

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)  
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)**

**N°: SDRCC DT 21-0329  
(DOPING TRIBUNAL)**

**CANADIAN CENTRE FOR ETHICS IN SPORT  
(CCES)  
U SPORTS**

**AND**

**CONSTANTINOS PAPANIKOLAOU  
(ATHLETE)**

**AND**

**GOVERNMENT OF CANADA  
WORLD ANTI-DOPING AGENCY  
(OBSERVERS)**

**Before:**

Janie Soublière (Arbitrator)

On behalf of the Athlete:     Constantinos Papanikolaou, Maxime Raymond (Counsel),  
Carmen Hojabri (Counsel)

On behalf of the CCES:       Kevin Bean, Matthew Koop, Mylène Lee, Jeremy Luke, Bradlee  
Nemeth, Elizabeth Cordonier (Counsel), Adam Klevinas  
(Counsel) and Alexandre Maltas (Counsel)

On behalf of U SPORTS:     Pierre Arsenault and Tara Hahto

WADA and the Government of Canada did not participate in the proceedings.

**DECISION WITH REASONS**

1. The Canadian Centre for Ethics in Sports ('CCES') has charged Constantinos Papanikolaou ('the Athlete') with two separate anti-doping rule violations ('ADRV') under the 2021 Canadian Anti-Doping Program ('CADP') as a result of two doping controls, one in-competition in October 2021 and the other out-of-competition in October 2022, which resulted in the non-specified prohibited substance SARM LGD 4033 (hereinafter 'LGD 4033' or 'Ligandrol') being detected in his urine sample on both occasions. The Athlete has admitted both ADRVs but seeks a reduction in the applicable consequences.
2. The CCES seeks the imposition of a four-year period of ineligibility ('POI') for the First ADRV and of an eight-year POI for the Second ADRV, while the Athlete, relying on the allegation that his ADRVs were caused by a contaminated product, seeks the imposition of a significantly reduced POI for the time he has already served by way of his mandatory provisional suspensions and his lack of fault and intention in relation to both ADRVs.

3. Further to a hearing held on 3 May 2023, this decision determines whether the Athlete, Constantinos Papanikolaou is eligible for a reduction to what would, under all applicable anti-doping rules, be the maximal presumptive POI of twelve years for his two admitted ADRVs involving non specified substances.

## **THE PARTIES**

4. The Athlete is a Canadian University Athlete ('U SPORTS') who competes in Men's Football for the McGill Redbirds.
5. The CCES is a Canadian independent not-for-profit organization which promotes ethical conduct in all aspects of sport. The CCES maintains and carries out the CADP, including providing anti-doping services to national sport organizations, including U SPORTS, and their members, including the Athlete.

## **APPLICABLE LAW and JURISDICTION**

6. As Canada's *National Anti-Doping Organization*, the CCES complies with the World Anti-Doping Code (the 'Code') and its mandatory International Standards. The CCES has implemented the Code and its mandatory International Standards through the CADP, the domestic rules which govern this proceeding. The CADP'S purpose is to protect the rights of all Canadian athletes to fair competition.
7. Pursuant to CADP Rule 1.3.1.1, the CADP applies to all athletes who are members of any sport organization that adopts the CADP. Consequently, as a participant in U SPORTS sport activities, the Athlete is subject to the CADP and its Rules. The applicability of the CADP to the resolution of the present dispute is not challenged by either party.
8. Pursuant to CADP Rule 8.1.1, the CCES' Doping Tribunal (the Tribunal) is the Sport Dispute Resolution Centre of Canada (SDRCC), which shall constitute and administer the Doping Panel. Hearings to determine whether an anti-doping rule violation has been committed and, if so, the Consequences(s), shall be conducted by a single arbitrator sitting as the Doping Panel.
9. Pursuant to CADP Rule 8.1.2, when the CCES sends a notification to an Athlete or other Person asserting an ADRV, the case shall also be referred to the Tribunal. If the Athlete or other Person requests a hearing, the Tribunal shall, pursuant to rules set out in the SDRCC Code, appoint a Doping Panel to hear and adjudicate the matter. Janie Soublière ('the Arbitrator') was appointed by both Parties to this end.
10. Sitting as the Tribunal's Doping Panel, the Arbitrator has had no prior involvement with the case. The Arbitrator's appointment to render a decision independently or impartiality in application and respect of both the CADP and the SDRCC Code is not disputed by either party.

## **UNDISPUTED FACTS**

11. On 23 October 2021, the Athlete was subject to an in-competition doping control in Montreal, Quebec, conducted in accordance with the CADP and the International

Standard for Testing and Investigations. His urine Sample coded 4518948 was sent to the Montreal WADA accredited laboratory ('the INRS') in accordance with the International Standard for Laboratories.

12. On his doping control form at the time of testing, the Athlete declared his use of Creatine, Advil, Total War pre-workout, protein, and Robax as medications and supplements taken within the seven days prior to testing. He did not list the Plantman Vitamin on his Doping Control Form as a supplement taken in the seven days prior to testing.
13. The INRS' analysis of the Athlete's sample coded 4518948 (the 'Sample') indicated the presence of SARM LGD 4033 metabolite at an estimated concentration of 4 ng/ml. Ligandrol is classified as a Selective Androgen Receptor Modulator, a Section S1 Anabolic Agent on the 2021 World Anti-Doping Agency Prohibited List. It is listed as a Non-Specified substance, the use of which is prohibited both in competition and out of competition in U SPORTS Football. He exercised his right to the analysis of the B sample which confirmed the finding of Ligandrol in his A sample, and was then formally charged by CCES with an ADRV, which he admitted, requesting a hearing on the applicable consequences.
14. A year later, on 13 October 2022, the Athlete was subject to an out-of-competition doping control in Montreal, Quebec conducted in accordance with the CADP and the International Standard for Testing and Investigations. His urine sample coded 7088605 was sent to the Montreal WADA accredited laboratory ('the INRS') in accordance with the International Standard for Laboratories. The INRS' analysis of the Athlete's sample 7088605 (the 'Sample') again indicated the presence of SARM LGD 4033 metabolites at an estimated concentration of 0.09 ng/ml. He exercised his right to the analysis of the B sample which confirmed the finding of Ligandrol in his A sample, and was then formally charged by the CCES with an ADRV, which he admitted, requesting a hearing on the applicable consequences.

## PROCEDURAL HISTORY

15. On 9 November 2021, the CCES was notified of an Adverse Analytical Finding ('AAF') resulting from the INRS' analysis of the Athlete's A Sample 4518948. Upon request, the Athlete's B sample was analysed on 20 December 2021. On 17 December 2021, the CCES issued a Notice of Charge to the Athlete and imposed a mandatory provisional suspension effective immediately in accordance with Rule 7.4.1 of the CADP. The Notice of Charge stemmed from the results of the A4518948 sample analysis which found Ligandrol and the B4518948 sample analysis which confirmed the finding of Ligandrol and therefore established the commission of an ADRV pursuant to CADP Rule 2.1.2.
16. In the Notice of Charge, the CCES provided the Athlete with a myriad of procedural options including the right to request a hearing before the Tribunal, which the Athlete exercised on 6 January 2022.
17. Without having to recount every step of the procedure, which was significantly delayed for several reasons but eventually carried out, the following provides a succinct overview of the process:
  - Two administrative meetings were scheduled to no avail (due to Athlete or Athlete's counsel not attending).

