NEW ERA ADR ARBITRATION

In the Matter of the Arbitration between

UNITED STATES ANTI-DOPING AGENCY (USADA)

Claimant

and

GIL ROBERTS

Respondent

Re: Case No. 23121801

FINAL AWARD

I. INTRODUCTION

This arbitration is being conducted pursuant to the Procedures for the Arbitration of Olympic & Paralympic Sport Doping Disputes (effective as revised January 1, 2023) ("**Arbitration Procedures**") as contained in the United States Anti-Doping Agency ("USADA") Protocol for Olympic and Paralympic Movement Testing (the **"Protocol**"), and pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 USC 22501, *et seq*. (the "Act"). This arbitration is being administered by New Era Alternative Dispute Resolution ("NE ADR").

The Panel in the above-referenced case, consisting of Hon. Hugh L. Fraser, O.C., Sole Arbitrator, after considering the submissions, evidence, and argument of the parties and conducting a hearing pursuant to the "Protocol", decides, orders, and awards as follows:

II. THE PARTIES

1. United States Anti-Doping Agency ("USADA") or "Claimant") is the independent anti-doping organization, as recognized by the United States Congress, for all Olympic, Paralympic, Pan American and Parapan American Sport in the United States. It's headquarters are in

Colorado Springs, Colorado. USADA is authorized to carry out a comprehensive national anti-doping program encompassing testing, results management, education, and research, while also developing programs, policies, and procedures in each of those areas.

2. Gil Roberts, ("Mr. Roberts") or ("the Respondent") is a competitor in the sport of Athletics (Track and Field). He is a 400 meter runner who was part of the U.S. gold medal winning 4x400 Meters relay team at the 2016 Olympic Games in Rio de Janeiro, Brazil. He was also part of the silver medal winning U.S. 4 x 400 Meters relay team at the World Athletics Championships in London, England in 2017.

3. USADA was represented in this proceeding by Jeff T. Cook, Esq. USADA General Counsel, Spencer Crowell, Esq. USADA Olympic & Paralympic Counsel, and Muriel Ossip, USADA Legal Assistant.

4. The Respondent, Gil Roberts, appeared *pro se* in this proceeding.

5. USADA and Respondent shall be referred to collectively as the "Parties" and individually as a "Party."

III. FACTUAL BACKGROUND

6. This case arises from an out-of-competition sample collected from the Respondent on September 20, 2023 that tested positive for ostarine and RAD-140 as well as metabolites of LGD-4033 and SR9009, all of which are non-specified substances. As an elite athlete, the Respondent has been included in USADA's whereabouts pools throughout his career. He was first included in USADA's National Testing Pool ("NTP") in November 2011, and he spent a total of more than six years in the NTP before being moved to the Registered Testing Pool ("RTP") in January 2019. He remained in the RTP until October 10, 2023.

7. USADA has provided the Respondent with anti-doping education each year that he has been in a whereabouts pool, beginning in 2011. That anti-doping education included instruction that the Respondent was responsible for everything that went into his body, the dangers and consequences of doping, and the prohibited status of various substances such as anabolic agents.

8. In 2017 the Respondent tested positive for probenecid, a specified substance in the class of diuretics and masking agents on the World Anti-Doping Agency Prohibited List (the "Prohibited List"). The first instance Arbitrator found that the Respondent exhibited no fault or negligence because the source of the positive test was determined to be intimate contact with his girlfriend who had been taking the substance as medication for a sinus infection. The first instance ruling was appealed by WADA, but a CAS panel agreed that the Respondent was not at fault or negligent in his rule violation.

9. In 2022, the Respondent tested positive for andarine and ostarine, which are both classified as anabolic agents on the Prohibited List. The Respondent stated that his positive test was caused by a contaminated protein powder supplement and he accepted a sixteen-month period of ineligibility as a result of that positive test. His sanction ended on October 3, 2023, two weeks after he tested positive for the four different prohibited substances that give rise to the present case.

