPO), as well as further breaches of

the ADR as asserted by the AIU; and imposed a period of Ineligibility of five (5) years against Ms. Okagbare for the ADRVs based on the application of Rule 10.4 (Aggravating Circumstances that may increase the period of Ineligibility) and a period of Ineligibility of five (5) years against her for the further breaches of the ADR in accordance with Rule 12, such period to be served consecutively (i.e., a total period of Ineligibility of ten (10) years).

19. Ms. Okagbare did not challenge the Decision by way of an appeal to the Court of Arbitration for Sport ("CAS") and it therefore became final and binding pursuant to the ADR.

20. The AIU subsequently charged Ms. Okagbare with further ADRVs under Rules 2.3 and 2.5 ADR (and, in so doing, relied on her being "Athlete 1"), which she did not challenge before the Disciplinary Tribunal. The AIU subsequently imposed a further 1-year sanction on Ms. Okagbare, making her overall sanction 11 years.

B. "ATHLETE 2" REFERRED TO IN THE COMPLAINT

21. The Complaint signed by FBI Special Agent Serkes in January 2022 records the following further information in relation to an individual referred to therein as "Athlete-2":

> *"10. From my discussions with an individual ("Individual-1") who is an associate of two track and field athletes ("Athlete-1" and "Athlete-2," respectively), I have learned, among other things:*
>
> *a. On or about July 12 and 13, 2021, Individual-1, at the request of Athlete-2, who was then outside of the United States, entered a residence in the vicinity of Jacksonville, Florida (the "Residence"), where Athlete-2 had recently resided. Individual-1 intended to gather Athlete-2's belongings and to transfer those belongings to a near-by storage facility. At the time that Individual-1 entered the Residence, Athlete-1 was abroad, training for the then-upcoming Tokyo Olympics.*
>
> *b. Inside the residence, Individual-1 found and photographed packages and vials that appeared to be various performance enhancing drugs, including drugs on the Prohibited List described above. Individual-1 subsequently provided those photographs to the FBI. For example:*
>
> *(i) Individual-1 provided photographs of a United States Postal Service parcel from "Eric Lira / [redacted street address] / El Paso, TX" (the "El Paso Address") with a particular telephone*

number for Lira (the "Lira Number"). The same parcel was addressed to Athlete-1 at an address other than the address of the Residence.

(ii) Individual-1 also provided photographs of the content of that parcel, which was a single box containing a drug appearing to have been manufactured by a Mexico-based pharmaceutical company. The box was labeled: "Xerendip® Somatropina," and, in Spanish, "injectable." From my review of publicly available sources of information regarding the content and effect of various drugs, I have learned that somatropin (or, in Spanish, "somatropina") is a human growth hormone, which, as noted above, is among the prohibited substances on the Prohibited List.

(Subsequent to July 13, 2021, I obtained the same box of Xerendip from the storage locker into which Individual-1 moved this drug and other items, having obtained consent to enter the storage facility. Upon inspection of the box itself, I have noted that the box indicates, in Spanish, that the drug is to be administered only as prescribed by a physician ("Dosis: Lo que el médico señale."). I also received from the same storage locker a used box of a Mexico-manufactured, injectable erythropoietin drug, Alveritin. The box, which originally contained six vials of that substance, was found containing only one remaining vial. As described in more detail below, both the photographs of these categories of drugs provided by Individual-1 and the drugs that I obtained subsequent to July 13, 2021, are drugs of the same categories discussed in the course of communications between Eric Lira, the defendant, and Athlete-1).

(iii) Individual-1 also provided a photograph of a small, clear, sealable bag containing three vials of white powder. The bag was labeled "IGF [illegible] R3." From my experience in this case and from my conversations with other FBI agents working on separate investigations of performance enhancing substances, I know that "IGF" is an abbreviation for "insulin growth factor." Among the substances on the Prohibited List is "Insulin-like Growth Factor-1 (IGF-1) and its analogues.

(iv) Individual-1 further provided a photograph of a box of 100 hypodermic needles, insulin injection needles, and various other drugs including A) a separate box of somatropin, also from what appears to have been a Mexico- or Central American pharmaceutical company, bearing the brand name "Humatrope;" and B) a box labeled as containing a "prefilled syringe" holding 5 ml of "recombinant human erythropoistin injection." This final drug's box included a symbol representing that it is a prescription drug, i.e., "Rx.""

22. In addition, and specifically in relation to "Athlete-2", the Complaint states that:

"12. c. On or about November 18, 2020, Athlete-1 and LIRA corresponded regarding TB-500, IGF and gonadoptropin (a peptide hormone on the Prohibited List). Athlete-1 asked LIRA what quantity of these drugs she would need for both herself and Athlete-2. […]

h. On or about June 7, 2021, LIRA, while in New York City, and during a period that the cellular telephone associated with the Lira Number was transmitting communications through cell towers in the Southern District of New York (as reflected in geolocation data provided by the service provider for the Lira Number), engaged in further conversations with Athlete-1 about LIRA's intent to travel from New York, to El Paso, and then to Florida, for the purpose of providing misbranded performance enhancing drugs to Athlete-1 and Athlete-2. For example, at approximately 10:12 a.m., Athlete-1 transmitted a voice message to LIRA: "Hey Eric, I just sent you $2,500, can you confirm it via Zelle [an electronic payment application]? And also, remember I told you [Athlete-2] had hurt his hamstring, so anything that will help the hamstring really heal fast you can actually bring it as well, ok?" [...]".

23. Following the filing of the Complaint, Mr. Lira was formally charged by way of an Indictment filed in the United States Southern District of New York ("the Indictment") which describes several acts by Mr. Lira and others in furtherance of a conspiracy to commit major international doping fraud. The Indictment also refers specifically to messages exchanged on or around 7 June 2021 as follows:

"4. a. On or about June 7, 2021, LIRA, while in New York City, engaged in conversations with a Nigeria-based athlete (the "Nigerian Athlete") about LIRA' s intent to travel from New York, to El Paso, Texas, and then to Florida, for the purpose of selling misbranded performance enhancing drugs to the Nigerian Athlete and another athlete. Specifically, in the course of that conversation, the Nigerian Athlete transmitted a voice message to LIRA, in substance: "Hey Eric, I just sent you $2,50, can you confirm it via Zelle [an electronic payment application]? And also, remember I told you [the second athlete] had hurt his hamstring, so anything that will help the hamstring really heal fast you can actually bring it as well, ok?" [...]*".*

C. EXCHANGES BETWEEN Ms. OKAGBARE AND Mr. LIRA

24. On or about 2 August 2021, Ms. Okagbare was returning from Tokyo to the USA. Officers of Customs and Border Protection ("CBP"), pursuant to their border search authority and utilizing passcode provided by Ms. Okagbare, conducted a limited review of a cellphone in the possession of Ms. Okagbare. The copies of a series of WhatsApp messages, including series of WhatsApp encrypted voice messages between Ms. Okagbare and the contact identified in her phone as "Eric Lira Doctor" were obtained and passed to FBI Special Agent Serkes.

25. The AIU has obtained WhatsApp messages (including a voice message) exchanged between Ms. Okagbare and Mr. Lira between November 2020 and June 2021 (as well as those referred to in the Complaint by FBI Special Agent Serkes available publicly).

26. On 17 November 2020, the following exchange took place between Mr. Lira ("EL") and Ms. Okagbare ("BO"):

> *"BO: I am thinking 4 honey and 2 epo [Honey' is understood from the investigation to be another name for Human Growth Hormone]. What else do we need for endurance and fall training now?*
>
> *EL: Let me check".*

27. On 18 November 2020, the following exchange took place:

> *"BO: Good morning Eric. Any update on the stuff I asked for?*
>
> *EL: Good morning love... the tb 500 with you igf1 and gonatropina is a good combination to increase strength and oxygen levels*
>
> *EL: That's also with hgh and epo*
>
> *BO: Cool. So, [how] much of each do me and divine need?*
>
> *EL: I have to review the cycle to see how much you need*
>
> *BO: Please eric. The ea[r]lier the better".*

28. On 26 November 2020, the following exchange took place:

> *"EL: Hi Blessing... I have the prices ready*
>
> *BO: What's the breakdown*
>
> *EL: IGF-1 $360 for 10 vials / TB – 500 $120 5mg / Hgh $220 / Epo $200*

BO: Good evening Eric. So I figured we still have igf lr3 i ordered from that website and tb 50p. [s]Till have one box of epo too so what do you think? Only thing we don't have is hgh".

29. On or about 13 April 2021, Eric Lira wrote to Ms. Okagbare *"I will send you the 2 honeys and[d] 4 bac water".*

30. On 10 May 2021, the following exchange took place:

"BO: Hi Eric. Did you mail the stuff?

EL: Hi Blessin, the package is behind the schedule… I am heading to the airport to receive the package. I can meet you in Lubbock […] I can send it tomorrow

BO: Meet in Lubbock.

BO: You coming with the stem cell then? I am leaving Lubbock on Sunday

EL: Yes. It has to be the placent [sic]

BO: Was it something else before?

BO: But that's what you wanted to do right?

EL: Can we talk?

BO: Yes… Eric just mail the stuff. You know I have to give divine his stuff too

EL: Ok".

31. On 1 June 2021, the following exchange took place:

"BO: Let's talk when you wake up please … Please … It's urgent... Divine hurt his harmstring and I need help with getting ready for the games too [Mr. Oduduru admitted to this hamstring injury in his interview with the AIU - Panel]. […]

BO: List of this we will need also

-Honey

-Iron

-glucose water

-Igf

-Tb 500

-Epo

EL: Ok

BO: The stem cells as well".

32. On 3 June 2021, the following exchange took place:

"EL: Ok… did you want the stem cells? The one iv?

BO: Yes… whatever you think I need to run fast eric. You haven't given me anything different. No new stuff from you. I need the real deal

EL: it will be 100 millions stem cells iv which is 1900. Please confirm. I need to order those in the laboratory […]

BO: Divine will need the stem cell too right [...] So with the stem cell for me and divine and the other stuff, how much we looking at?

EL: Let me break everything".

33. On 7 June 2021, Ms. Okagbare sent a voice message to Mr. Lira, within the above exchange of messages, which stated: *"Hey Eric, I just sent you $2500, can you confirm it via Zelle, and also you remember I told you Divine hurt his hamstring so anything that will help the hamstring really heal fast, you can actually bring it..."*.