- A third administrative meeting was held where it was decided that this matter SDRCC DT 21-0329, and a parallel matter with identical factual circumstances, SDRCC DT 21-0330 involving the Athlete's brother should be consolidated, further to which an initial procedural calendar was set.
- The CCES filed its Initial Brief on 31 March 2022.
- The Athlete changed Legal Counsel three months after the start of the procedure.
- A Conference Call was held with new Counsel.
- Requests were made for the Laboratory Documentation Packages for both A and B 4518948 Samples.
- The Athlete made requests to analyse his supplements, which after a delay, was accomplished.
- Requests for extension to file submissions were requested and granted.
- A new Procedural Calendar was eventually set on 17 August 2022.
- The Athlete filed his Response Brief submissions on 28 August 2022.
- Further to a granted request for extension, the CCES filed its Rejoinder on 30 September 2022.

#### *The Request for Provisional Measures*

18. On 7 September 2022, the Athlete filed a Request for Provisional Measures with the Tribunal requesting that his provisional suspension be lifted in anticipation of the conclusion of this case and the issuance of the Tribunal's decision. In making this request, the Athlete argued that his submissions established that the finding of Ligandrol in his urine sample was likely to have been caused by a contaminated product. He also relied on the fact that he had already served 9 months of a provisional suspension, that the football season had started and that, under the circumstances, he would be greatly prejudiced by not being able to compete.
19. Upon receipt of this request for provisional measures, the Tribunal immediately invited the CCES to make submissions on whether it agreed to the provisional measures and if not, why.
20. The CADP clearly states at Rule 7.4.1 that a mandatory provisional suspension imposed under Rules 7.4.1 by virtue of a non specified substance being detected in an Athlete's sample may be eliminated by the Doping Panel if:
  - i. the Athlete demonstrates that the violation is likely to have involved a Contaminated Product, or*
  - ii. the violation involves a Substance of Abuse and the Athlete establishes entitlement to a reduced period of Ineligibility under Rule 10.2.4.1.*
21. On 9 September 2022, the CCES agreed to the lifting of the Athlete's provisional suspension, without prejudice to any argument it was to make in the course of these proceedings.
22. On 9 September 2022, without making a determination on the merits of the case or any POI that might eventually be imposed on the Athlete, the Arbitrator ordered that the Athlete's provisional suspension be immediately lifted.

#### *The conclusion of the prehearing procedural history*

23. Further to a granted request for an extension to do so, the Athlete filed his Rejoinder on 24 October 2022.
24. On 17 November 2022, the CCES informed the Tribunal of developments in the case which would disrupt the ability of the hearing to proceed as scheduled. Specifically, the CCES informed the Tribunal that a Second Notice of Charge had been sent out to the Athlete and his brother related to the AAF's that arose from samples collected out-of-competition during the period in which the Athlete's provisional suspension had been lifted. The CCES thus opened New Case proceedings against the Athlete in relation to that second AAF and the CCES issued another Notice of Charge to the Athlete informing him of the AAF for Ligandrol that has been detected in his urine sample further to the an out-of-competition test conducted on 13 October 2022.
25. During a preliminary phone conference call held on 21 November 2022, the parties and the Tribunal agreed to consolidate the two sets of proceedings addressing and making determinations on four anti-doping rule violations, two committed by each brother.
26. On 5 December 2022, the Athlete exercised his right to the analysis of his B sample, which confirmed the finding of LGD-4033 metabolites.
27. On 15 February 2023, Counsel for the Athlete requested he be given until 20 February 2023 to "provide a definite position regarding the two sets of charges", which was agreed upon by the CCES, and granted by the Tribunal, with an additional extension to this end granted to 20 February 2023. The Athlete did not provide his definite position by the agreed-upon date.
28. The Arbitrator then convened the Parties to another Preliminary Call during which a new procedural calendar was agreed upon by all Parties and set.
29. Although the Athlete's written submissions were due at 5:00 p.m. (EDT) on 17 March 2023, he again requested a one-week extension to file his submissions due to the fact that he had just received an expert report. Although agreed upon by the CCES, the Tribunal only partially granted the request and ordered that the submissions be filed no later than 10:00 a.m. (EDT) on 20 March 2023, noting that "should the Athlete's submissions, expert report, or any exhibits related thereto be received after this date and time, they will be deemed inadmissible and excluded from the case file."
30. The Athlete filed his brief written submission on the second ADRV on 20 March 2023, with no supporting exhibits or expert reports. The CCES' written submissions were filed on 7 April 2023 and no further written submissions were made by either party.

#### *The Hearing*

31. A video conference hearing was held on 3 and 4 May 2023. In attendance were Janie Soublière, Arbitrator, and Jérôme Fontaine-Benedetti from the SDRCC, as Case Manager.
32. In attendance for the CCES at the hearing for the CCES were:
  - Mylène Lee
  - Bradlee Nemeth

- Elizabeth Cordonier (Counsel)
- Alexandre Maltas (Counsel)

33. In attendance for the Athlete at the hearing were:

- Constantinos Papanikolaou
- Dimitrios Papanikolaou
- Maxime Raymond (Counsel)

34. Dr. Lekha Sleno testified as an Expert for the Athlete.

35. Dr. Martial Saugy testified as an Expert for the CCES, as did Kevin Bean from the CCES.

36. Also in attendance at the hearing was Tara Hahto from U SPORTS.

37. At the close of the hearing, all parties confirmed that they were satisfied that the procedures had been conducted with respect to their rights to natural justice and the Arbitrator advised all parties that an impartial reasoned decision would be issued within the deadlines provided in the Canadian Sport Dispute Resolution Code ('Code').