10. The sample collected by USADA on September 20, 2023 was taken out-of-competition. The Respondent did not declare any supplements or medications on the Doping Control Form, nor did the Respondent raise any issues with the sample collection process on the Doping Control Form. The Respondent's sample was sent by USADA to the WADA accredited laboratory at UCLA in Los Angeles, California. The laboratory reported the Respondent's sample as an Adverse Analytical Finding ("AAF") for the presence of LGD-4033 metabolite di-hydroxy-LGD-4033, ostarine, RAD-140, and SR90009 metabolites SR9009 M2 and SR9009 M6. All four substances (and their metabolites) are classified as non-specified substances according to the Prohibited List, and each is prohibited at all times. LGD-4033, ostarine, and RAD-140 are anabolic agents, and SR9009 is a metabolic modulator.

11. On October 17, 2023, USADA sent the Respondent a letter notifying him that he had tested positive for LGD-4033 metabolite di-hydroxy-LGD-4033, ostarine RAD-140, and SR9009 metabolites SR9009 M2 and SR9009 M6. The Respondent was also notified that USADA had imposed a provisional suspension. The Respondent did not request an analysis of his B Sample by the stated deadline of October 24 2023, and was therefore deemed to have waived that analysis under the rules. On December 1, 2023, USADA charged the Respondent with ADRV's for the presence of the same prohibited substances and the use and/or attempted use of LGD-4033, ostarine, RAD-140, and SR9009 pursuant to Articles 2.1 and 2.2 of the World Anti-Doping Code (the "Code") respectively.

12. On December 16, 2023, the Respondent requested a hearing. USADA contacted New Era to initiate this matter on December 18, 2023. On that same day, December 18, 2023, USADA propounded discovery on the Respondent, seeking clarification on the alleged source of the Respondent's positive test. On January 8, 2024, the Respondent emailed USADA the following answer: "I do not accept fault for points #1 or #2 [of USADA's discovery requests], therefore I cannot give an explanation for the test results. I'm refuting the validity of the test results in general." USADA sent the Respondent a letter on January 12, 2024 requesting clarification of the Respondent's January 8 answer that he did not accept fault for points #1 and #2. The Respondent did not respond to USADA's January 12, 2024 letter. During the preliminary hearing held in this matter on January 26, 2024, the pending discovery issue was addressed with the Respondent, and he confirmed that he is not claiming that his positive test results are from supplement contamination.

III. PROCEDURAL HISTORY

13. On December 1, 2023, USADA sent the Respondent a charging letter advising him that if he was willing to accept the sanction proposed by them as set out on the Acceptance of Sanction Form, he could inform USADA of such acceptance in writing by December 11, 2023 by executing and returning the attached form. If the Respondent chose to contest the sanction proposed by USADA, he had the right to request a hearing before an independent arbitrator as long as he so notified USADA in writing by December 11, 2023. The charging letter also advised the Respondent that a Provisional Suspension had been imposed on him.

14. On December 11, 2023 the Respondent sent an email to USADA requesting a 5 day extension of his time to respond, as was his right pursuant to 15(d) of "the Protocol". On that same day, USADA wrote the Respondent to advise him that the extension had been granted and his new response deadline was December 16, 2023. On December 16, 2023, the Respondent communicated with USADA by email requesting a hearing. On December 18, 2023, USADA wrote to New Era ADR advising that the Respondent had requested a hearing before an arbitrator.

15. On December 18, 2023, New Era ADR appointed Hon. Hugh L. Fraser as Sole Arbitrator in this matter.

16. A Preliminary Hearing was held on January 26, 2024. During that Preliminary Hearing, the parties agreed to a Hearing date in this matter of May 20, 2024 commencing at 11:00 a.m. E.T. on the Zoom platform. The Scheduling Order established during the Preliminary Hearing determined that the Claimant, USADA, would be permitted to provide an Introductory Brief by March 4, 2024. The Respondent's Pre-Hearing Brief was due on April 8, 2024 and the Claimant's Pre-Hearing Reply Brief was due on May 6, 2024.

17. Each party provided their Pre-Hearing Briefs and disclosure of witnesses in accordance with the established schedule. USADA's Pre-Hearing Reply Brief, included a motion for a change in the start time of the hearing. The Respondent did not oppose the request and the Arbitrator advised the parties that the hearing would commence on May 20, 2024 at 2:30 p.m. M.T., (1:30 p.m. P.T., 4:30 p.m. E.T.)