D. EVIDENCE DISCOVERED IN THE RESIDENCE ON OR AROUND 12 JULY 2021

34. As mentioned in the Complaint, and quoted above, PEDs were found and photographed in the Apartment at 4870 Deer Lake Drive in Jacksonville, Florida, on 12 and 13 July 2021 by Individual-1. Individual-1 was identified in these proceedings as [redacted], former [redacted] of [redacted] Mr. Oduduru.

35. The AIU noted (i) that the Apartment was registered to Mr. Oduduru via a residential agreement that expired on 14 July 2021 in his sole name as also confirmed in his written statement by Mr. Burgos, Chief investigating officer from USADA; (ii) the registered name for the utility bills for the address in question over the relevant time period was that of Mr. Oduduru; (iii) Mr. Oduduru evidence during his interview on 23 May 2022 with the AIU was that nobody else (including Ms. Okagbare) had access to the Apartment, at least that he was aware of; (iv) before leaving for Europe on 3 July 2021, Mr. Oduduru left the only key to his Apartment with the residence's reception, to be picked up by Individual-1; (v) Individual-1 was due to be late arriving to Florida on 12 July 2021 and so arranged for a third-party, "Individual-2", to pick up the key from the reception before it closed that day at

5 pm. WhatsApp messages available in the case file show that "Individual-2" handed over the key to the Respondent's Apartment to Individual-1 on the late evening of 12 July 2021. Individual-2 has confirmed to the AIU that he did not visit the Respondent's Apartment prior to the handover and Individual-1's evidence is that nobody had access to the Respondent's Apartment between the time of his departure from the USA on 3 July 2021 to Japan to compete at the Tokyo Olympic Games and their visit to his Apartment on 12 July 2021.

36. "Individual – 2" was identified in these proceedings as [redacted], an athlete, who knows Mr. Oduduru.

37. The detailed background to Individual-1's visit to the Respondent's Apartment on 12 July 2021 is set out in the Complaint and reproduced in paragraph 21 above. Individual-1 found multiple substances in the Apartment and took photographs of everything he found, which seemed suspicious to him as being illegal. In the following days, Individual-1 sent those photographs to Mr. Burgos, Chief Investigating Officer at USADA. The photographs show that several different Prohibited Substances were found in the Apartment, in particular:

- Two boxes of Somatropin, "Xerendip" and "Humatrope" (namely, synthetic or "recombinant" hGH), each from a different manufacturer;
- A plastic ziplock bag labelled "IGF LR3" containing three vials. IGF LR3 is an abbreviation for synthetic or "recombinant" Insulin Growth Factor;
- Two boxes of recombinant erythropoietin (EPO), each from a different manufacturer – "Alvertin" and "Wepox 2000". One of the two boxes, Alvertin, was found to be open and had only one vial out of six remaining in it;
- A US Postal Service envelope that was addressed to Ms. Okagbare with the sender's name clearly marked to be "Eric Lira";
- Amongst the vials and syringes located in the Respondent's Apartment was a handwritten note on Texas Tech headed notepaper including text which reads: "*If there is no sin, there will be no forgiveness*".

38. The above substances found in the Respondent's Apartment on 12 July 2021 - hGH, IGF-1 and EPO - are all Prohibited Substances that are prohibited at all times according to the WADA 2021 Prohibited List, belonging to category S2. The Respondent had no

Therapeutic Use Exemption ("TUE") for the possession and/or use of any of the substances concerned.

39. Individual-1 confirmed in his interview with the AIU on 29 June 2022 that he did not place the substances described above in the Respondent's Apartment.

III. INITIATION OF DISCIPLINARY PROCEEDINGS

40. On 23 May 2022, the AIU issued Mr. Oduduru with a Demand to attend an interview in the United States and such interview was conducted on the same day with Mr. Burgos of USADA in attendance. It was put to Mr. Oduduru at interview that he was considered to be "Athlete-2" and, whilst he denied that Mr. Lira had ever intended to provide him with PEDs, he did not specifically deny that he was "Athlete-2". Pursuant to the foregoing, the AIU comfortably satisfied itself that Mr. Oduduru was "Athlete-2" referred to in the Complaint.

41. At interview with the AIU on 23 May 2022, the Respondent was unable to explain why Ms. Okagbare referenced "*Divine*" and "*we*" in her message exchanges with Lira:

> *"Interviewer: Why would Blessing talk to Eric Lira about you?*
>
> *DO: I don't know maybe she was just being a big sister. But I don't know, I was not, I was not informed of any of this.*
>
> *Interviewer: Why would she talk about you and just using your first name?*
>
> *DO: Like I say I don't know.*
>
> *Interviewer: Because that, that suggests to me that there had been previous conversations or previous exchanges because otherwise the response to that would be, "Well, who's Divine? Who is he? What does he need? What event is he doing? What are you asking me to do?" But it seems to me that there's a conversation that's gone on before that means that Eric Lira knows who you are, Divine.*
>
> *DO: Maybe she, I don't know maybe she text him who I am, but I don't know, I don't know him.*
>
> [...]
>
> *Interviewer: That's okay. So on, on November 17th she asks for growth hormone and EPO from Eric Lira. And then on November 18th, well on November 17th, sorry, also she asks,*

"What do we need for endurance and full training?" And then on November 18th she asks, "How much of each do me and Divine need?" So, Divine, it seems quite clear from that exchange that she is ordering growth hormone IGF1, TB500, EPO for her use and also for your use.

DO: (inaudible) so I don't know".

42. The AIU is of the opinion that from those messages between Mr. Lira and Ms. Okagbare, it appears that the Respondent was using or attempting to use multiple Prohibited Substances including hGH, Insulin Growth Factor and EPO, that those substances were sourced for the Respondent by Eric Lira and also on occasion by Ms. Okagbare, and that Ms. Okagbare was at times acting as a go-between for the Respondent with Mr. Lira.

43. All three of the substances referenced in the WhatsApp messages above were found by Individual-1 in the Respondent's Apartment. The Respondent could not explain during his interview with the AIU on 23 May 2022 how the Prohibited Substances came to be found in his Apartment.

44. On 9 February 2023, in accordance with Article 5.3.2.1 ISRM, the AIU issued the Respondent with a Notice of Allegation of Anti-Doping Rule Violations ("the NoA"), in which it set out the same factual background as set out above, and notified the Respondent that it was comfortably satisfied that he had committed violations of Rule 2.6 (Possession of a Prohibited Substance or a Prohibited Method by an Athlete or other Person) and Rule 2.2 (Use or Attempted Use of a Prohibited Substance or a Prohibited Method). The AIU advised the Respondent that it would seek a period of Ineligibility of six (6) years and disqualification of results since 12 July 2021. It also imposed a Provisional Suspension upon the Respondent effective immediately and requested an explanation for the ADRVs alleged by 16 February 2023.

45. On 20 February 2023, based on an agreed extension, the Respondent submitted his explanation and response to the matters set out in the NoA and made a written application to overturn the Provisional Suspension imposed upon him. The Respondent alleged that he had never asked anyone (including Eric Lira or Blessing Okagbare) to buy drugs for him, that he disputed the contents of the witness statement of Mr. Victor Burgos, that he was not a participant within the Okagbare - Lira messages exchange, that there was no

evidence of use, and that he was not in exclusive control of his Apartment when the Prohibited Substances were found.

46. On 2 May 2023, having considered the Respondent's application, the AIU issued a decision that the Provisional Suspension was maintained. The AIU remained satisfied that the Respondent had committed the ADRVs alleged in the NoA, because the Respondent in his explanation had barely denied the allegation with no explanation or counterevidence and did not address how the body of evidence relied upon by the AIU could have arisen without his knowing involvement.

47. On the same day, the Notice of Charge was issued by the AIU and the Athlete was charged with committing the following ADRVs:

    a) Possession of a Prohibited Substance or a Prohibited Method by an Athlete or other Person pursuant to Rule 2.6 ADR; and/or

    b) Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method pursuant to Rule 2.2 ADR.

48. The Notice of Charge set out inter alia: (i) the facts and supporting documentation and evidence upon which the AIU intended to rely in order to establish the ADRVs against the Respondent; (ii) the Consequences that the AIU was seeking viz. a mandatory period of Ineligibility of six (6) years effective from the date of the final decision in this matter, with credit for the period of Provisional Suspension since 9 February 2023 (provided that this has been effectively served); (iii) Disqualification of results with all resulting consequences including forfeiture of any medals, titles, points, prize money and prizes since 12 July 2021; and (iv) Public Disclosure: the AIU shall publicly disclose the full details of this matter in accordance with Rule 14.3.2 ADR.

49. On 13 May 2023, the Athlete responded to the Notice of Charge requesting a hearing to determine the charges against him. He denied using (or attempting to use) or possessing any prohibited substances and denied that he had committed violations of Rules 2.6 and 2.2 ADR. The matter was therefore referred to the Disciplinary Tribunal.

IV. PROCEDURE BEFORE THE DISCIPLINARY TRIBUNAL

50. On 18 May 2023, Ms. Anna Bordiugova, Ukraine, attorney-at-law, was appointed as Chair of the Panel to decide on this matter.

51. On 2 June 2023, the Chair held a preliminary meeting with the Parties by video Conference. In attendance for the AIU was Mr. Tony Jackson, Monaco, and for the Athlete his counsel Mr. Chinedu G. Udora, Nigeria and Mr. Oduduru in person. The Athlete maintained his request for a hearing. After the meeting the Chair issued Directions for the Parties to submit their Briefs. A preliminary date for the hearing was set. The Chair of the Panel decided that the case should be adjudicated by a Panel of three arbitrators.

52. On 16 June 2023, Mr. Paul Ciucur, Attorney-at-law, Romania, and Mr. Peter Koh, Barrister, Singapore, were appointed as members of the Panel to sit alongside the Chair.

53. Following an agreed extension by the Parties and the Panel, the AIU provided its Brief on 30 June 2023. The Athlete provided his Reply Brief on 31 July 2023. On 23 August 2023, based upon agreed by the Parties extension, the AIU filed its Reply Brief.

54. On 29 August 2023, the Athlete submitted his Second witness statement in support of his case with two exhibits, namely a medical report dated 10 December 2022 and an undated video of alleged treatment of the hamstring injury that the Athlete underwent in 2021 before the Olympic Games requesting its admission to the record. This request was grounded by the Athlete as follows*: "… fresh facts in the second witness statement of* Individual-1 *and the Expert evidence submitted by AIU upon being served with the athlete's response. … were not available to the Athlete at the time the AIU brief was served on the Athlete. … The facts necessitated the Athlete's second witness statement".*

55. Being invited to comment on the Athlete's request for admission of new evidence, the AIU noted that it was late and not in accordance with the Directions, issued by the Chair of the Panel, nevertheless the AIU left the final decision for the Panel.