38. In accordance with the Code, an initial decision was issued on 8 May 2023.

39. These are the Arbitrator's full reasons issued in accordance with the CADP and the Code.

#### **RELEVANT PROVISIONS OF THE CADP**

40. The following provisions are relied upon by the Arbitrator and referred to throughout the reasons below.

41. Rule 10.2 reads:

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

*The period of Ineligibility for a violation of Rule 2.1, 2.2 or 2.6 shall be as follows, subject to potential elimination, reduction or suspension pursuant to Rule 10.5, 10.6 or 10.7:*

*10.2.1 The period of Ineligibility, subject to Rule 10.2.4, shall be four (4) years where:*

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

42. The relevant portion of Rule 10.2.3 reads:

*10.2.3 As used in Rule 10.2, the term "intentional" is meant to identify those Athletes or other Persons who engage in conduct which they knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. (...)*

43. The definition of Fault reads:

*Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete's or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Protected Person, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. (...)*

44. The definition of No Significant Fault or Negligence reads:

*The Athlete or other Person's establishing that any Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Protected Person or Recreational Athlete, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered the Athlete's system.*

45. The relevant portion of Rule 10.6 reads:

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

*10.6.1 Reduction of Sanctions in Particular Circumstances for Violations of Rule 2.1, 2.2 or 2.6.*

*(...)*

*10.6.1.2 Contaminated Products*

*In cases where the Athlete or other Person can establish both No Significant Fault or Negligence and that the detected Prohibited Substance (other than a Substance of Abuse) came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two (2) years Ineligibility, depending on the Athlete or other Person's degree of Fault.*

46. Contaminated Products are defined as:

*A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search.*

47. Rule 10.9 reads:

*Multiple Violations*

*10.9.1 Second or Third Anti-Doping Rule Violation*

*10.9.1.1 For an Athlete or other Person's second anti-doping rule violation, the period of Ineligibility shall be the greater of:*

*a) A six (6) month period of Ineligibility; or*

*b) A period of Ineligibility in the range between:*

*i) the sum of the period of Ineligibility imposed for the first anti-doping rule violation plus the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, and*

*ii) twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.*

*The period of Ineligibility within this range shall be determined based on the entirety of the circumstances and the Athlete or other Person's degree of Fault with respect to the second violation.*

## **SUBMISSIONS**

48. The following is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion below. While the Arbitrator has considered all the facts, evidence, allegations and legal arguments submitted by the Parties in the present proceedings, it refers in its Decision only to the submissions and evidence it considers necessary to explain its reasoning.
49. The Arbitrator further notes that although the Athlete alleged in the first round of written submissions that the First ADRV might have been caused by two different supplements (Creatine and Plantman), the Creatine was later withdrawn as a possible source of the LGD4033 when Dr. Sleno recognised that her initial analytical finding had been flawed due to cross-contamination. The Parties accept Creatine not to be source of the ADRVs and of no relevance to the Arbitrator's findings.

## **The CCES**

### ***Submissions on the First ADRV***

50. The CCES first argues that the definition of contaminated product does not apply to the Plantman supplement because a reasonable internet search of Plantman would have immediately informed the Athlete that this product was contaminated.
51. The CCES's position is that the Athlete's First ADRV attracts a sanction of four (4) years of ineligibility pursuant to Rule 10.2.1.1 of the CADP since the Athlete neither successfully established that his ADRV was caused by a contaminated product, nor shown that his admitted ADRV was not intentional.
52. Alternatively, the CCES says that, if the ADRV was not intentional then the Athlete demonstrated significant fault and negligence in taking the substance and is not eligible



for further sanction reductions below a POI of two (2) years. In the further alternative, if the Athlete can prove No Significant Fault or Negligence, then the CCES says that his fault attracts a POI at the high end of the sanction range available.

53. The CCES reiterates that under the CADP the Athlete bears the onus to prove that a sanction reduction is warranted. Pursuant to Rule 10.2.1.1 of the CADP, the Athlete is eligible for a reduction of sanction from the four (4) year default sanction to two (2) years if the Athlete can establish that the ADRV was not intentional. The Athlete's onus is to prove both that (i) the Athlete did not knowingly take the prohibited substance; and (ii) there was no significant risk that he manifestly disregarded.
54. The CCES suggests that the Athlete's has created a narrative using a well-known supplement and submits that his explanation for how the ADRV occurred lacks credibility. Specifically (inter alia):
  - The Athlete did not disclose his consumption of the Plantman multivitamin on his DCF (which he first alleges caused of the ADRV).
  - After being notified of the Notice of Charge, the Athlete continued to use and/or disposed of the multivitamin product rather than retaining the product for testing as a prudent athlete would have done.
  - It is only roughly six months after being served with a Notice of Charge and retaining counsel that the Athlete "conveniently" claimed to have ingested the Plantman multivitamin.
  - A simple internet search reveals that Plantman, is notorious for contamination with the particular anabolic agent discovered in the Athlete's Sample.
  - The Athlete's explanation for what steps he took to confirm the safety of his supplements, the timing in which he took the supplements and the reasoning for the failure to disclose the supplements on his doping control form are identical to his brother. The CCES has difficulty accepting that each athlete did the exact same product inquiries, took the supplements at the same time and both neglected to name the specific supplements on their DCFs.
  - The Athlete did not have the original Plantman bottle for testing. The capsules in the Plantman bottle that were analysed by the Athlete were potentially a different lot and batch number than the ones he allegedly took at the time of the doping control.
  - Ligandrol is a powerful anabolic steroid that has known performance-enhancing properties and would have provided the Athlete with a competitive advantage in his sport. As such, the Athlete had some motivation to voluntarily take the prohibited substance.
55. In the event that the Tribunal accepts the Athlete's explanation of his accidental ingestion of the prohibited substance, the CCES submits that the First ADRV must still be found to be intentional as defined in CADP Rule 10.2.3 because the Athlete "manifestly disregarded significant risks" as follows:
  - the Athlete was an experienced U SPORTS athlete who would have had significant knowledge regarding his anti-doping responsibilities;
  - the Athlete did not conduct a reasonable internet search into the products to ascertain whether there was a risk of contamination, and instead merely took the products' labels as sufficient. A mere Google search of "Plantman supplement" would have demonstrated to the Athlete that this was a risky substance;

- the Athlete took no other meaningful steps to confirm that his supplements were safe such as testing or clearing the products for consumption with his coaches or trainers; and
  - alternatively, the Athlete knowingly took Plantman for performance enhancing reasons because it contained SARM LGD 4033.
56. As such, the CCES' position is that the Athlete has failed to prove, on a balance of probabilities, that the ADRV was not intentional.
57. In the event that the Tribunal accepts that the ADRV was not intentional, the CCES argues that the Athlete does not qualify for a reduction of sanction based on his degree of fault or negligence.
58. The CCES argues that the Athlete's explanation as to how the Ligandrol entered his body relies exclusively on his own evidence and that this evidence does not have an air of reality. In making this argument the CCES submits as follows:
- There is a significant discrepancy between Dr. Sleno's (who analysed the Athlete's supplements on his behalf) findings and the INRS findings (who analysed the Athlete supplements on the CCES' behalf).
  - The INRS analysed both the Athlete's Plantman as well as another sealed bottle of Plantman that the CCES sourced independently. The INRS findings are that (i) LGD-4033 in an amount estimated at 0.2 mg per capsule, Ibutamoren roughly estimated at 1 µg per capsule and Methasterone estimated at 50 ng/g were detected in the Athlete's Plantman and (ii) LGD-4033 in an amount roughly estimated at 89 ng per capsule was detected in the Plantman supplement sourced by the CCES.
  - Further, the amounts of LDG-4033 in the Athlete's Plantman supplement are significantly higher than those found in the bottle sourced by the CCES.
59. In the event that the Tribunal finds that the Athlete has established the source of the Ligandrol to the required standard, the CCES flatly rejects that the Athlete may have access to the No fault provisions of the CADP, as the Athlete argues. The CCES equally rejects that the Athlete's degree of fault should be considering anything but significant.
60. In making this argument, and with reference to relevant jurisprudence, the CCES lists a myriad of factors considered by arbitrators when assessing fault:
- where the risk of contamination of supplements is well known;
  - whether the athlete attempted to contact or seek advice from persons at their respective sport organization about intended use;
  - whether the athlete sought medical advice in regard to the supplements;
  - whether the athlete made sufficient enquiries about the supplement and its ingredients, and the person who recommended the supplement;
  - whether the athlete contacted the manufacturer to ensure their products do not contain any of the substances listed on the WADA Prohibited List;
  - whether the athlete had the supplements tested prior to use;
  - the amount of education the athlete has received in regard to doping;
  - the experience of the athlete and the level at which the athlete competes; and
  - whether the athlete declared the use of the supplement on their DCF.
61. The CCES thus submits that (i) the Athlete does not establish the source of the Ligandrol to the required standard, (ii) the ADRV can only be deemed intentional and (iii) he cannot