18. The Hearing took place as scheduled on May 20, 2024 on the Zoom platform. The Sole Arbitrator, Hon. Hugh L. Fraser, O.C. was joined by the following:

<u>For the Claimant:</u>

- Jeff Cook (Counsel)
- Spencer Crowell (Counsel)
- Muriel Ossip (Legal Assistant)
- Dr. Matthew Fedoruk (Witness)
- Victor Burgos (Witness)
- Lindsay Stafford (Witness)

<u>For the Respondent:</u>

- Gil Roberts (Athlete) *pro se*

World Athletics and the World Anti-Doping Agency had the right to participate in the hearing as a party or as an observer but did not exercise their right to do so.

The Team USA Athlete Ombuds also had the right to attend the hearing as an observer. There were no observers in attendance.

IV. ISSUES

19. The Claimant submits that the sole issue for consideration is the length of sanction that should be given to the Respondent. The Respondent submits that the Sole Arbitrator should be

concerned about the lack of adherence by the Claimant to the process established under "the Protocol".

IV. SUBMISSIONS OF THE PARTIES

The Claimant

20. USADA submits that LGD-4033, ostarine, and RAD-140 are anabolic agents belonging to a subcategory called selective androgen receptor modulators ("SARMs") which have comparable biochemical and physiological effects to anabolic steroids. Dr. Matthew Fedoruk, the Chief Science Officer for USADA, explained in his report that SARMs are highly sought after by athletes looking for an advantage because they promote increases in strength and power without the negative side effects for which traditional anabolic steroids are notorious. USADA notes that although SARMs are considered investigational drugs and have not yet been approved for human use by the FDA, worldwide AAF cases involving SARMs are increasing as athletes become more familiar with SARMs powerful performance enhancing capabilities. They also maintain that these performance enhancing effects are particularly relevant for sprinting athletes such as the Respondent, who stand to benefit from increased strength and power.

21. USADA also submits that SR9009 is classified as a metabolic modulator and was added to the prohibited list in 2018. The Claimant submitted that studies have shown that SR9009 can increase energy and decrease fat mass, although it is still undergoing clinical evaluation and has not been approved for therapeutic use. The Claimant maintains that SR9009 is a potent doping agent because it has the potential to increase exercise capacity, and it is often used in conjunction with SARMs to create a synergistic effect.

22. The Claimant also submits that because the Respondent did not request analysis of his B sample by the deadline he had been given, he was deemed to have waived testing of his B sample. The Claimant maintains that the WADA accredited laboratory analysis was completed in accordance with the requisite international standards and that USADA has met its burden to demonstrate that the Respondent committed the charged ADRVs.

23. USADA asserts that once a violation has been established, the next step is to determine the appropriate sanction length. The default period of ineligibility for a first ADRV involving a non-specified substance such as LGD-4033, ostarine, RAD-140, and SR9009, is four years unless the athlete can establish by a balance of probabilities that the ADRV was unintentional, in which case the period of ineligibility shall be two years. The Claimant notes that the Code

provides for a further reduction in the period of ineligibility if the athlete can establish no significant fault or negligence, and a reduction is deemed appropriate based on the degree of fault analysis. The Code provides that for adverse analytical findings involving non-specified substances, the period of ineligibility may not be reduced below one year.

24. The Claimant acknowledges that although the instant matter represents the Respondent's third ADRV overall, his 2017 ADRV, where he established no fault or negligence, is not considered a prior violation under Code Article 10.9, which provides for enhanced sanctions when an athlete commits multiple ADRVs within a ten-year period.

25. The Claimant submits that because the instant matter must then be treated as the Respondent's second anti-doping rule violation, Code Article 10.9.1.1 applies. That Article states that:

> [T]he period of *Ineligibility* shall be the greater of: (a) A six 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, with the period of *Ineligibility* within this range to 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.

26. The Claimant therefore submits that an AAF for a non-specified substance as a first violation can be reduced to a minimum of twelve months depending on the athlete's degree of fault. Since the Respondent received a sixteen-month sanction in 2022, the bottom of the sanctioning range according to USADA would be 28 months in this case. The top of the sanctioning range would therefore be eight years because the default period of ineligibility for first ADRVs involving non-specified substances is four years, which when doubled pursuant to Code Article 10.9.1.1 is eight years.