56. The Panel notes that in accordance with Rule 8.9.1 *"The Disciplinary Tribunal, and any Panel of the Disciplinary Tribunal, shall have all powers necessary for, and incidental to, the discharge of its responsibilities, including (without limitation) the power, whether on the application of a party or of its own motion: […] (i) to make any other procedural direction or take any other procedural steps which the Disciplinary Tribunal considers to*

be appropriate in pursuit of the efficient and proportionate management of any proceeding or matter pending before it".

57. Having considered the Athlete's request and the AIU's position, who did not manifestly object to it, because the additional statement was produced by the Athlete himself and he was to make a statement during the hearing, thus allowing the AIU to make its comments on any Athlete's arguments and to cross-examine the Athlete, the Panel saw no prejudice to any of the Parties and decided to admit the new evidence to the file. The Parties were informed accordingly.

58. On 4 September 2023, the Panel held a hearing via video conference. In addition to the Panel and Ms. Kylie Brackenridge, Secretariat to the Disciplinary Tribunal, Ms. Xènia Campàs Gené, Sport Resolutions Case Manager, attended as an observer.

59. The following persons attended the hearing:

<u>For the WA:</u>

- Mr. Adam Taylor, External Counsel, Kellerhals Carrard;
- Mr. Tony Jackson, AIU Deputy Head of Case Management;
- Mr. Tuomo Salonen, AIU Case manager;
- Individual-1, [redacted], witness;
- Professor Martial Saugy, Anti-Doping scientific advisor;
- Mr. Victor Burgos, USADA Chief Investigative Officer, witness;
- Individual-2, an athlete, witness.

<u>For the Athlete:</u>

- Mr. Divine Oduduru, the Respondent;
- Mr. Chinedu G. Udora, attorney-at-law and Mr. Olariwaju A Olaleye, counsels for the Athlete, Chinedu G. Udora & Co.

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

61. During the hearing the Athlete gave his testimony. Individual-1, Mr. Burgos, Prof. Saugy and Individual-2 were heard as witnesses upon request of the AIU. The Parties and the Panel had the opportunity to examine and cross-examine the persons heard.

62. The Parties had the opportunity to present their case, comment on the evidence, submit their arguments and answer the questions posed by the Panel. At the end of the hearing, the Parties stated that they did not have any objection in respect of the way the hearing was held and that they were satisfied with the way they were treated by the Panel. The Parties also declared their procedural rights have been observed.

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

V. APPLICABLE LAW AND JURISDICTION

64. No jurisdictional issues arise in this matter.

65. In accordance with Rule 1.4.2(f)(i) ADR, given that the Athlete was in the International Registered Testing Pool at all material times, it follows that he is an International-Level Athlete in the sense of Rule 1.4.4(a) ADR, as a consequence of which the ADR is applicable to him.

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

VI. THE PARTIES' SUBMISSIONS

World Athletics

67. WA has made the following requests for relief defended at the hearing:

"(i) That the Tribunal has jurisdiction over the present matter;

(ii) That the Athlete has committed an ADRV pursuant to Rule 2.2 (Use) and/or Rule 2.6 (Possession) of the World Athletics Anti-Doping Rules 2021;

(iii) That the Athlete shall serve a period of Ineligibility of six years for the ADRVs based on Rules 10.2.1 and 10.4 of the World Athletics Anti-Doping Rules 2021, commencing on the date of the Tribunal's award;

(iv) That the Athlete be given credit for the period of Provisional Suspension served from 9 February 2023 until the date of the Tribunal's award against the period of Ineligibility imposed for the ADRVs, provided that the Provisional Suspension has been effectively served by the Athlete;

(v) That the Athlete's competitive results obtained since 12 July 2021 be disqualified pursuant to Rule 10.10 of the World Athletics Anti-Doping Rules 2021, with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money; and

(vi) World Athletics is granted an order for costs pursuant to Rule 10.12.1 ADR."

68. In essence, the AIU's submissions can be summarized as follows:

- There is clear evidence of Prohibited Substances being requested for the Athlete by Ms. Okagbare from Mr. Lira in messages exchanged between them, and there is clear evidence of Prohibited Substances being found at the Athlete's Apartment in circumstances where no one, but the Athlete, had control over that Apartment or access to it. The total picture is damning, and shows the Athlete engaged in the same illicit scheme as his counterparts, who have already been brought to justice;
- It appears from the message exchanges between Mr. Lira and Ms. Okagbare that the Athlete was using or Attempting to Use multiple Prohibited Substances including hGH, Insulin Growth Factor and EPO, that these substances were sourced for him by Mr. Lira and also on occasion by Ms. Okagbare, and that Ms. Okagbare was at times acting as a go-between for the Athlete with Mr. Lira;
- All three of the substances referenced in the WhatsApp messages above were found by the Athlete's [redacted], Individual-1 in the Athlete's apartment, as further explained below;
- (i) The Apartment where the Prohibited Substances were found by Individual-1 was registered to the Athlete via a residential agreement in his sole name that expired on 14 July 2021; (ii) Mr. Oduduru was the registered name for the utility bills for the address

in question over the relevant time period; (iii) his evidence at interview with the AIU was that nobody else (including Ms. Okagbare) had access to the Apartment, at least that he was aware of; (iv) before leaving for Europe on 3 July 2021, he left the only key to the Apartment with the residence's reception, to be picked up by Individual-1; (v) Individual-1 was due to be late arriving to Florida on 12 July 2021 and so arranged for a third-party, Individual-2 to pick up the key from reception before it closed that day. WhatsApp messages show that Individual-2 handed over the key for the Apartment to Individual-1 on the late evening of 12 July 2021. Individual-2 has confirmed to the AIU that he did not visit the Apartment prior to the handover and Individual-1's evidence is that nobody had access to the Apartment between the time of the Athlete's departure from the USA on 3 July 2021 and his visit to the Apartment on 12 July 2021 in light of the instructions given by the Athlete to the rental office who had custody of them while the Athlete was away;

- On 8 May 2023, it was announced by the US Attorney's Office, Southern District of New York, that Mr. Lira had pleaded guilty in Manhattan federal court to the federal charges under the Rodchenkov Act. It was specifically announced that he had pleaded guilty *"for his role in providing banned performance-enhancing drugs ("PEDs") to Olympic athletes in advance of the 2020 Olympic Games held in Tokyo in the summer of 2021."* The conviction was described by the US Attorney as *"a watershed moment for international sport".*

As to the Possession

- The facts of this case are in line with the Comment to definition of "Possession", which states: "*Under this definition, anabolic steroids found in an Athlete's car would constitute a violation unless the Athlete establishes that someone else used the car".* It is important to note that this comment imposes the burden of proof upon the Athlete to show that he was not in exclusive control of the premises where contextual factors suggest that he would have been, as in the present case with the Apartment being rented and lived in solely by the Athlete;
- In confirmation of the Possession, the package found at the Apartment links the Athlete to Mr. Lira and Ms. Okagbare, and therefore corroborates the truth of the messages

between those two individuals in which Ms. Okagbare is explicitly requesting Prohibited Substances for the Athlete from Mr. Lira (who clearly understands the context and even acquiesces), including the very substances then found at the Apartment. WA also notes that Ms. Okagbare has now been convicted of doping and that those same messages were found to be reliable evidence by the WA Disciplinary Tribunal, not least because they had been used by the FBI in the American court proceedings;

- The Athlete has been unable to offer any justification or explanation for how the Prohibited Substance would have ended up in his Apartment, except for through his own control. He has not provided any motivation for why anyone else, let alone Individual-1 or Individual-2, would have wanted to "plant" Prohibited Substances at his Apartment, or how they would have had the means or access to do so. Similarly, he has provided no explanation as to how Ms. Okagbare or Mr. Lira could have had the discussions about him, without the obvious meaning of those discussions being that he was knowingly receiving Prohibited Substances from them;
- No defence of "acceptable justification" has been raised by the Athlete, as he has denied any knowledge of the Prohibited Substances being in his Apartment. Even hypothetically, it is hard to see what such a defence could even constitute, given the seriousness and variety of the Prohibited Substances found;
- Therefore, WA submits that the violation under Rule 2.6 ADRV is proven.

As to the Use or Attempted Use

- The evidence of the messages between Mr. Lira and Ms. Okagbare, as well as the evidence found in the Apartment, demonstrate that the Athlete used (or attempted to use) Prohibited Substances;
- In particular, one box of EPO vials, found within the Apartment had only one vial remaining, suggesting that the others had already been used by the Athlete. The messages themselves also make clear what Prohibited Substances the Athlete needed to use and why, and it is noted that on 26 November 2020 Ms. Okagbare wrote *"we still have igf lr3... Only thing we don't have is hgh"*, which in the context of the messages strongly implies that there was an existing stock of Prohibited Substances that the

Athlete and Ms. Okagbare had used and were continuing to use and in fact by that time now needed to replace, renew or supplement;

- It is also relevant that a product labelled as IGF LR3 was found in the Apartment of the Athlete. It should also be noted that the last messages from Ms. Okagbare to Mr. Lira are in June 2021, a month or so prior to the finding at the Apartment, and they explain that the Athlete had hurt his hamstring and needed to receive products to help him recover quickly. The Athlete therefore had a specific reason to use what was being asked for on his behalf and what was found at his Apartment.

As to the Consequences

- In a case based both upon Use of multiple Prohibited Substances of the most serious nature (where it is use of the labelled products themselves and without the possibility of ingestion through contamination or suchlike) and Possession by way of exclusive control, the ADRV cannot be proven unintentional and the four-year starting point period of Ineligibility must apply;
- On the facts of this case, where the Athlete conspired with another international-level athlete and a supplier of Prohibited Substances, to follow a wide-ranging doping program involving multiple substances of the utmost seriousness, planned and/or executed across an 8-month period from the first messages on file in November 2020 to the findings at the Apartment in July 2021, in direct anticipation and preparation for the Tokyo Olympics (being the most important athletics event in the calendar), Aggravating Circumstances clearly apply. Therefore, WA seeks a Period of Ineligibility of six (6) years;
- WA requests that all of the Athlete's competitive results be disqualified from 12 July 2021.