benefit from any reduction in sanction based on his degree of fault. Accordingly, his First ADRV carries a mandatory four (4) years POI.

### ***Submissions on the Second ADRV***

62. The CCES submits that the appropriate POI in this case is eight (8) years for the Second ADRV and that no reduction of the ineligibility period is warranted.
63. The CCES submits that the Athlete's explanation for how the Second ADRV occurred lacks any evidentiary support and is not grounded in reality. As he has not submitted anything to support his position and the evidence tells another story, the Athlete fails to prove on a balance of probabilities that the ADRV was not intentional.
64. While the Athlete states he did not knowingly consume the Ligandrol and, "*can only explain the second ADRV by a residual presence of the prohibited substance dating for the first ADRV, caused by the intake of the Plantman multivitamin supplement*", the CCES argues that:
  - the Athlete has not provided any evidence to support the possibility that the Ligandrol could still be detected in the Athlete's Sample a year after the First Sample was collected.
  - the CCES does not consider that the Athlete has established the source of the First ADRV, which makes it difficult to extrapolate and accept that the Second ADRV was caused by his alleged consumption of Plantman.
  - It is insufficient for the Athlete to speculate as to the source of the Second ADRV.
  - Anti-doping jurisprudence dictates that, in order to establish the source of the violation, the Athlete must present actual evidence.
65. As to whether the prohibited substance could still be present in the Athlete's Sample a year after initial ingestion, the CCES relies on the expert opinion of Dr. Saugy who opines that it is "extremely unlikely" that this would be the cause of the Second ADRV. Specifically, he states that the longest excretion window with small doses of LGD-4033 has been shown to be between maximum 20 to 25 days, depending on the metabolite analyzed.
66. Finally, both the Athlete and his brother rely on the same explanation for the presence of the Ligandrol in their Samples collected on 13 October 2022. The CCES says that this further demonstrates the improbability of the Athlete's (and his brother's) explanation, specifically when taking into account the interindividual variability of how the Ligandrol is metabolized over time, which makes it highly improbable that both the Athlete and his brother would return an AAF for the Ligandrol one year later as a result of similarly timed prior ingestion.
67. As the Athlete has provided no evidence in support of his submission as to the cause of the Second ADRV, the CCES submits that the Athlete has failed to establish that his Second ADRV was not intentional. Therefore, the CCES submits that pursuant to Rule 10.9.1.1. (b) i) and ii), an eight-year POI applies.
68. Pursuant to CADP Rule 10.9.1.1 the Tribunal must also consider:
  - the entirety of the circumstances; and
  - the Athlete's degree of fault with respect to the Second ADRV.

69. When determining the applicable POI, and regardless of the Arbitrator's finding on the First ADRV, the CCES says that the Athlete's conduct when considering all the circumstances of this case should attract a sanction in the highest range because the evidence suggests that the Athlete has abused the CADP procedures that have allowed him to continue to compete despite ongoing proceedings for the First ADRV and continued to use the prohibited substance during the time in which he was able to compete due to the lifting of the provisional suspension.
70. With regards to the Tribunal's possible assessment of fault, the CCES submits that the Athlete's fault for the Second ADRV is at the highest degree because:
  - his only evidence is that he did not knowingly take the prohibited substance and that it was residual to his First ADRV; and
  - he has not provided an alternative or plausible explanation for the Second ADRV nor offered any evidence to be considered in a fault analysis.
71. As the Second ADRV can only be deemed intentional and that the Athlete has but the highest degree of fault for the same, pursuant to Rule 10.9.1.1.(b)(ii), the CCES says that the Second ADRV attracts a POI of eight (8) years being twice the POI that would otherwise apply to the Second ADRV if it were a first violation.

## THE ATHLETE

### *Submissions on First ADRV*

72. The Athlete does not contest the First ADRV and accepts that the Ligandrol was detected in his urine Sample. He attributes the ADRV to his Plantman Multivitamin - which he says is a contaminated product.
73. He explains that at the time of doping control on 22 October 2022 he was requested to provide on his doping control form a list of medication and supplements he had taken within 7 days of the test. He did not write down other supplements such as the Plantman Multivitamin because he had taken it more than 7 days before the test.
74. The Athlete submits evidence that the laboratory analyses performed by the Université du Québec à Montréal ('UQAM') Chemistry Department on the Plantman revealed the presence of LGD 4033. Specifically, the Athlete submits that the report prepared by Lekha Sleno PhD concludes that the Plantman contains a "serving" size of Ligandrol. As a result, the Athlete submits that he has established, to the required standard of proof, that the Plantman is the source of the Ligandrol.
75. Although the Athlete concedes that the batch and lot tested by the UQAM laboratory for contamination might not be the same as the one that the Athlete used in October 2021, the concentration of the prohibited substance in his urine, combined with Dr. Sleno's report and conclusions, make it highly probable that the prohibited substance found in his body came from the Plantman multivitamin supplement.
76. With regards to the timing and dosage of his ingestion of Plantman in relation to the estimated concentration detected therein, the Athlete offers the following:
  - He was consuming the Plantman supplement during week-offs of games and took a capsule of Plantman on one of the weekdays of the week of October 11th (October 11th-15th). His previous consumption was one capsule during the week of September 6th, 2022, another week without a game. He cannot confirm with

absolute certainty which weekday the capsule was taken, but he can confirm it was during these off-weeks.

- This timing is consistent with excretion studies which show that Ligandrol can be detected in urine 20-25 days after ingestion.

77. The Athlete therefore submits that he satisfies his burden of establishing the Plantman as the source of the Ligandrol. And, as the Plantman did not list Ligandrol in its list of ingredients, and no reasonable internet search could result in the conclusion that it contained Ligandrol, the Athlete relies on CADP Rule 10.6.1.2 (cited above) and submits that Plantman must be considered a contaminated product.

78. The Athlete thus argues that he benefits from the possibility of having his ADRV being assessed solely on his degree of fault as provided in CADP Rule 10.6.1.2 by virtue of the ADRV having been caused by a contaminated product and that he does not need to establish that his ADRV was not intentional as provided in CADP Rule 10.2.1 to benefit from this assessment.