27. The Claimant submits that the next step after establishing the applicable sanctioning range, is to assess "the entirety of the circumstances" and the Respondent's "degree of fault with respect to the second violation" to determine the appropriate sanction bearing in mind that, even if this was the Respondent's first violation, no reduction to the default period of ineligibility of four years would be appropriate absent the Respondent establishing that the violation was not intentional.

28. In assessing the entirety of the circumstances, the Claimant asserts that the Respondent has tested positive for multiple prohibited substances, which constitutes his third ADRV in the last seven years, despite having received years of anti-doping education and first-hand experience regarding anti-doping rule violations. They add that the Respondent has not provided any explanation for this most recent positive test, other than to state that it was not caused by supplements contamination or any other source that he is aware of. The Claimant maintains that testing positive for four different prohibited substances, three of which are anabolic agents, is grounds for the application of Aggravating Circumstances, despite USADA not pursuing them at this juncture.

29. The Claimant points to Dr. Fedoruk's expert report which highlights that all four substances would be expected to confer a performance enhancing benefit through increased strength, power, muscle mass, and energy and the specific combination of SARMs found in this case is a recommended pairing or "stack" to promote greater gains in various online resources. Therefore USADA submits that the appropriate period of ineligibility is eight years unless and until the Respondent can show that the circumstances surrounding his positive test warrant a reduction under the rules.

30. Regarding the sanction start date, the Claimant submits that the Code permits an athlete to receive credit for the period during which a provisional suspension is imposed and respected and in the absence of any information that the Respondent has not respected his provisional suspension, his period of ineligibility should commence on October 17, 2023. USADA also submits that any results obtained by the Respondent after September 20, 2023, the date on which the Respondent's sample was collected, should be disqualified.

Respondent Submissions

31. The Respondent submits that he did not take the four prohibited substances and does not know the source of them. He also submits that the references to the ADRV from 2017 are a personal attack against him, and retaliation by USADA since he was "acquitted" of taking performance enhancing drugs by a first instance tribunal and again on appeal.

32. The Respondent further submits that he has never taken performance enhancing drugs and has never done anything to disadvantage his competitors. He reiterates that he has not been

a top tier competitor since 2018 and does not deserve an eight year suspension. The Respondent submits that he did not knowingly take an illegal substance in 2022 but was the victim of legal supplement contamination in a protein powder that he was taking. He adds that he is aware of the risk of taking supplements, that cross-contamination might incur from ingestion of supplements, and that is the reason why he accepted the 16-month suspension.

33. The Respondent also submits that he has approximately 30 negative tests in his USADA file since 2017, and has never failed a test during any competition. He states that since the suspension of 2022, he stopped taking protein powder and no longer takes any medication or supplements. The Respondent maintains that he was not a member of USA Track and Field (USATF) until June 17, 2022, which was after his failed test, and was not a part of the National Governing Body. He adds that his performance of 49.96 in the only 400 meter race that he completed in 2021 should not have made him eligible to be part of the National Testing Pool and that the only reason that he joined USATF was that this was a requirement in order to expedite the 2022 hearing.

34. The Respondent submits that he had always intended to have his B sample tested and that after placing a call to USADA Counsel, Spencer Crowell, he was waiting to hear back from him to discuss arrangements for the testing of the B sample. The Respondent also makes reference to the fact that the UCLA lab which tested his A sample, had been placed on probation by WADA in 2017, and this was a further reason why he would have wanted to have his B sample analyzed. He states that without the B sample analysis, he cannot be certain that there was no error or tampering at the UCLA testing laboratory.

35. The Respondent further submits that under section 4 of the USADA Protocol for Olympic and Paralympic Movement Testing, testing cannot be used as a form of harassment. He notes that he provided five test samples in 2022 which is the average of samples that the US Championship final heat runners were subjected to, notwithstanding the fact that he has not been a top contender since 2018. The Respondent states that he was not a part of the National Governing Body and yet was still tested in a manner similar to athletes who competed in the National Championship Finals. He maintains that something changed in 2021 when he found himself subject to 15 test samples even though he competed just once that year.

36. The Respondent argues that the amount of testing that he was subject to does not align with the amount of tests conducted on athletes who recorded similar times. He adds that he was not taking supplements at the time, and cannot be certain that the UCLA laboratory did not make

any mistakes, something that he might have been able to confirm if he had been afforded the opportunity to have his B sample tested.