<u>The Athlete</u>

69. The Athlete has made the following requests for relief defended at the hearing:

"a) An Order of the Tribunal dismissing the Charge against the Athlete.

b) That the provisional suspension *placed on the Athlete be set aside."*

70. The Athlete's arguments are as follows:

- On 3 July 2021, the Athlete travelled out of his base in the United States to Europe (Samorin) in preparation for the Tokyo Olympics leaving behind the keys to his Apartment for [redacted], Individual-1 to assist him to move his belongings from his Apartment to a storage facility. [redacted];
- [redacted].
- When the Athlete left his Apartment to travel to Europe, he did not have any Prohibited Substances or Prohibited Methods. While Individual-1 was in the Athlete's house on 12 and 13 July 2021 to move his belongings, he maintained phone communication with the Athlete, however he did not inform the Athlete of any finding/discovering of the alleged Prohibited Substances and Prohibited Methods in his Apartment;
- On 24 December 2021, Individual-1 wrote an email to the Athlete [redacted]. In that email, he did not mention or state that he found any Prohibited Substance(s) in the Athlete's Apartment. [redacted];
- WA's charge against the Athlete for ADRVs stems from the WhatsApp conversation directly between Ms. Okagbare and Mr. Lira where his name was mentioned, the US charge against Mr. Lira and the alleged Prohibited Substances purportedly found in the Athlete's Apartment on 12 July 2021. In all this evidence produced by WA, there is no direct evidence of the Athlete's Use of the alleged Prohibited Substances or Attempted Use of the same or of the Athlete being in Possession of them. WA's evidence is at most circumstantial evidence and grossly insufficient to prove the charge against the Athlete;

- Indeed, with respect to the incriminating comments found in Ms. Okagbare's phone conversation with Mr. Lira, the Sole Arbitrator in Ms. Okagbare's case found the messages were only relevant to her case because Ms. Okagbare was part of the said phone conversation. The Athlete was not part of the conversation between Ms. Okagbare and Mr. Lira and was not aware of the discussions between them over the phone;
- Importantly, the Athlete during the said periods that Ms. Okagbare allegedly had the said conversation with Mr. Lira that implicated him, was tested severally between 2019 and 9 July 2021 (a few days after he travelled from his base in the United States) and all the results came out negative. He was also subjected to several drug tests until February 2023 when he was provisionally suspended by WA and all the results came out negative, which means that the Athlete is clean and did not use any Prohibited Substance(s);
- The US charge and conviction of Mr. Lira was not based on any association or communication between Mr. Lira and the Athlete but on the findings of the US FBI agent who investigated Mr. Lira and found direct communication between Mr. Lira and Ms. Okagbare on one hand and between Mr. Lira and another Swiss Athlete on the other hand. The conviction of Mr. Lira by way of a guilty plea is, without doubt, a result of his direct communication with both Ms. Okagbare and the Swiss Athlete. In Ms. Okagbare and the Swiss Athlete's case drug test results were positive and were linked directly to the drugs supplied to them by Mr. Lira. The Athlete did not have any communication with Mr. Lira and his drug test results are negative.

As to the Possession

- The Athlete denies being in Possession of the alleged Prohibited Substances or Prohibited Methods. He also states that the alleged Prohibited Substances or Prohibited Methods were not in his Apartment and were not found in his Apartment by Individual-1;
- The allegation of ADRVs brought against the Athlete by WA is a very serious one for which they are seeking a six (6) year period of Ineligibility (including Aggravated Circumstances) and the disqualification of the Athlete's prizes,

awards, and credits dating back to 12 July 2021. Thus, WA is required to produce more cogent supporting evidence in order to comfortably satisfy the Disciplinary Panel that the Athlete has committed the alleged ADRV. It is the Athlete's position that WA has not produced sufficient evidence in this case to discharge its burden to the standard of proof of comfortable satisfaction;

- There is no admission by the Athlete to the Possession of the alleged Prohibited Substances or Prohibited Methods purportedly found in his Apartment by Individual-1. From the evidence of WA, if there was any person in Possession of the alleged substances and methods, it would be Ms. Okagbare, whose name was shown on the envelop and whose phone conversation shows evidence of payment she made to Mr. Lira;
- The chain of possession in this case is broken and thus WA is required to produce cogent and sufficient evidence to show the chain of possession of the said drugs from either Mr. Lira or Ms. Okagbare to the Athlete. Simply put, there is no evidence showing that the Athlete received the said drugs from either Mr. Lira or Ms. Okagbare, who as established above was in Possession of the said drugs;
- The alleged telephone conversation between Ms. Okagbare and Mr. Lira is not helpful to WA and did not provide the missing gaps in the chain of Possession of the said Prohibited Substances and Prohibited Methods from either Mr. Lira or Ms. Okagbare to the Athlete. The Athlete was not part of that conversation. Therefore, it cannot be used against the Athlete who was unaware of the conversation;
- The Athlete was not heard by either the Court in Mr. Lira's case or Ms. Okagbare's case and was not invited by the FBI during the investigation of the Prohibited Substances alleged to have been found in the Athlete's Apartment or regarding the conversation from Ms. Okagbare's phone that mentioned his name. In both cases, the Athlete's right to a fair hearing was breached and therefore, it is the Athlete's submission that the finding of facts in either Ms. Okagbare's case or Mr. Lira's case cannot apply to his case as irrefutable evidence against him to prove that the Prohibited Substances were found in his Apartment. Instead, WA is still under the duty to prove by comfortable

satisfaction that the Prohibited Substances were found in the Athlete's Apartment, which it has not established in this case;

- In the conversation of Ms. Okagbare with Mr. Lira regarding what the Athlete purportedly requested or demanded from Mr. Lira through Ms. Okagbare on the Athlete's behalf is not what was allegedly found by Individual-1 at the Athlete's Apartment on 12 or 13 July 2021;
- Ms. Okagbare repeatedly and allegedly made a request of stem cells from Mr. Lira on the Athlete's behalf and from the evidence of WA of what Individual-1 purportedly found in the Athlete's Apartment, the evidence in the US court case against Mr. Lira and the WA's submissions before the Panel, stem cells were not found in the Athlete's Apartment or anything that relates to stem cells' treatment of the Athlete by either Ms. Okagbare or Mr. Lira;
- There is also no evidence from WA that any of the alleged substances purportedly found in the Athlete's Apartment (including the alleged EPO or hGH) heals or is used for the healing of hamstring injury. The Athlete indeed admitted to his hamstring injury in his interview with the AIU and in his Response, however said admission by the Athlete is immaterial and does not support WA allegation that the Athlete received any drugs from Ms. Okagbare or was in Possession of any. There is no link between the alleged drugs found in the Athlete's Apartment and the effect of any of them on the Athlete's hamstring injury. At the interview with the AIU, the Athlete stated that his hamstring injury was at the beginning of the season for 2021 and that it was taken care of by their team doctor;
- The substances which Individual-1 mentioned as unknown to him, including the ones written in Russian, which he googled, and the ones with names on it, were not tested nor analyzed to confirm their content. There is no evidence of any scientific analysis of whatever drugs that were allegedly and purportedly found in the Athlete's Apartment, to determine the content of them. In particular, the alleged drugs shown in Exhibit D and L in the witness statement of Individual-1 did not have any name at all written on them and were not tested in any laboratory to determine what the content was. The same goes for all other drugs allegedly found in the Athlete's Apartment;

- All the decisions of CAS where it was ruled that the Athlete committed ADRV of Possession of Prohibited Substances or Prohibited Methods, were corroborated with evidence of admission by the Athlete, either by documentary evidence, witness statement or admission by the Athlete to a third party. But in the Athlete's case, there is no evidence of admission by the Athlete either directly or indirectly that the Athlete received or purchased any of the said substances from either Ms. Okagbare or Mr. Lira. The chain of evidence of WA is therefore insufficient to sustain this charge against the Athlete and there is a broken chain of possession in the alleged evidence purportedly found in the Athlete's Apartment.

As to the Use or Attempted Use

- All the evidence of WA in support of this charge is circumstantial, non-analytical evidence, which obviates the strict liability that would have been placed on the Athlete to prove how the Prohibited Substance entered his body; all his doping tests in recent years came out negative. The Athlete did not admit to the AIU or anybody else that he used any Prohibited Substances; Ms. Okagbare in her conversation with Mr. Lira also did not mention any use of Prohibited Substance by the Athlete and their alleged effect on him unlike she did mention with regard to herself;
- In the present case, WA seeks to rely on circumstantial and non-analytical evidence, such as, the witness statement of Victor Burgos that one box of EPO vials found in the Athlete's Apartment had only one vial remaining suggesting that the Athlete has used the others; the messages of Ms. Okagbare to Mr. Lira where she wrote: *"we still have igf IR3* [...] *Only thing we don't have is hgh";* and the alleged drugs found in the Athlete's Apartment, which is the evidence of Individual-1 in proof of the allegation of Use and Attempted Use against the Athlete. The evidence of WA is grossly insufficient to reach a finding that the Athlete used Prohibited Substances or Prohibited Methods;
- During the Athlete's interview with the AIU, Mr. Burgos lied to the Athlete, stating that EPO was found in his fridge. From the evidence of Individual-1, who claimed to have discovered the drug, he does not mention that he found anything in the Athlete's fridge. Yet the interviewer's bid to implicate the Athlete at all cost, he lied that EPO

was found in his fridge and went further to suggest that it was a preparatory stage of use of EPO. Unfortunately for the Interviewer, the Athlete's response was firm and unshaken;

- The only piece of evidence from Mr. Burgors that WA seeks to rely on in support of its case against the Athlete can be seen in paragraph 81 of WA's brief, where they stated that: *"one BOX of EPO vial found within the Athlete's Apartment had only one vial remaining, suggesting that the others had already been used by the."* If all the said vials were missing or found in the Athlete's Apartment (which is disputed), then it must have been used by Ms. Okagbare who tested positive to EPO and has been linked to Mr. Lira as the supplier;
- The Athlete does not have a positive Adverse Analytical Finding ("AAF") for EPO, the said alleged missing vials do not amount to an admission by the Athlete to the Use of the said Prohibited Substances, none of the four or five missing used vials were found in the Athlete's Apartment, there is no evidence of how many vials were purportedly in the pack when it was supplied or received by the Athlete (which is disputed) and who used them;
- Just like the case with the witness statement of Mr. Burgos, the witness statement of Individual-1 did not state that he either saw the Athlete Use any Prohibited Substances or that the Athlete confessed to him to have Used the alleged Prohibited Substances;
- In the majority of similar cases where Prohibited Substances or Prohibited Methods have been found in apartments used by athletes, CAS did not in any of them make a finding of ADRV for the Use of Prohibited Substance or Prohibited Method on the evidence of what was found in the Apartment of the Athlete, but CAS has consistently relied on evidence of admission or confession by an Athlete admitting to Use of Prohibited Substances and positive test result in the Athlete's samples;
- In most cases that arose from the Russian state-sponsored doping scheme and came to CAS on appeal, the hearing panels of CAS did not base their decision (in the instances where Russian athletes were found to have committed an ADRV for the Use of Prohibited Substances) on the McLaren reports, but on evidence of Athletes' test results that were positive but not reported;