79. With regards to his lack of significant fault in taking the Plantman he relies on the following:

- The Ligandrol detected in one dose of Plantman carries a dose of 1.14 mg Ligandrol.
- Dr. Sleno's conclusion that "that there would be a potential of the athlete taking the Plantman supplement over 7 days prior to testing and still have very well detectable levels of Ligandrol in their circulation."
- Plantman does not list Ligandrol as an ingredient on its label.
- He cross referenced the ingredients on the label with the CADP list and concluded it was ok.
- He verified the Manufacturers' website to ensure that the product was safe to use and did not find anything that would convince him otherwise, referring to it as appearing to be a "legitimate business" endorsed by "legitimate athletes". He notes that the product is no longer displayed on the manufacturers' website.
- There was no way for him to know that a multivitamin could contain an anabolic agent such as Ligandrol.

80. As such, the Athlete invites the Tribunal to disregard simple and unfounded assertion made by the CCES that the submissions from the Athlete are nothing more than a fabrication to cover up an otherwise intentional and deliberate use of SARM LGD-4033 and argues that:

- He has established that the ADRV was caused by the Plantman, a contaminated product.
- He was diligent in his verifications and mindful of the Prohibited List and his responsibilities as an Athlete.
- He only takes supplements during the off season to mitigate the risks of taking supplements.
- He has demonstrated that he has no significant fault or negligence for the ADRV.

#### ***Submissions on Second ADRV***

81. The Athlete does not contest that traces of the prohibited substance were again found in his body at the time of testing on 13 October 2022.

82. The Athlete further accepts that the analysis of his samples (A and B) at the INRS were conducted in accordance with the International Standards for Laboratories.
83. He submits that to his knowledge he did not consume SARM LGD-4033 in 2022.
84. The Athlete thus argues, with no supporting evidence, that his Second ADRV is explained by a residual presence of the Ligandrol caused by the intake of the Plantman multivitamin supplement a year before.
85. He leaves it to the Tribunal to make a determination on sanction pursuant to the CADP.

### Oral Evidence

86. The hearing provided an opportunity for both Parties' expert witnesses to be examined and provide evidence of their respective positions and expert opinions and submitted reports.
87. The CCES relied on the oral evidence of Dr. Saugy, an expert in mass spectrometry and pharmacokinetics analyses and former director of the Lausanne WADA accredited Laboratory. He had submitted two reports in the course of the written proceedings, the content of which he reiterated. He questioned the reliability of the analyses conducted by Dr. Sleno in her first report, and did not find her methodology, chain of custody or other quantitative methods to be adequately validated. In his opinion, the variation of the amount of LGD 4033 detected by the INRS and UQAM (0.2mg vs 1.44mg)<sup>1</sup> is not reasonable. He thus plainly rejected the findings of her first report and accepted the findings of the INRS laboratory to be more accurate in terms of the estimated concentration of Plantman detected in the bottles analyzed. Based on these findings, he found it possible but unlikely that the Plantman the Athlete took 8-12 days before his first test could it still be detected in urine at an estimated concentration of 4 ng/ml and extremely unlikely that it could still be detected a year later at an estimated concentration of 0.09 ng/ml.
88. The Athlete relied on the oral evidence of Dr. Sleno, an expert in mass spectrometry who runs a research laboratory at UQAM. She prepared two written reports for the Athlete, the second of which was inadvertently not tendered to the CCES or the Tribunal. It was entered into evidence in the course of the hearing, but only after Dr. Saugy's testimony. Therefore, when Dr Sleno's methodology was questioned, she referred to the second report, which provided far more robust quantification, methodologies and clear chromatograms. She also explained that her first report was not exhaustive and had only been a screen to determine if LGD 4033 was present in the Athlete's supplements. She conceded that the LGD 4033 found as reported in her first report was reported at a higher estimated concentration than after her more thorough evaluation and full external quantification. She explained that her second report was conducted using more calibrated equipment, doing a fully quantitative analysis and resulted in the LGD4033 being found in the Plantman and at an estimated concentration of 1.14 mg (as opposed to 1.44 mg). Based on the estimated concentration of LGD 4033 detected in the Athlete's first urine sample she believes that it possible that if he took one capsule containing 1.14

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<sup>1</sup> The Arbitrator notes that Dr. Saugy relied solely on the contents of the first Report prepared by Dr. Sleno, which is the one he was provided. That report reported a finding of LGD4033 at an estimated concentration of 1.44 mg. As indicated in the second report tendered during the course of the hearing, this estimated concentration was later corrected to 1.14 mg further to a more in-depth analysis.

mg of LGD4033 7-10 days prior to his test, it could still be detected in his urine at an estimated concentration of 4 ng/ml. As for the second urine sample, given the lack of studies on the excretion of Ligandrol, she did not discount the possibility that it could still be detected in urine a year later at an estimated concentration of 0.09 ng/ml. This is even more so because of the variations of LGD 4033 detected in the two different bottles of Plantman which opens the door to the real possibility that a Plantman capsule could also contain more LGD 4033 than what was detected by both the INRS and UQAM laboratory and that the Ligandrol detection window might be longer as a result.

89. Kevin Bean also briefly testified on behalf of the CCES to clarify that the web articles he found from making cursory searches on the internet in 2022 yielded numerous articles about Plantman containing LGD 4033, notably one concerning MMA fighter Nate Diaz who was sanctioned for an ADRV involving LGD 4033 further to taking Plantman multivitamins, and a USADA article dated 2019 warning all athletes that Plantman multivitamins contained LGD 4033. While he conceded there was no way for him to verify if the Athlete would have found these articles in 2021 had he conducted the same internet search, he opined that it is likely they would have been given that the articles were dated 2020 and 2019.

## REASONS

90. Because the Athlete has admitted the ADRVs, the Tribunal must determine the appropriate POI to impose on the Athlete as a result of the presence and use of Ligandrol in contravention to CADP Rules 2.1 and 2.2 on two separate and distinct occasions.

### Contaminated Products as defined for the application of CADP Rule 10.6.1.2

91. The first crucial element to determine is whether CADP Rule 10.6.1.2 applies to the First ADRV. (Logic dictates that for the second ADRV, the contaminated product allegation would be rejected on its face).
92. If it does, or in other words, if the Athlete succeeds in establishing on a balance of probabilities that the Plantman should be considered a contaminated product, no assessment of the Athlete's intention under CADP Rule 10.2.3 is necessary and the merits of the case would then be based solely on an assessment of the Athlete's fault.
93. The Athlete argues that CADP Rule 10.6.1.2 applies and that the Arbitrator's assessment of this POI should be undertaken in light of his having established that his ADRV was caused by a contaminated product. The Athlete relies on Dr. Sleno's analysis which detected Ligandrol in the Plantman supplement. He argues that because Plantman does not list Ligandrol on its label as an ingredient, he has established on a balance of probabilities that the finding of Ligandrol was caused by a contaminated product. He also argues that any internet articles found by the CCES in 2022 could not necessarily have been found in 2021 and that he would not necessarily have found these articles and learned that the product was contaminated had he conducted an internet search using the name of the supplement.
94. The CCES on the other hand, argues *inter alia* that because the Athlete did not source an unopened bottle of the Plantman for analysis and that the INRS' analysis yielded significantly different findings than that of UQAM's, little weight should be placed on the Athlete's evidence.