VI. JURISDICTION

37. This proceeding is governed by the United States Anti-Doping Agency ("USADA") Protocol for Olympic and Paralympic Movement Testing, (the "Protocol" or "USADA Protocol". Section 4 of the Protocol lists the Athletes who are subject to the Protocol and Testing by USADA. That section reads as follows:

> The USOPC, NGBs, other sports organizations and the Code authorize USADA to test, investigate, and conduct other anti-doping activities concerning *Athletes* who:
>
> a. Are a member or license holder of, or under contract with, an NGB or sports organization for whom USADA is authorized to conduct any aspect of *Doping Control*;
>
> b. Are a member of, or the recipient of a license from, an IF or other *Code Signatory* or a member of a *Signatory;*
>
> c. Participate in sport including by registering or preparing for or participating in an *Event* or *Competition* in the United States or which is organized or sanctioned by the USOPC, an NGB or a sport organization for whom USADA is authorized to conduct any aspect of *Doping Control*:
>
> d. Apply for (including participating in any qualifying Event or other step in the selection process), or are selected to a U.S. national Olympic, Paralympic, Pan American, Parapan American, Youth Olympic Team or other team representing the USOPC or NGB in an *International Event*;
>
> e. Apply for a change of sport nationality to the United States;
>
> f. Are present in the United States;
>
> g. Receive benefits from the USOPC or NGB;
>
> h. Register for or uses any USOPC training center, training site or other facility;
>
> i. Give their consent to *Testing* by USADA;

j. If a U.S. Athlete submits, or is required to submit, a *Whereabouts Filing* to USADA or an IF within the previous twelve (12) months and has not given his or her IF, NGB, and USADA written notice of retirement;

k. Are included in the USADA *Registered Testing Pool* ("*RTP*") or the USADA Clean Athlete Program ("CAP");

l. Have been previously sanctioned by USADA or other *Anti-Doping Organization* ("ADO") for an anti-doping rule violation, and are serving a period of *Ineligibility* on account of an anti-doping rule violation and who have not given prior written notice of retirement from all sanctioned Competition to the applicable IF, NGB, and USADA, or the applicable foreign anti-doping agency or foreign sport association;

m. Are subject to *Testing* under authorization from the USOPC, NGB, IF, any *NADO*, *WADA*, the IOC, the IPC, any other *ADO*, any other sports organization, or the organizing committee of any *Event* or *Competition*; or

n. USADA is entitled to test under the rules of any *ADO* or sports organization.

WADA shall also have *In-Competition* and *Out-of-Competition Testing* authority over any of the above mentioned *Athletes.*

USADA will not allow the Testing process to be used to harass any *Athlete*.

Athletes also subject themselves to USADA's authority through their participation in sport as set forth in the USOPC NADP and as provided in the Code and the rules of various sports organizations.

38. The Respondent was subject to the Protocol and requested a hearing. USADA advised New Era ADR that a hearing was required and New Era ADR assigned the Hon. Hugh L. Fraser as Sole Arbitrator in this matter.

39. In light of the foregoing, the Sole Arbitrator was vested with the jurisdiction to hear this proceeding.

VII. APPLICABLE LAW

40. The USADA Protocol implements the requirements of the World Anti-Doping Code ("the Code") and its related International Standards on a national basis within the United States.

As required by the Code and United States Olympic & Paralympic Committee ("USOPC") National Anti-Doping Policy ("NADP"), all United States National Governing Bodies ("NGBs") must comply in all respects with this Protocol and shall be deemed to have incorporated the provisions of the Protocol into their rulebooks as if they had set them out in full therein.

VIII. ANALYSIS AND FINDINGS

41. The Code makes athletes responsible for every substance that enters their bodies. This duty of strict liability is contained in Article 2.1.1 which states that:

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

42. Article 2.1.2 sets out how sufficient proof of an anti-doping rule violation is established. That article states that:

> Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B sample and the B Sample is not analyzed; or, where the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or where the Athlete's A or B Sample is split into two parts and the analysis of the confirmation part of the split Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first part of the split Sample or the Athlete waives analysis of the confirmation part of the split Sample.