- To prove the charge of Attempted Use of a Prohibited Substance or a Prohibited Method, the Anti-doping Organization (WA) is required to demonstrate to the comfortable satisfaction of the hearing panel a voluntary affirmative act or omission (actus reus) by the Athlete to purchase or procure the use of the banned drugs or methods. i.e. an intent on the part of the Athlete to commit the ADRV. It is not therefore enough for WA to merely state that the alleged drugs were found in the Apartment where the Athlete resides or to rely on the act/steps taken by a third party (without an admission of confession on an Athlete to Use drugs) to procure a Prohibited Substance or a Prohibited Method. The Panel must always look at the positive and voluntary act of the Athlete to commit an ADRV showing an intent to use the drugs before making a finding that the Athlete has committed an ADRV of Attempted Use of a Prohibited Substance or a Prohibited Method;
- In cases of Attempted Use of Prohibited Substances, CAS has always found evidence of Attempted Use of Prohibited Substances from the positive and voluntary act of the Athlete who have shown to have ordered or purchased the Prohibited Substance or paid for it;
- In the Athlete's case, there is no evidence that the Athlete ordered any of the Prohibited Substances alleged against him or that he requested for it from either Ms. Okagbare or Mr. Lira. The Athlete has denied knowledge of the Prohibited Substances in his witness statement. He has also stated that he did not use them and did not attempt to use any of it. He also did not test positive to any Prohibited Substance. The available evidence shows that it was Ms. Okagbare who paid money to Mr. Lira. The test for "Attempted Use" requires evidence of a voluntary act of the Athlete to purchase and use the Prohibited Substances. It therefore not enough for WA to rely on assumption or presumption to discharge the burden of proving to the comfortable satisfaction of the hearing panel that the Athlete committed an ADRV of Attempted Use;
- Likewise, it is not enough for WA to rely on evidence of the alleged missing five vials of EPO that were not shown to have been supplied to or received completely by the Athlete; or that the used bottles of the vials were found in the Athlete's Apartment to establish the ADRV for Attempted Use;

- The case of WA for Aggravating Circumstance does not apply in the Athlete's case. As submitted above, WA has not discharged its standard of proof to the comfortable satisfaction to support their case of ADRVs of Rules 2.6 and 2.2;
- The Athlete rejects WA's request for cost because the Athlete does not have money [redacted]. Also, his contract with PUMA has been terminated and he is presently not competing in sport having been suspended provisionally.

71. In rebuttal to the Athlete's submissions the AIU, in its Reply Brief, responded as follows:

Second statement of Individual-1

- *"The Athlete has chosen to actively deny that* Individual-1 *found anything in his Apartment. This is somewhat surprising, given that: (a) the Athlete was not at his Apartment when* Individual-1 *made his discoveries there, and had not been there for some days; and (b) the Athlete has not put forward any explanation whatsoever as to why* Individual-1 *would have any interest in fabricating such a detailed story,* [redacted]*. World Athletics also notes that the Athlete has still failed to engage with any of the detail of the discovery;"*
- In his second witness statement Individual-1 denies the suggestion that he did not make the discovery and provides time-stamped and location-stamped photographs from his mobile phone, confirming the account already given and the photographs already provided to USADA. In the statement, Individual-1 also provides video evidence recorded by him when at the Apartment. Individual-1 also addresses a further incident involving the storage locker into which he placed the Prohibited Substances. After telling [redacted] on the phone that he had given a key to the storage locker to the FBI (and receiving a calm acceptance to this news [redacted]), he was called shortly after by the Athlete, who was furious about the news. He then received a further call shortly after from [redacted], who was now also furious. World Athletics submits that the clear implication of this exchange is that the Athlete feared that his Prohibited Substances from his Apartment would be discovered in the locker by the authorities, and that he had

made [redacted] aware of this risk after [redacted] first call with Individual-1 on the subject. This reaction is further support for the factual truth of Individual-1's discovery. Individual-1 also addresses in his second witness statement the suggestion of the Athlete that Individual-1 would have informed him about the discovery if it had actually happened. As Individual-1 explains, [redacted] and he wished to preserve anonymity, not least in order to maintain the integrity of the ongoing investigation.

On the relevance of the Lira - Okagbare message exchange

- The messages have significant probative value, in that they involve two (now-convicted/sanctioned) individuals candidly discussing the Athlete's doping needs, in circumstances where one individual (Ms. Okagbare) knew the Athlete intimately, and where a package between those two individuals was found at the Apartment, thus linking all three of them together even more closely. The evidence is strong enough to merit a proper exculpatory response or alternative explanation, but none has been forthcoming;
- The WA Disciplinary Tribunal Sole Arbitrator in Okagbare case was dealing with the evidence of the Lira complaint, in which Ms. Okagbare was referred to not by name but as Athlete 1. The arbitrator was clearly only stating that the Lira complaint evidence was only relevant to Ms. Okagbare if she was Athlete 1. That is what is meant by "if she is part of the conversation", in the sense that the arbitrator had to find that "Athlete 1" was her, or the evidence of the messages had no link to her whatsoever. The arbitrator was not making a point of general principle that only messages sent by or received by an athlete are relevant to their liability: that would be overly restrictive and simplistic, and wrong in law.

On Possession

- The Athlete suggests that all CAS cases where a Possession ADRV has been upheld involved admissions by the relevant athletes charged, such that a charge with no admission would mean the ADRV could not be established. That is clearly wrong. The example of the steroids found in the car of an athlete, as set out at the Comment to Art.

2.6 of the WADA Code, shows that those facts alone would constitute an ADRV, with no mention of an admission being necessary. In any event, it is inherently senseless to suggest that an ADRV could only or primarily be established based on an admission;

- The Athlete further suggests that, in the absence of an admission, it is necessary to establish a "chain of possession" of the Prohibited Substances from Mr. Lira or Ms. Okagbare to the Athlete, and repeatedly refers to the lack of evidence of the Athlete receiving or purchasing the substances. Respectively, that is wrong and irrelevant. It is unsupported by any reference to case law. It has no relation to the nature of a Possession ADRV. The relevant test is of exclusive control of the Apartment, alternatively intention to exercise control over the products. It is not a test that relates to *receipt* of products in any way. Again, the car example in the Comment to Art. 2.6 of the WADA Code shows the Athlete's point to be wrong: it is the presence of the steroids in the car that is relevant, not how the steroids came to be in the car;
- The Athlete claims that the substances found at the Apartment would not have been useful to heal a hamstring injury. That is not relevant to a Possession ADRV and is denied. An expert report from Prof. Martial Saugy in which he addresses the muscle-recovery benefits of the substances found is self-speaking. In any event, the Athlete's use could have been before or after the injury he claims he had;
- Regarding the absence of evidence of scientific analysis of the products found in the Apartment - there is significant photographic evidence of named and specific Prohibited Substances in their original "medical/pharmaceutical" packaging, including the brand name and manufacturer. Those Prohibited Substances are also sealed. That is a convincing – if not overwhelming - body of evidence to support that the substances photographed were what they appeared to be and what World Athletics alleges them to be. The Athlete would have to produce convincing counterevidence as to why the substance is not in fact what it so clearly appears to be on its face. He has produced nothing;
- Those same Prohibited Substances then formed part of the factual basis for the Lira charges. Notably, Mr Lira has now pleaded guilty, both factually and legally, to a count of a major international doping fraud conspiracy, including by providing performance-enhancing substances to Ms. Okagbare and including by shipping such substances from

El Paso, Texas to Ms. Okagbare in Florida (which matches the addresses found on the envelope in the Athlete's Apartment);

- The present case is completely different from Troy case CAS 2008/A/1664: International Rugby Board v. Luke Troy & Australian Rugby Union. Here the evidence goes far beyond a written description of a now-destroyed container from a non-present authority. It is photographic evidence of the original products, both in their original pharmaceutical packaging and out of it in their sealed vials, from the person who found the products. That is convincing evidence. It must also be noted that the present case is (primarily) a different type of constructive Possession case than Troy, based on exclusive control and not (except as an alternative) knowledge and intent to exercise control.

On the Use

- It is clearly wrong to say that the fact that no Prohibited Substance was found in the Athlete's body is evidence against a Use ADRV. The whole point of having separate Presence and Use ADRVs is to distinguish between scenarios of doping through a positive test and doping through other contextual evidence of Use;
- By contrast to the French case CAS 2002/A/651: Mark French v. Australian Sports Commission, in the present case, there is no indication that the substances are not what they appear to be that might require stronger counterevidence of the contents. The substances are sealed and labelled with the original packaging. In short, a used ampoule in a bin with scientific indications that it did not contain what was on its label, is very different from the unused and packaged products contained in the Apartment; unlike in that case, the Athlete had exclusive control of his Apartment where the substances were located, and where there are the Lira - Okagbare messages which support the Athlete's Use or Attempted Use;
- The Athlete's negative tests are not evidence that he did not Use or Attempt to Use a Prohibited Substance. There are significant gaps in time between the tests and there is only one test on 28 April 2021 between the first of the Lira - Okagbare messages on 17 November 2020 and the Athlete's departure for Europe at the start of July 2021. In any event, the Prohibited Substances relied on in the charges have short excretion times, as per the report of Prof. Saugy;

- As to Attempted Use, the Athlete's willing receipt into his home of a number of Prohibited Substances – which is a conclusion that necessarily follows from a factual finding that he had exclusive control of the Apartment – would constitute the *"Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation"* as per the definition of Attempt in Appendix 1 to the ADR.

VII. MERITS

72. The Panel notes that it is required to answer the following questions:

1. Did the Athlete commit an ADRV under Rule 2.6 ADR (Possession of a Prohibited Substance or a Prohibited Method)?
2. Did the Athlete commit an ADRV under Rule 2.2 ADR (Use or Attempted Use by an Athlete of a Prohibited substance or a Prohibited Method)?