95. Also, even if the Arbitrator was to accept that the Plantman was the source of the AAF, the CCES argues that a simple internet search would have led the Athlete to find out that the Plantman was contaminated. The CCES cited two compelling articles dated 2020 and 2019 in support. They rebut the Athlete's contention that these articles might not have been found by conducting a reasonable internet search in 2021 and argue that the two articles dated 2020 and 2019 could certainly have been found in 2021 along with others given that Nate Diaz's suspension would have been more contemporaneous to that 2021 search.
96. The arguments brought forth by the CCES are compelling and do raise credibility issues with regards to the evidence and arguments brought forward by the Athlete to convince this Tribunal that the ADRV was caused by the Plantman and that it should be considered a contaminated product, paving the way for the application of Rule 10.6.1.2.
97. Although there was conflicting evidence before the Tribunal, the weight of which favours the CCES, the simple fact is that "a reasonable internet search" conducted by typing in the name of the product "Plantman multivitamin" in the search engine leads to information which indicates that Plantman contains LGD4033/Ligandrol. The Mixed Martial Arts (MMA) Diaz article relied upon by the CCES to show that Ligandrol was found in Plantman is in fact the very first hit on an internet search for the words "Plantman multivitamin." As the article is dated 2020, the Arbitrator finds it more likely than not that it was available on the internet at the time the Athlete allegedly conducted his searches. The same applies with the 2019 USADA article warning athletes of the fact Plantman contained LGD 4033 and that was tendered into evidence along with the affidavit of Kevin Bean from the CCES and referred to and relied upon during the course of the hearing.
98. Although the Athlete has argued that the "or" is used in its alternative form and that the fact the Plantman label failed to disclose any information relating to the possibility that an anabolic agent could be contained in the product and should be defined as a contaminated product, the Arbitrator disagrees with the premise of the argument. The Arbitrator accepts and it is uncontested that the Plantman's label did not disclose that it contained Ligandrol. However, a reasonable internet search simply using the name of the product would have led to this conclusion. Regrettably, on his own admission, the Athlete failed to conduct such a reasonable search.
99. As a result, the Arbitrator accepts the CCES's submissions and evidence in this regard and finds that the Plantman falls outside of the definition of a contaminated product as expressly provided in the CADP because the prohibited substance found in the Plantman is disclosed in information available in a reasonable internet search. Rule 10.6.1.2 is not applicable here.

## **The First ADRV**

*Does the Athlete satisfy his burden of proving that the Plantman is the source of the Ligandrol?*

100. In order to determine the period of ineligibility applicable to the first ADRV and because the finding of Ligandrol cannot be attributed to a contaminated product, an analysis under CADP Rule 10.2 follows. Because the substance involved is classified as non-specified, the CADP provides that the presumptive applicable POI is of 4 years unless the Athlete can establish that this First ADRV was non-intentional. To the CCES, this is first contingent on the Athlete establishing the source of the Ligandrol to the required



standard of proof, which it says the Athlete does not do as his explanation “lacks any air of reality.”

101. The CCES has raised numerous reasons why the credibility of the Athlete’s argument should be questioned and that little weight should be placed on his evidence. The CCES suggested that had he really used the Plantman he would have come forward with his defence immediately and that it was convenient for him to have waited 6 months to do so - as it gave him time to find out that Plantman contained the Ligandrol and argue that it was the source of the AAF.
102. The Athlete conversely invited the Arbitrator to refrain from drawing negative inferences related to the same because he was unrepresented for a substantial length of time (6 months) with a change of legal counsel, and that promptly upon being represented he raised his intention to raise a contamination defence.
103. The Arbitrator accepts that for the Athlete not to raise the Plantman as the source until he found Counsel who was actively representing him cannot be de facto factored against him. Athletes do not necessarily possess the ability, or knowledge to defend themselves in the face of serious charges. Thus, the Arbitrator sides with the Athlete on this point.
104. There is some discrepancy between the findings of the INRS and Dr. Sleno in terms of the estimated concentrations detected in the Plantman, and whether or not such quantities could have still been found in the Athlete’s sample 7-10 day after his doping control. There is also conflicting and unclear testimony on the date the Athlete would have taken his last Plantman capsule before this test. It may have been up to 7 days before or as far as 13 days before.
105. Both experts concluded and the CCES conceded in its written submissions and at the hearing that, given the lack of conclusive excretion studies on Ligandrol and the varying quantities of Plantman detected in all analyses conducted on capsules from different bottles, there is no way to know with certainty the estimated amount of Ligandrol that could be contained in one capsule of Plantman. As the CCES stated, *the significant differences illustrate that there is no consistency in contamination levels amongst supplement batches, or even within the same batch.*
106. Because Ligandrol was detected in small quantities in the Athlete’s urine sample and as well as in all analysed Plantman capsules by both by the INRS and UQAM, and that after excretion the estimated concentration of Ligandrol may on a balance of probabilities be commensurate to the estimated concentration of Ligandrol detected in the Athlete’s sample, the Arbitrator finds that the Athlete has satisfied his burden of proving that his First ADRV was caused by his ingestion of a Plantman multivitamin.

*Does the Athlete succeed in convincing the Arbitrator that his ADRV was not intentional?*

107. Jurisprudence and the CADP confirm that, although highly unlikely, the possibility exists for an ADRV not to be deemed intentional without establishing source. In order to determine if the Athlete may benefit from an automatic reduction of two years in his POI, the next assessment is whether or not the Athlete has successfully established, again on a balance of probability, that his ADRV was not intentional. On this, he falls short.
108. As argued by the CCES, a reasonable internet search using “Plantman Multivitamin” would have resulted in the Athlete reading the article on the Diaz case. On this particular

point, although the Athlete confirmed that he and his brother both knew who Nate Diaz was (unlike his brother who alleged not knowing him), the Athlete testified that he never saw this article and that he didn't follow Nate Diaz enough to have known that he had been suspended for an anti-doping rule violation involving Ligandrol as a result of taking Plantman. Ironically, the fact that Nate Diaz endorsed Plantman was one of the reasons the Athlete assumed it was a legitimate product. As decided above, had the Athlete conducted a reasonable search typing "Plantman vitamin" in the search engine, he would have quickly learned that it was not safe to use. This can only be considered "*information available in a reasonable internet search.*"