43. The Analysis of the Respondent's A Sample revealed the presence of four different prohibited substances; ostarine, RAD-140, and metabolites of LGD-4033 and SR9009.

44. The Sole Arbitrator observes that the main issues to be resolved are:

(a) Can the Laboratory results from the testing of the Respondent's A Sample be relied on?
(b) Was the Respondent denied an opportunity to have his B Sample tested?
(c) Was the Respondent unfairly targeted for testing by USADA?
(d) Is the Respondent entitled to a reduction in the length of sanction?

45. These issues will be considered in turn.

A. Can the results from the UCLA Laboratory be relied on?

The Respondent has claimed that the WADA-Accredited Laboratory mistakenly identified four separate prohibited substances in his sample. Under Article 3.2.2 of the Code, the laboratory's analysis is presumed accurate. This Article states that:

> WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted *Sample* analysis and custodial procedures in accordance with the *International Standard* for Laboratories. The *Athlete* or other *Person* may rebut this presumption by establishing that a departure from the International Standard Laboratories occurred which could reasonably have caused the *Adverse Analytical Finding*.
>
> If the *Athlete* or other *Person* rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could have reasonably have caused the *Adverse Analytical Finding*, then the *Anti-Doping Organization* shall have the burden to establish that such departure did not cause the *Adverse Analytical Finding*.

The comment to this article further explains that "the burden is on the Athlete or other Person to establish, by a balance of probability, a departure from the International Standard for Laboratories that could reasonably have caused the Adverse Analytical Finding".

46. Dr. Matthew Fedoruk, the Chief Science Office at USADA, was called as a witness by the Claimant to comment on his findings after reviewing the laboratory's analysis of the test results and to comment on the Respondent's claim that results from the UCLA laboratory should be considered with skepticism. Dr. Fedoruk is considered an expert in the scientific aspects of doping control. He works in collaboration with a number of advisory groups including the World Anti-Doping Agency (WADA) Health, Medicine and Research Committee. Dr. Fedoruk

has also reviewed thousands of athlete biological passport results and provided expert reviews upon request. In addition to his other responsibilities, he oversees USADA's Drug Reference Department, which is responsible for administrating the Therapeutic Use Exemption (TUE) process.

47. Dr. Fedoruk reviewed the laboratory analysis of the samples collected from the Respondent by USADA on September 20, 2023 out-of-competition, which returned adverse analytical findings (AAF) for four prohibited anabolic agents: di-hydroxy-LGD-4033, a metabolite of LGD-4033; enobosarm (ostarine); RAD-140; and SR9009 M6 and SR9009 M2, mebabolites of SR9009.

48. After reviewing the analytical data reported by the UCLA Olympic Analytical Laboratory associated with the Respondent's AAFs and sample collection documentation, Dr. Fedoruk concluded that the sample analyses were conducted in strict accordance with the International Standard for Laboratories (ISL) and associated technical documents. He noted that there were no observed or reported departures from the ISL in the analyses of the Respondent's sample.

49. With regard to the UCLA Laboratory's partial three-month suspension in June, 2017, Dr. Fedoruk observed that the laboratory was never closed and was fully reinstated on September 27, 2017. The laboratory had been suspended from testing for four substances – prednisolone, prednisone, boldenone and boldione – after identifying "non-conformities with best practices". Dr. Fedoruk testified that the UCLA Laboratory underwent strict blind testing experiments prior to the suspension being lifted, and WADA commended the laboratory for their "quick and effective response", adding that "athletes can be confident that the Laboratory is operating at the high standards required by WADA and the global anti-doping programme."

50. Dr. Fedoruk opined that the substances found in the Respondent's A sample belonged to a new category of anabolic agents called selective androgen receptor modulators (SARMS) by the pharmaceutical industry. He noted that all four substances are non-Specified Substances and are not subject to any laboratory minimum reporting limits. Therefore an AAF is reported at any concentration that is detected and confirmed in a urine sample by a WADA-accredited laboratory.