If any or both of those ADRV are found to be committed by the Athlete -

3. What are the Consequences to be applied?
4. Are there Aggravating Circumstances that justify increase of the period of Ineligibility?

73. These questions will be answered below.

1. Did the Athlete commit an ADRV under Rule 2.6 ADR (Possession of a Prohibited Substance or a Prohibited Method)?

74. The Athlete is charged by WA with the violation of Rule 2.6 *"Possession of a Prohibited Substance or a Prohibited Method"*. Under Rule 2.6 of the ADR:

> *"2.* […] *Each of the following constitutes an anti-doping rule violation:* [...]
>
> *2.6.1 Possession by an Athlete In-Competition of any Prohibited Method or any Prohibited Substance, or Possession by an Athlete Out-of-Competition of any Prohibited Method or any Prohibited Substance that is prohibited Out-of-Competition, unless the Athlete establishes that the Possession is consistent with a TUE granted in accordance with Rule 4.3 or other acceptable justification.*
>
> […]

[Comment to Rules 2.6.1 and 2.6.2: Acceptable justification may include, for example, (a) an Athlete or a team doctor carrying Prohibited Substances or Prohibited Methods for dealing with acute and emergency situations (e.g., an epinephrine auto-injector), or (b) an Athlete Possessing a Prohibited Substance or Prohibited Method for therapeutic reasons shortly prior to applying for and receiving a determination on a TUE. Acceptable justification would not include, for example, buying or Possessing a Prohibited Substance for purposes of giving it to a friend or relative, except under justifiable medical circumstances where that Person had a physician's prescription, e.g., buying insulin for a diabetic child.]"

75. For the purposes of this rule the following definition, as set by the ADR in its Appendix 1, is relevant:

***"Possession:** The actual, physical Possession, or the constructive Possession (which will be found only if the Person has exclusive control or intends to exercise control over the Prohibited Substance/Method or the premises in which a Prohibited Substance/Method exists); provided, however, that if the Person does not have exclusive control over the Prohibited Substance/Method or the premises in which a Prohibited Substance/Method exists, constructive Possession will only be found if the Person knew about the presence of the Prohibited Substance/Method and intended to exercise control over it. Provided, however, there will be no anti-doping rule violation based solely on Possession if, prior to receiving notification of any kind that the Person has committed an anti-doping rule violation, the Person has taken concrete action demonstrating that the Person never intended to have Possession and has renounced Possession by explicitly declaring it to an Anti-Doping Organisation. Notwithstanding anything to the contrary in this definition, the purchase (including by any electronic or other means) of a Prohibited Substance or Prohibited Method constitutes Possession by the Person who makes the purchase.*

[Comment to Possession: Under this definition, anabolic steroids found in an Athlete's car would constitute a violation unless the Athlete establishes that someone else used the car; in that event, the Integrity Unit must establish that, even though the Athlete did not have exclusive control over the car, the Athlete knew about the anabolic steroids and intended to have control over them. Similarly, in the example of anabolic steroids found in a home medicine cabinet under the joint control of an Athlete and spouse, the Integrity Unit must establish that the Athlete knew the anabolic steroids were in the cabinet and that the Athlete intended to exercise control over them. The act of

purchasing a Prohibited Substance alone constitutes Possession, even where, for example, the product does not arrive, is received by someone else, or is sent to a third-party address.]"

76. The concept of Possession under the ADR comprises more than just actual physical possession and includes "constructive possession". Thus, a person will be found to be in Possession of a Prohibited Substance or Method if he or she had it in his or her physical possession; or had constructive possession over it, which means that he or she either had exclusive control over the Prohibited Substance or Method or over the premises in which it was found; or knew about the presence of the Prohibited Substance or Method and intended to exercise control over it.

77. Unless an athlete establishes that the possession is pursuant to a TUE granted or "other acceptable justification", the possession of the substances, found in the Athlete's Apartment, i.e. Non-Specified Prohibited Substances, prohibited at all times, constitutes in itself an ADRV since these can obviously be used for doping purposes.

78. Constructive possession is defined as existing either where a person has exclusive control over a Prohibited Substance or Method, or over the premises in which the Prohibited Substance or Method is located.

79. In the present case, it is not contended that the Athlete ever sought a TUE for the substances in his possession. Notably, at all times the Athlete was insisting that nobody but him had access to his Apartment.

80. However, according to Individual-1, the following Prohibited Substances were found by him in the Athlete's Apartment:

    1. Two boxes of Somatropin, "Xerendip" and "Humatrope" (namely, synthetic or "recombinant" Human Growth Hormone), each from a different manufacturer;

    2. A plastic ziplock bag labelled "IGF LR3" containing three vials. IGF LR3 is an abbreviation for synthetic or "recombinant" Insulin Growth Factor;

    3. Two boxes of recombinant erythropoietin (EPO), each from a different manufacturer – "Alvertin" and "Wepox 2000". One of the two boxes, Alvertin, was found to be open and had only one vial remaining in it out of six;

4. An opened US Postal Service envelope sent on 13 April 2021, that was addressed to Ms. Okagbare with the sender's name clearly marked to be "Eric Lira", inside which "Xerendip" was found.

81. The entire defense of the Athlete until the hearing was a bare denial of the fact that the substances in question were found in his Apartment and bare denial of any contact with Mr. Lira or any possibility that Ms. Okagbare was procuring Prohibited Substances on his behalf from Mr. Lira.

82. However, during the hearing, suddenly the Athlete changed his stance and stated that it was Individual-1, who sabotaged him [redacted]. The Athlete further contended that he was bullied by his coach in US ([redacted]) and that the coach allegedly wanted him out of the team, [redacted]. Thus, the Athlete's stance was that Individual-1 was plotting against him with the team and it culminated in him being sabotaged.

83. However, the Panel is unable to accept the Athlete's change of explanations given in his submissions and during the hearing concerning the Prohibited Substances found in his possession. It finds those explanations provided by him, inculpating Individual-1, as entirely fabricated, for the following reasons:

a) The Athlete contended that he was set up by Individual-1, however, did not explain how the latter could possibly procure the Prohibited Substances found in his Apartment, all produced outside of US, all of which are obviously not on sale in pharmacies without a specific prescription, especially in US, [redacted].

b) Individual-1, on the contrary, in his written and oral testimony confirmed that he did not place any of the Prohibited Substances in the Athlete's Apartment [redacted]

[redacted].

c) Notably, while giving his testimony, Individual-1 was not questioned by the Athlete's counsel with regard to [redacted], any possible conflict between him and the Athlete or him and Ms. Okagbare that could have possibly prompted him to such an action as to set the Athlete up by filling his Apartment with Prohibited Substances. Still, there was no explanation advanced as to the envelope addressed to Ms. Okagbare from Mr. Lira – how could it be found in the Athlete's Apartment and in case put there by Individual-1 – how could it possibly be in his possession. Individual-1 was clear that the Athlete indeed was bullied by his coach and this is not acceptable, that the plan was to change the team after the Olympic Games (despite that Ms. Okagbare was going well with that same coach) and that is why the Apartment was vacated because the Athlete did not know in which state he would have ended up with the new coach.

d) The Athlete kept saying in his defense that on the video sent to him Individual-1 while packing his stuff, no drugs were seen and that Individual-1 while keeping telephone contact with him did not mention to him anything about finding Prohibited Substances in his Apartment, that he left the Apartment "clean" before leaving for Hungary. The Panel, on the contrary, notes that the video made by Individual-1 was indeed, as stated by him during his testimony, not meant for the investigation. He obviously wanted to keep anonymity before the Athlete and did not tell him anything about his shocking findings in the latter's Apartment. The Panel understands that the 8-second video sent to the Athlete was merely for showing him how the trophies left at the Apartment were packed; from the second video that Individual-1 made early in the morning on 13 July 2021 to show his wife how much stuff he had to collect and pack, the Panel notes that Individual-1's statement as to the Athlete's last moment departure for the competition in Hungary on 3 July 2021 is truthful (to which the Athlete ultimately conceded during the hearing, confirming that he had approximately two hours between when he received the ticket and had to depart for the airport). From that video the entire Apartment can be seen, everything inside is left untidy, the bed is not made and the notorious black suitcase which was found by Individual-1 to be full of drugs was indeed on the kitchen island and closed. It is only after making this video

for his wife at 8 am that Individual-1 says he found other Prohibited Substances (according to the pictures available to the Panel closer to 11am) and later, having spoken to USADA representatives, opened the suitcase and found "the motherload" of drugs and syringes, which he further photographed.

e) The Panel further notes that, in opposition to the Athlete's speculation regarding the sabotage by Individual-1, the [redacted] email addressed by Individual-1 to [redacted] the Athlete, submitted to the record by the Athlete himself, is self-speaking [redacted] (implication with doping of [redacted] and [redacted] refusal to cooperate and come clean), the text of the email, the way Individual-1 explained [redacted] he felt about the situation, and his statement that [redacted] were like a family to him and his advice to [redacted] to confess and collaborate, in the eyes of the Panel points to only one direction – that honesty and reputation ([redacted]) are very important to Individual-1 and that his statements made in these proceedings are credible, hence truthful.

f) The Panel further notes that the Athlete offered no explanation as to why he was mentioned frequently by Ms. Okagbare in her message exchanges with Mr. Lira as "we" or "Divine" beside saying that he does not know why she mentioned him, why she requested specific Prohibited Substances from Mr. Lira for him and specifically why she was so concerned about his hamstring injury that she requested Mr. Lira to send her whatever was possible just to make the Athlete heal fast. In this regard the Panel finds that the message exchange between Ms. Okagbare and Mr. Lira as regards to the Athlete, called by name, is particularly incriminating in view of its content as pertaining to the Athlete. The Panel wonders what the possible reason for those two persons could be to inculpate the Athlete (who did not ultimately dispute that it was his name that was mentioned) or to discuss other than the truth when their messages were in private. Moreover, the messages are consistent with what was ordered by Ms. Okagbare from Mr. Lira and what was found in the Athlete's Apartment, and as sent on 13 April 2021 by Mr. Lira to Ms. Okagbare in the envelope, found at the Athlete's Apartment – the "honey", i.e. hGH. The Athlete did not advance a plausible existence of a plot hatched against him by Ms. Okagbare, who he claims to be his role model, long-standing teammate (they had the same coaches in Nigeria and in US, both come from the same region in Nigeria) and a "bigger sister" who is

"looking out for" him. Notably, according to Individual-1, Ms. Okagbare was very close to the Athlete and actively participated in his daily life influencing his sport as well as everyday decisions.

g) Finally, the Panel finds it to be an extraordinary coincidence that all the Prohibited Substances found in the Athlete's Apartment were precisely those requested from Mr. Lira by Ms. Okagbare for her and "Divine", specifying that she had to give [to Divine] his stuff too and for which she tested positive (EPO and hGH). Moreover, during the hearing, the Athlete stated that he met Ms. Okagbare each training session even though they were not training at the exact same time, which in the eyes of the Panel is clearly pointing to the possibility of receiving/passing anything without being noted.

h) The Panel also draws inference with regard to the Athlete's refusal to provide his mobile phones to the AIU during its investigation. The Athlete claimed that both his mobile phones were not available because his Nigerian cell was blocked, and his US cell phone was stolen in Nigeria. He stated to the AIU in his interview that he complained to the police in Nigeria about the theft and that he also could have provided the confirmation from his Nigerian cell operator that his number is blocked, however he failed to provide any evidence to support this allegation. He also stated that he did not complain about the theft in the US with regards to his US cell phone. The Panel considers this to be an attempt to hide the evidence inculpating the Athlete, namely hiding message exchanges with Ms. Okagbare and/or Mr. Lira pertinent to sourcing the Prohibited Substances and their possible Use. The cell phones provided by the Athlete to the AIU for imaging were the new ones and it does not seem a surprise to the Panel that nothing was found in there by the AIU.