109. The Athlete further concedes that he did not consult anyone on whether or not Plantman was safe to use, other than trusting his uncle who holds no certification whatsoever. He did not consult with his coach, with team doctors or trainers, nor with the CCES.
110. The CCES submits that the internet search the Athlete conducted, whatever it may have been or on which search engine used, was utterly inadequate and failed to heed the many warnings expressly made on any pages allegedly consulted. The Arbitrator agrees.
111. The Athlete testified that he conducted a "CCES search" for all the ingredients on the label of the Plantman and that he felt it was a green flag when he saw nothing wrong with it. Yet, he could not identify with certainty what search engines he used. In fact, he and his brother gave contradictory evidence on the search engines they used to check the ingredients on the label, and admittedly little else.
112. On he and his brother's evidence, the search they allegedly conducted to cross reference the ingredients on the Plantman label may have been made on the CADP, the CCES, the Global DRO or the WADA websites. The fact that he does not know for sure where he allegedly conducted his searches prejudices him. Regrettably in addition to the other shortcomings, by erroneously thinking that Plantman was a multivitamin and not a supplement and that as a result it should "not be a problem and would be ok to use", the Athlete manifestly disregarded all the risks involved with supplement use, notwithstanding the numerous warnings given to him in the CCES education he received as well as on the CCES website, the WADA website and the Global DRO website, one of which he may or may not have consulted.
113. The Arbitrator rejects the Athlete's allegation that he did not receive sufficient education on the risks of taking supplements relying on paragraph 56 of SDRCC DT 21-0325.

*"The education program offered by the CCES is internationally recognized and is comprehensive and thorough - particularly with respect to the risks associated with supplements."*

114. The Athlete was in fact educated by the CCES and others, on the risks of taking supplements. He thus knew or should have known that by using supplements and not first conducting basic internet searches and making other inquiries as instructed by the CCES, he would be manifestly disregarding the risks that were pointed out to him as being significant by the CCES education course, in addition to the CADP, WADA and Global DRO websites. The Athlete either willfully ignored these warnings or paid no heed to them. Either way, these were costly mistakes.
115. The CCES education course makes it abundantly clear that Athlete should proceed with extreme caution when selecting and using supplements and that reasonable if not extensive internet searches, including on the NSF website should be conducted to

ensure that the product in question is safe to use. As referred to below, this has often been referred to in CAS and SDRCC jurisprudence as the “duty of utmost caution.”

116. In this regard the Arbitrator refers to her reasons in SDRCC DT 21-0325 at paragraph 55, another case where an Athlete was sanctioned for 4 years for taking a supplement containing Ligandrol, where she stated:

*“That the Athlete did not knowingly take the Ligandrol, which is necessarily a possibility as alleged, is not relevant to the present determination of the intentional nature of the violation as defined by the CADP. What matters most under the CADP is that he engaged in conduct that he knew constituted an anti-doping rule violation or that there was a risk that such a violation might result.”*

117. The Arbitrator also refers to paragraph 61 of SDRCC DT 21-0325, citing CAS 2005/C/976 & 986 April 2006, which describes the long-established duty of all athletes who are subject to anti-doping rules and explains an athlete’s obligation to avoid ingesting prohibited substances as a “duty to exercise utmost caution.” This same paragraph emphasises that:

*“... this standard (and duty of utmost caution) is rigorous, and must be rigorous, especially in the interest of all other competitors in a fair competition...”*

118. As a result, on the facts and the evidence and applying the CADP as plainly written, the First ADRV cannot be seen as being anything other than intentional as defined in Rule 10.2.3 because in his actions and inactions the Athlete engaged in conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and **manifestly disregarded that risk**. (Emphasis added).
119. Pursuant to Rule 10.2.1 of the CADP, as the Athlete has failed to establish that his ADRV was not intentional (as defined in Rule 10.2.3), the applicable POI cannot be anything other than 4 years and no assessment of fault is necessary.

## The Second ADRV

120. The Athlete made a sincere and remorseful statement to the effect that he never intended to disrespect the sport he has loved all his life. To justify a reduction in sanction for his Second ADRV he argues that inference, deduction and common sense can only lead to a conclusion that there is no reason for him to have taken the Plantman again one year later whilst under extreme scrutiny and that his second ADRV cannot be found to be intentional as a result.
121. He acknowledges that he has no explanation whatsoever for this Second ADRV other than it being residual traces of the LGD 4033 unintentionally ingested by way of the Plantman a year before. But he nonetheless argues that the rules allow an athlete to establish they had no intention to use a non-specified prohibited substance without determining its source and that this is one of those highly unlikely circumstances where such a finding should apply. The Arbitrator cannot agree with such a proposition.
122. The Arbitrator finds the Athlete’s explanation for his Second ADRV inadequate. He has brought forth no evidence whatsoever to support his blanket assertion that the Second ADRV must have been caused by Plantman residue.

123. Dr. Saugy's oral and written expert evidence shuts the door on any such possibility when he opines:

*As already expressed, I confirm that there is no example in the scientific literature showing the possibility of a very long-term excretion of LGD-4033 (more than 1 year).*

*The longest excretion window with small doses of LGD has been shown to be between maximum 20 to 25 days, depending on the metabolite which is analyzed.*

*Thus, I can conclude that it is extremely unlikely that the result of October 13th, 2022, is a residue of the ADRV of October 23rd, 2021.*

124. The Athlete will understand that the Arbitrator's decision cannot be based solely on what he believes to be common sense in the face of all the evidence before the Tribunal, especially Dr. Saugy's unchallenged scientific evidence which all but completely excludes the possibility of the Second ADRV having been caused by his ingestion of LGD4033 a year prior to the test.

125. Primarily, in anti-doping cases, a tribunal's decision must be grounded in evidence, applicable law and legal precedent. Common sense rarely finds its way in anti-doping determinations because there is nothing that makes sense about doping in sport or in taking manifest risks that could result in anti-doping rule violations, yet athletes do both all the time.

126. Here:

- The Athlete has not brought forward any concrete or credible evidence to support his defence that his Second ADRV was unintentional.
- There is no evidence whatsoever that, whether whilst provisionally suspended or after benefiting exceptionally from a lifting of that provisional suspension, the Athlete took any measures to avoid the ingestion of prohibited substances because the Second ADRV proves otherwise.
- There are no viable alternative explanations for the second ADRV other than intentional use, thereby excluding the application of Rule 10.2.1 as sought by the Athlete.

127. Without needing to speculate on how the LGD 4033 did again find its way into the Athlete's urine sample, the only possible conclusion as a result of the Athlete's failure to establish the source of the LGD 4033 detected in his sample in 2022 is that:

- i. because no exceptional circumstances exist in this case which would warrant reducing the presumptive sanction for an ADRV involving a non specified substance, and
- ii. because as a result of the foregoing the ADRV can only be considered to be intentional,
- iii. the POI applicable to the Second ADRV, as though it was treated as a first ADRV, is of 4 years.