51. Dr. Fedoruk also opined that the high anabolic potency of SARMs coupled with a limited or even absence of androgenic effects, are properties which attract athletes looking for power and strength improvement without undergoing the undesirable physiological side effects of anabolic

steroid use. He also stated that for a male track and field athlete, the benefits of repeated pharmaceutical doses of SARMs are potent, and include increased muscle mass and strength and increases in lean body mass. Dr. Fedoruk remarked that there are websites which discuss pairing or "stacking" SR9009 with SARMs such as LGD-4033, ostarine and RAD-140 to further promote muscle building and shedding fat.

52. Dr. Fedoruk testified that the concentration numbers found in this case are considered high and not consistent with contamination. He added that he had never seen a contamination case involving four different substances.

53. The Respondent did not provide any evidence that the UCLA laboratory had departed from the International Standard for Laboratories. Not only has the Respondent failed to identify a departure for the ISL, he has also failed to explain how such a departure could reasonably have caused his positive test for four separate prohibited substances. The Sole Arbitrator finds therefore that the UCLA Laboratory results from testing of the Respondent's A sample are reliable and presumed accurate.

B. Was the Respondent denied the opportunity to have his B sample tested?

54. Mr. Roberts maintains that he was denied the opportunity to have his B sample tested. In response to this allegation USADA refers to the notice letter sent to the Respondent on October 17, 2023. In that letter USADA advised the Respondent as follows:

> If you choose not to accept the A Sample Laboratory results, you may request that your B Sample be opened and analyzed at the Laboratory, which is located at 2122 Granville Avenue, Los Angeles, California 90025. You and/or your representative have the right to be present at your expense to observe the B Sample opening and the analysis, the total duration of which may vary from hours to days depending on the test(s) performed. Please inform [USADA] in writing by fax at 719-785-2028 or by email to mossip@usada.org by October 24, 2023 if you would like your B Sample opened and analyzed, and if you plan to attend or send a representative to the Laboratory to observe the analysis of your B Sample. If you do not request the analysis of your B Sample by the deadline above, then the B Sample analysis will be deemed irrevocably waived.

55. Mr. Roberts testified that shortly after receiving an email from USADA he called USADA counsel, Spencer Crowell and left a voice mail message for him. He further testified that by the time that Mr. Crowell called him back, the window to have his B Sample tested had

closed. Mr. Roberts also testified that he did not recall seeing the notice letter advising him that he was required to make a request in writing to have the B Sample tested. When that notice letter (Exhibit J) was presented to him for his review during the hearing, the Respondent acknowledged seeing the reference in the letter to making a request in writing if he wanted his B sample to be tested.

56. Victor Burgos, the Chief Investigative Officer with USADA testified that he spoke to the Respondent on November 2, 2023. That interview was recorded and entered as Exhibit Z in these proceedings. On November 2nd, Mr. Burgos and Mr. Roberts discussed the notice letter and Mr. Roberts stated that he was going to decide on what he would do next. He expressed a desire to obtain the name of some medications that he was taking. Mr. Burgos recalled a second conversation with Mr. Roberts in which the Respondent mentioned that he wanted to have the B sample analyzed. This according to Mr. Burgos was the first mention by the Respondent of his B sample. Mr. Burgos stated that the Respondent did not mention any conversation with Mr. Crowell about having his B sample analyzed. The second conversation took place on November 15, 2023.

57. USADA's final exhibit contained the contemporaneous call notes taken by Mr. Crowell following his interaction with Mr. Roberts in the early stages of this proceeding.

> Call
>
> 10/31: Called athlete to follow up on notice letter. Athlete said he doesn't have any explanation or supplements to test but he doesn't want to admit that he did anything wrong. I informed athlete we would be in touch to schedule an interview.
>
> Call
>
> 1/25: Called athlete re missing discovery responses and potential briefing schedule before PH tomorrow – LVM

58. The Sole Arbitrator listened to the recording of the interview conducted by Victor Burgos with Mr. Roberts on November 2, 2023. At no point during that interview does the Respondent mention wanting to have his B sample analyzed. Even though it was made clear to the Respondent that he should present his request in writing to USADA if he wanted to have his B sample tested, the Sole Arbitrator accepts USADA's statement that they would likely have considered a verbal request to have the B sample tested had they received one in a direct conversation with Mr. Roberts or through a voice mail message left with one of their representatives. Not only is there no such evidence of any request made by Mr. Roberts prior to the deadline to have his B sample tested, when the question was directly put to the Respondent

during the hearing, he confirmed that he did not specifically mention testing of the B sample to any USADA officials.