84. Therefore, given the nature of the living arrangements of the Athlete and the evidence on the file, especially from Individual-1 regarding when, where and what he had found at the Athlete's Apartment, the Panel finds that the Athlete was in constructive Possession of the Prohibited Substances found in his Apartment by Individual-1.

85. In accordance with Rule 3.1. ADR, World Athletics has the burden to establish *"to the comfortable satisfaction of the relevant hearing panel"* that the Athlete is responsible for the violation for which he is charged.

86. In the Panel's opinion, WA has satisfied that burden. In fact, the Panel remarks that evidence has been provided by WA to support the conclusion that the Athlete possessed multiple non-Specified Substances prohibited at all times without any justification.

87. The Panel disregards the Athlete's argument that since none of the substances were tested to confirm whether they were indeed a Prohibited Substance, the charge cannot stand. First, this is not a demand under Rule 2.6 ADR. Second, as indeed rightly pointed out by WA, in this very specific case the Prohibited Substances found were all in their original manufacturer packaging with the sealed glass vials inside with the corresponding names on them. Therefore, the Panel concludes that it is entirely implausible that the content of those vials would be any different from what is written on them. Evidence in that respect provided by Individual-1 is detailed, consistent, credible, and supported by photo- and video-recordings, as well as by contemporary messages' exchanges between Mr. Lira and Ms. Okagbare. That evidence remained unchallenged by the Athlete.

88. In light of the foregoing, the Panel finds that the Athlete committed the ADRV contemplated by Rule 2.6 of the ADR.

2. Did the Athlete commit an ADRV under Rule 2.2 ADR (Use or Attempted Use by an Athlete of a Prohibited substance or a Prohibited Method)?

89. As regards the Athlete's conduct which formed the basis of the WA charge under Rule 2.2 ADR, the latter reads as follows:

> *"2. Each of the following constitutes an anti-doping rule violation:* […]
>
> *2.2. Use or Attempted Use by an Athlete of a Prohibited Substance or*
>
> *a Prohibited Method*
>
> *2.2.1. It is each Athlete's personal duty to ensure that no Prohibited Substance enters their body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary to demonstrate intent, Fault, Negligence or knowing Use on the Athlete's* part in order to establish a Rule 2.1 anti-doping rule violation.
>
> *[Comment to Rule 2.2: It has always been the case that Use or Attempted Use of a Prohibited Substance or Prohibited Method may be established by any reliable means. As noted in the Comment to Rule 3.2, unlike the proof required to*

establish an anti-doping rule violation under Rule 2.1, Use or Attempted Use may also be established by other reliable means such as admissions by the Athlete, witness statements, documentary evidence, conclusions drawn from longitudinal profiling, including data collected as part of the Athlete Biological Passport, or other analytical information that does not otherwise satisfy all the requirements to establish the presence of a Prohibited Substance under Rule 2.1. For example, Use may be established based upon reliable analytical data from the analysis of an A Sample (without confirmation from an analysis of a B Sample) or from the analysis of a B Sample alone where the Anti-Doping Organisation provides a satisfactory explanation for the lack of confirmation in the other Sample.]

2.2.2. The success or failure of the Use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was Used or Attempted to be Used for an anti-doping rule violation to be committed.

[Comment to Rule 2.2.2: Demonstrating the Attempted Use of a Prohibited Substance or a Prohibited Method requires proof of intent on the Athlete's part. The fact that intent may be required to prove Attempted Use does not undermine the strict liability principle established for violations of Rule 2.1 and violations of Rule 2.2 in respect of Use of a Prohibited Substance or Prohibited Method. An Athlete's Use of a Prohibited Substance constitutes an anti-doping rule violation unless such Prohibited Substance is not prohibited Out-of-Competition and the Athlete's Use takes place Out-of-Competition. However, the presence of a Prohibited Substance or its Metabolites or Markers in a Sample collected In-Competition will be a violation of Rule 2.1, regardless of when that Prohibited Substance might have been Administered.]"

90. The Panel notes, that "Use" violations may be proven by "any reliable means" including, but not limited to, admissions, witness testimony and documentary evidence. A "Use" violation may also be established through other analytical information which does not otherwise satisfy all the requirements to establish an ADRV based on presence of a prohibited substance. It is not necessary that a violation be proven by a scientific test itself.

91. It is not in dispute between the Parties that empty vials or used syringes were found in the Athlete's Apartment, or that somebody saw him using Prohibited Substances or that he confessed to somebody he was using them. There is no documentary evidence to this

end. The Athlete denied having used any Prohibited Substance and put forward as defense his clear testing record.

92. The Panel cannot take into consideration the matter raised by the Athlete that he has a clean record – it is not a factor to be weighed in his favour. All Prohibited Substances found in the Apartment of the Athlete were confirmed to have performance enhancing, fast healing and regenerating effect to soft tissues by Prof. Saugy, who in his expert testimony confirmed that all three are extremely difficult to be detected unless a doping sample is taken immediately after a dose was injected and the healing effect is visible within one - two weeks.

93. From the list of the samples taken from the Athlete available on the file it is obvious to the Panel, pursuant to the same expert testimony that time gaps between them are huge (i.e. months), which clearly is too long for detecting substances which are detectable: hGH within 24 - 48 hours and EPO within maximum 10 days and only if significant dosages were taken regularly. Whereas IGF is almost undetectable in urine and in blood. Prof. Saugy indicated that there is even no validated method in the WADA laboratories for IGF detection. Notably, a urine sample was taken from the Athlete on 28 April 2021 in Jacksonville, and it is not surprising to the Panel that it came out negative, as the next day the Athlete had a race.

94. Further, the Panel observes, that contrary to the Athlete's claim in his submissions, nothing in the ADR points to the direction that an admission by an athlete is necessary to establish the "Use" or "Attempted Use" ADRV or is more significant than other types of evidence. Instead, it is one of the possible evidentiary means, among others, listed as an example in the Comment to Rule 2.2. Notably, the list of examples is not exhaustive and thus the Panel can accept any other evidence, which, from the Panel's point of view, is acceptable and has weight.

95. Nevertheless, the Panel is not comfortably satisfied that Use can be established in this case.

96. On the other hand, the concept of "Attempt" is defined in Appendix 1 of the ADR as follows:

"Attempt: purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation; provided, however, that there will be no anti-doping rule violation based solely on an Attempt to commit a violation if the

Person renounces the Attempt prior to it being discovered by a third party not involved in the Attempt".

97. It is therefore clear to the Panel that the ADR treats an ADRV not only as the Use of Prohibited Substances, but also a conduct constituting an Attempt to Use them, and includes an autonomous definition of the concept of "Attempt" that shall be applied in the assessment of any conduct eventually leading to such violation.

98. The Panel, therefore, must analyze the Athlete's conduct with a view to determine whether it can be qualified as an "Attempt to Use" within the ADR definition.

99. To this end the Panel notes that in the Comment to Rule 2.2.1 ADR, WA expressly provides that *"proof of intent on the Athlete's part"* is required to establish an attempt to Use: *"Demonstrating the "Attempted Use" of a Prohibited Substance* requires proof of intent on the Athlete's part. […]*".*

100. After having reviewed the facts giving rise to this charge and all the evidence produced by the Parties, the Panel considers as proven that:

a) The Athlete possessed multiple non-Specified Prohibited Substances and had no justified reason for such possession;

b) The Prohibited Substances were supplied to the Athlete by Mr. Lira through Ms. Okagbare, who used them herself to enhance her sporting performance and who tested positive twice with those substances found in her samples;

c) The envelope found in the Athlete's Apartment is dated 13 April 2021 and when it was found it contained 1 box of hGH, meaning that indeed two were sent to Ms. Okagbare and she gave one to the Athlete – i.e. exactly as discussed between her and Mr. Lira in their WhatsApp exchanges dated 13 April 2021;

d) Shortly before the Tokyo Olympic Games the Athlete injured his hamstring and had, therefore, in order to heal as fast as possible, the motive to Use Prohibited Substances.

101. These facts do in fact provide some indication that the Athlete has been involved in doping practices.

102. However, the relevant issue to be considered for determining whether the violation foreseen in Rule 2.2 ADR has been committed or not is whether these facts constitute an "Attempt" within the meaning of the definition of the ADR.

103. Thus, the Panel notes that the Athlete failed to provide any explanation at all about the exchanges between Ms. Okagbare and Mr. Lira where she repeatedly referred to "we" mentioning herself and the Athlete, requesting certain Prohibited Substances to be provided to her by Mr. Lira, at least three of which were later found in his Apartment by Individual-1 and discussing how exactly to use/ingest them. In the eyes of the Panel the content of the conversations held between Ms. Okagbare and Mr. Lira as available to the Panel, does provide corroborative evidence to support the charge that the Athlete was engaged in the conduct planned to culminate in the commission of an ADRV.