*Do the entirety of the circumstances and or the Athlete's fault in relation to the Second ADRV warrant a reduction in sanction?*

128. As provided in CADP Rule 10.9.1, the applicable period of ineligibility for both ADRVs shall be:

*In the range between:*

- i) *the sum of the period of Ineligibility imposed for the first anti-doping rule violation plus the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation, and*
- ii) *twice the period of Ineligibility otherwise applicable to the second anti-doping rule violation treated as if it were a first violation.*

*The period of Ineligibility within this range shall be determined based on the entirety of the circumstances and the Athlete or other Person's degree of Fault with respect to the second violation.*

129. The Arbitrator has determined above that the applicable POI for the first ADRV is of 4 years and that the applicable POI for the Second ADRV, treated as though it was a first violation, is also of 4 years. Thus, pursuant to Rule 10.9.1, the applicable POI to be imposed on the Athlete for his Second ADRV can only be 8 years. There is no range available.

130. The Arbitrator notes that Rule 10.9.1 also specifies that

*"The period of Ineligibility within this range shall be determined based on the entirety of the circumstances and the Athlete or other Person's degree of Fault with respect to the second violation."*

131. Therefore, even if there effectively is no range, Rule 10.9.1 appears to leave the door slightly ajar to a possible reduction based on "*the entirety of the circumstances and the Athlete's degree of fault in relation to the second ADRV*". In the interests of the Athlete, the Arbitrator shall therefore consider whether such a reduction is possible here.

132. As is often the case in these supplement cases, the Athlete remains steadfast in his belief that the limited searches he conducted on the ingredients listed on the supplement label by cross referencing the CADP/WADA Prohibited List were sufficient and allow for a significant reduction based on his lack of fault and intention. As already established above, they were not.

133. There are a series of errors in judgement and actions taken by the Athlete which disregarded all risks and warnings repeatedly made regarding supplement use. The most glaring are as follows:

- He exclusively trusted his uncle's suggestion of supplements.
- He bought his supplements from an unworthy source without first contacting the manufacturer.
- He did not retain an invoice for the purchase to confirm the same.
- He assumed that a multivitamin would be safe to use without conducting reasonable internet searches.
- He made unsatisfactory searches on the product, seemingly limited to the CADP (sic) Prohibited List, which has many disclaimers to the effect that "*If a Substance or Method is not defined in this list, please verify with your Anti-Doping Organization*" and the fact that the List is not and cannot be exhaustive stating

that it also includes “*and other substances with a similar chemical structure or similar biological effect(s)*” to those listed.

- He failed to conduct a reasonable internet search by typing the name of the supplement in his browser - which he has done would have resulted in him realising that it contained a prohibited substance (in this case Ligandrol.)
- He paid too little attention, if any on his own evidence, to his CCES education courses and all the warnings provided by the various modules.
- He paid no attention whatsoever to all the express warnings and disclaimers contained on the CADP website, the WADA website and Global DRO website, if he did in fact visit all of them or some of them, which is not clear further to the testimony heard during the hearing.
- He did not seek advice from the CCES, his coach or his trainer before taking the supplement.

134. Thus, as many other before it, but even more here so because of the length of the POI is being ultimately imposed, this case should be referred to as a cautionary tale.

135. The Athlete’s shortcomings are mistakes commonly made by many athletes who end up being charged and sanctioned with anti-doping rule violations. It is an utter shame that athletes do not take their CCES education more seriously or carefully read all warnings that are provided to them. Much anguish, dark moments, anger and damaged dreams could be avoided if athletes just paid better attention to all the warning and risks regarding supplements. It is always difficult as an Arbitrator to sanction athletes under these circumstances. But as the old axioms go: The Rules are the Rules, and Ignorance of the Rules is not a defence. So too do these truisms apply here.

136. It is worth noting, if only for the benefit of the Athlete, that both his oral testimony, even if contradictory in many regards, and the fact that the Athlete conducted a search on the WADA Prohibited List prior to taking the Plantman, even if cursory and wholly inadequate, support the finding that he did not use the Plantman deliberately knowing it contained LGD 4033 when committing his First ADRV.

137. This finding should provide some consolation to the Athlete. However, as explained above when discussing the definition of intention at CADP Rule 10.2.3, this finding is of little consequence or assistance to the Athlete when applying the CADP to determine the applicable sanction, as the Arbitrator has found that he manifestly disregarded all risks involved with supplement use. This finding is further of little assistance to him as the fault assessment under Rules 10.9.1 is only applicable to his Second ADRV.

138. Therefore, whilst an assessment of the Athlete’s degree of fault with respect to the First ADRV might have opened the door to a slight reduction in his presumptive 12 year sanction in terms of the “*entirety of the circumstances*” of this matter, the Athlete’s degree of fault with respect to the second ADRV can only be found to be at the highest end of spectrum because the source of the LGD4033 has not been established to the required standard and no explanation whatsoever has been provided for its finding in the Athlete’s urine. Without knowing how the Second ADRV occurred and because the Athlete has not established source to the required standard of proof, an assessment of the Athlete’s fault cannot be conducted. As stated above, on the contradictory evidence before the Arbitrator (notably the Athlete and his brother’s conflicting and unreliable testimonies on how many Plantman capsules were left in the bottle after October 2021 and when the bottle was disposed of), such an assessment would be of little assistance to the Athlete in any event as it would only lead to an adverse inference of intentional use.

139. Therefore, the unfavorable inferences that are drawn a result of the unknown circumstances of the Second ADRV counterbalance any reduction in sanction that might have been possible when making a determination on the “entirety of the circumstances” of the First ADRV.
140. Pursuant to the Arbitrator’s assessment carried in accordance with CADP Rule 10.9.1, the Athlete’s Second ADRV carries a POI of eight years. As the First ADRV carries a POI of four years, the total POI applicable as a result of both ADRVs is of twelve years.
141. A twelve-year POI is a harsh outcome considering this case has arisen as a result of the Athlete and his brother taking what they believed was a simple multivitamin. But it is the only possible outcome on the evidence before the Arbitrator further to a correct application of the CADP. While such an outcome will not make this ordeal an easier pill to swallow for the Athlete, it does, at least, bring finality to this unfortunate case.

## ORDER

142. The Athlete Constantinos Papanikolaou has committed two anti-doping rule violations for the use and presence of Ligandrol in contravention to CADP Rules 2.1 and 2.2.
143. Pursuant to CADP Rule 10.9.1, the applicable period of ineligibility for these anti-doping rule violations is twelve years.
144. Pursuant to CADP Rule 10.13.2.1 the Athlete will receive credit for the two periods of provisional suspension already served.
145. Pursuant to CADP Rule 10.14.1 the Athlete’s period of ineligibility of twelve years extends to all competitions participation in any capacity in a Competition or activity (other than authorized anti-doping Education or rehabilitation programs) authorized or organized by any Signatory, Signatory’s member organization, or a club or other member organization of a Signatory’s member organization, or in Competitions authorized or organized by any professional league or any international- or national-level Event organization or any elite or national-level sporting activity funded by a governmental agency.
146. The SDRCC now considers this case closed subject to appeal filed pursuant to CADP Rule 13.

## PUBLICATION

147. This decision will be published in accordance with CADP Rule 14.3.2.

Decision issued in Beaconsfield, Québec, this 19th day of May 2023.



Janie Soublière, Arbitrator