104. It also strikes the Panel that Ms. Okagbare listed to Mr. Lira in her messages which Prohibited Substances were missing for her and the Athlete and ordered those substances from Mr. Lira, which he informed her he would send. Indeed, on 13 April 2021 the envelope addressed from Mr. Lira to Ms. Okagbare was sent and found on 13 July 2021 in the Athlete's Apartment containing the Prohibited Substance, mentioned in the message exchange, namely hGH, and the envelope is indeed dated 13 April 2021 - the Panel finds it to be a conclusive evidence linking all three persons together and indicating to the direction of them having a lasting relationship where Mr. Lira was providing Prohibited Substances to Ms. Okagbare and knew that she was sharing them together with instructions for Use with the Athlete, and knew who the Athlete was.

105. The mere fact that the same substances as mentioned by Ms. Okagbare in her messages to Mr. Lira have been found in the Athlete's Apartment and in her samples, when she tested positive for hGH and EPO, clearly indicates to the Panel that the Athlete was pursuing or intending to pursue doping practices. The intent on the Athlete's side is, therefore, proven to the comfortable satisfaction of the Panel.

106. Further, it is not in dispute that the Athlete suffered from a hamstring injury sometime in late May 2021. Although the video of physiotherapy treatment provided by the Athlete is undated and is not possible to identify whether the person in it is the Athlete, the Medical Certificate provided by the Athlete is dated 6 December 2022 and is, therefore irrelevant for the events in June 2021, as it is one and a half years later than the events in question,

the Panel is prepared to accept that the Athlete was indeed getting treatment from his medical team such as physiotherapy and some medication back in June - July 2021. However, this does not exclude the second possible scenario of him using an alternative, additional way to heal faster by using specific Prohibited Substances, all found in his Apartment exactly as ordered by Ms. Okagbare from Mr. Lira on the Athlete's behalf and for healing hamstrings injury purposes.

107. However, the Panel is, under the ADR, not concerned with the motive - though the fact that a major competition was imminent, and the hamstring injury was ruining the possible participation, is consistent with a motivated manipulation or, at least, an attempted manipulation.

108. The Panel agrees with the observation of CAS panels in numerous doping cases that circumstantial evidence might be compared to a rope comprised of several cords: one strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Therefore, it is not necessary that every element of proof on its own surmount the required standard of comfortable satisfaction, but the evidence as a whole must constitute reliable means for the determination on which an adjudicating body is comfortably satisfied that an athlete indeed committed an ADRV.

109. In this regard the Panel keeps in mind that amongst those Prohibited Substances found in the Apartment of the Athlete, the EPO box of 6 vials contained only one of them. The message of Ms. Okagbare's, close friend of the Athlete sport wise, who was emotionally urgently requesting from Mr. Lira on 1 June 2021 anything that could help to heal a hamstring injury, points to the conclusion that the Athlete at least Attempted to Use Prohibited Substances.

110. On the other hand, the Panel indeed cannot exclude that Ms. Okagbare provided the Athlete with EPO box, where only one vial was left, and it is not him who used the other five. However, even under this scenario one could only ask themselves what would be the reason for handing only one vial of EPO if not for the Use?

111. This is a case in which multiple Prohibited Substances are found in the Athlete's exclusive Possession in his domicile, and although immaterial, there is an obvious motive for using that Prohibited Substances.

112. The above arguments lead the Panel to conclude that the facts proven by WA can, in the Panel's opinion, be considered as conduct constituting a substantial step in a course of conduct planned to culminate in the commission of an ADRV.

113. Having carefully considered all the evidence available to it in these proceedings the Panel decides that it is proven to its comfortable satisfaction by World Athletics that the Athlete has committed ADRVs under Rule 2.2. ADR, namely Attempted Use of a Prohibited Substance.

3. What are the consequences to be applied?

Period of Ineligibility

114. Rule 10.2 of the ADR provides the Consequences to be imposed for ADRVs under Rules 2.6 and 2.2 as follows:

> **"10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method**
>
> *The period of Ineligibility to be imposed for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete or other Person's first anti-doping rule violation shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:*
>
> *10.2.1 Save where Rule 10.2.4 applies, the period of Ineligibility shall be four years where: (a) The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the nti-doping rule violation was not intentional."*

115. As used in Rule 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct that they knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded that risk.

116. The Athlete has failed - indeed not sought - to meet his burden to establish that his violations, if proven, were not intentional.

117. Rule 10.9.3 ADR deals with situations where potential multiple violations have occurred. In this case the second AAF cannot be considered a second violation as the Athlete did not commit the additional ADRV after he received notice of the first one. Therefore, the violations shall be considered together as one single first violation, and the sanction imposed will be based on the violation that carries the more severe sanction. The Athlete is therefore subject to the mandatory period of Ineligibility of four (4) years in accordance with Rule 10.2.1(a) of the ADR.

Disqualification of Results and Other Consequences

118. Rule 10.10 of the ADR provides that:

> "***10.10 Disqualification of results in Competitions subsequent to Sample collection or commission of an anti-doping rule violation***
>
> *In addition to the automatic Disqualification of the results in the Competition that produced the positive Sample under Rule 9, all other competitive results obtained by the Athlete from the date a positive Sample was collected (whether In-Competition or Out-of-Competition) or other anti-doping rule violation occurred through the commencement of any Provisional Suspension or Ineligibility period, will, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, titles, points, prize money, and prizes.*"

119. Pursuant to Rule 10.10 ADR, the Panel concludes that all competitive results obtained by the Athlete from 12 July 2021 through to the beginning of the Athlete's Provisional Suspension on 9 February 2023, if any, shall be disqualified, with all of the resulting consequences, including the forfeiture of any titles, awards, medals, points, prizes, and appearance money.

4. Are there Aggravating Circumstances that justify increase of the period of Ineligibility?

120. Rule 10.4 ADR "Aggravating Circumstances that may increase the period of Ineligibility" states as follows:

"If the Integrity Unit or other prosecuting authority establishes in an individual case involving an anti-doping rule violation other than violations under Rule 2.7 (Trafficking or Attempted Trafficking), Rule 2.8 (Administration or Attempted Administration), Rule 2.9 (Complicity or Attempted Complicity) or Rule 2.11 (Acts by an Athlete or other Person to discourage or retaliate against reporting) that Aggravating Circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable will be increased by an additional period of Ineligibility of up to two (2) years depending on the seriousness of the violation and the nature of the Aggravating Circumstances, unless the Athlete or other Person can establish that they did not knowingly commit the anti-doping rule violation".

121. Further, in accordance with the Appendix 1 to ADR "Definitions", Aggravating Circumstances are

"*Circumstances involving, or actions by, an Athlete or other Person that may justify the imposition of a period of Ineligibility greater than the standard sanction. Such circumstances and actions include, but are not limited to: the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods, Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions or committed multiple other anti-doping rule violations; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or other Person engaged in deceptive or obstructive conduct to avoid the detection or adjudication of an anti-doping rule violation; or the Athlete or other Person engaged in Tampering during Results Management. For the avoidance of doubt, the examples of circumstances and conduct described herein are not exclusive and other similar circumstances or conduct may also justify the imposition of a longer period of Ineligibility*."

122. The Panel observes that the situation of the Athlete falls squarely into the first example given in the definition – the Athlete Possessed multiple Prohibited Substances listed under the category S2.1 – S2.3, i.e. non-Specified Substances, prohibited at all times. The

Athlete Attempted to Use the non-Specified Prohibited Substances in the lead-up to the World Athletics' competitions and Tokyo Olympic Games.

123. To procure those substances, he engaged into a scheme with his teammate who in her turn was procuring those substances on his behalf from a person who was illegally bringing them to US in order to distribute among athletes with the aim to improve their sport performance, thus influencing unfairly the outcome of athletic competitions, including the major ones. The Panel considers this behaviour to be particularly serious.

124. Moreover, the Panel also notes the substantial financial gains that the Athlete benefited from under his sponsorship contract and the pressure thereof to be as competitive as possible.

125. Last but not least, at a mere search on the internet, the media coverage that the Athlete had even before the announcement of his possible ADRVs offers an image of the high impact that the notoriety of the Athlete may have had and still has on younger generations of athletes.

126. In his defense the Athlete did not put forward any argument that would suggest the possibility of reducing the maximum additional period of Ineligibility applicable under Rule 10.4 ADR, i.e. two (2) years of ineligibility. Therefore, the Panel considers it fair and proportionate to increase the period of Ineligibility imposed on the Athlete for additional two (2) years, i.e. the total period of Ineligibility to six (6) years.

Commencement of the period of Ineligibility

127. According to Rule 10.13 ADR commencement of the period of Ineligibility shall come into force and effect on the date that the decision imposing the Consequences is issued and the Provisional Suspension served by the Athlete shall be credited towards such a period of Ineligibility. The period of Ineligibility is, therefore, ordered to run from 9 February 2023 (the starting date of the Provisional Suspension) and shall end at 23:59 on 8 February 2029.

VIII. COSTS

128. WA has requested the Panel to award it a contribution to the costs. According to Rule 10.12.1 ADR, the Panel may require the Athlete or other Person to reimburse WA for the costs that it has incurred in bringing the case where an Athlete or other Person is found to have committed an ADRV.

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

130. As two ADRVs have been established, Mr. Oduduru is ordered to pay to WA the total amount of 3000 US Dollars as a contribution towards the legal fees and other expenses incurred in connection with these proceedings. The Panel rejects the argument put forward by the Athlete that he has no means to pay contribution towards WA's expenses because it was not supported by any evidence.

131. The Athlete shall bear his own costs.

IX. DECISION AND ORDERS

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

133. The Athlete has committed ADRVs under Rules 2.6 and 2.2 ADR. The violations shall be considered together as one single first violation.

134. A period of Ineligibility of six (6) years is imposed by the Panel upon the Athlete commencing on the date of the Decision. The period of Provisional Suspension imposed on the Athlete from 9 February 2023 until the date of the decision shall be credited against the total period of Ineligibility.

135. The Athlete's results from 12 July 2021 until the date that the Provisional Suspension was imposed, on 9 February 2023, shall be disqualified with all resulting consequences including the forfeiture of any titles, awards, medals, points and prize and appearance money.

X. RIGHT OF APPEAL

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

137. All other prayers for relief are dismissed.

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

139. Pursuant to Rule13.6.1(a) ADR, the deadline for filing an appeal with CAS is 30 days from the date of receipt of the present decision by the appealing party and where the appellant is a party other than WA, a copy of the appeal must be filed on the same day with WA.

Anna Bordiugova

Chair, on behalf of the Panel

London, UK

18 September 2023

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