59. The Sole Arbitrator finds that the Respondent was not denied an opportunity to have his B sample analyzed. It is clear that he did not request that his B sample be opened and analyzed within the required deadline and was therefore deemed to have waived the analysis.

C. Was the Respondent unfairly targeted by USADA for excessive testing?

60. After reviewing the USADA Protocol for Olympic and Paralympic Testing, the Respondent questioned USADA's jurisdiction to test him, stating that he was not part of the Track & Field National Governing Body at the relevant time. He stated that his best performance of 49.96 in 2021 would not have met the testing requirements to be in the National Testing Pool and maintains that he was subject to excessive testing by USADA as a means of retaliation and harassment by the Claimant. The Respondent has also suggested that USADA did not have jurisdiction over him in 2022 when he tested positive for ostarine, for which he accepted a sixteen-month sanction.

61. Lindsay Stafford, Director of Olympic and Paralympic programs at USADA testified that Track & Field, cycling, weightlifting and swimming are considered high risk sports for doping violations. This is part of the internal risk assessment tool that looks at all sport disciplines. Elite level athletes will be subject to a minimum of three tests annually. Ms. Stafford testified that sprinters take up one third of the Registered Testing Pool for Track & Field. USADA's records indicate that Mr. Roberts was in the Registered Testing Pool from 2019 to 2023 and was in the National Testing Pool between 2011 and 2018. National Testing Pool athletes are required to file a daily account of their whereabouts.

62. Ms. Stafford also testified that Mr. Roberts was on the cusp of making the 2021 Olympic team. On a quarterly basis, she provides the names of athletes who should be added to the testing pool. USA Track & Field (USATF) will provide names of athletes who should be removed from the pool or added to the pool. Ms. Stafford's records indicated that Mr. Roberts was tested three times in 2018 and four times in 2019. Ms. Stafford also stated that high level athletes make up the majority of persons in the pool. She noted that athletes are kept in the pool even during the period when they are serving a sanction. According to USADA records, Mr. Roberts was tested four times in 2022 and three times in 2023.

63. It was Ms. Stafford's evidence that the Respondent was tested 8 times in 2021 and not 15 as Mr. Roberts has stated. Ms. Stafford believed that the 15 tests referred to by Mr. Roberts are the total of the types of tests not the actual number of tests. Ms. Stafford also testified that Mr. Roberts never submitted a retirement notice to USADA.

64. In 2021, the Respondent was tested by USADA on eight separate occasions. In his supplementary report, Dr. Fedoruk stated that this can be explained by an Atypical Finding reported by the laboratory for a urine sample collected on August 17, 2021. Three follow-up urine samples were collected and analyzed in 2021, which were part of the WADA requirements. A fourth sample was collected upon recommendation of USADA's Athlete Passport Management Unit.

65. On the question of jurisdiction, the Sole Arbitrator finds that USADA had jurisdiction over the Respondent in 2022 for multiple reasons, the first being that Mr. Roberts consented to USADA's jurisdiction each time he provided a sample by signing the doping control form that he agreed to be bound by in compliance with the USADA Protocol. Furthermore, USADA has jurisdiction to test all athletes in its whereabouts pools including the Registered Testing Pool ("RTP"), in which the Respondent was included until October 10, 2023. The sample giving rise to this case was collected on September 20, 2023, while the Respondent was still serving his sixteen-month period of ineligibility and still in the RTP.

66. The Sole Arbitrator finds no merit to the Respondent's argument that he was subject to excessive testing as a form of retaliation or harassment on the part of USADA. As the Claimant has submitted, it was WADA and not USADA which appealed the 2017 first instant no fault decision to the Court of Arbitration for Sport. The rules are clear that cases involving no fault findings are not to be considered as a prior ADRV under the sanctioning framework. USADA also highlights that they are not seeking a finding of aggravated circumstances in this case, even though they could have done so. The number of tests that the Respondent has been subject to in the past few years, is consistent with tests given to athletes in the Registered Testing Pool and in particular for those competing in the sport of Track & Field which is considered a high risk sport. Testing data presented by USADA in this proceeding confirms that Track & Field athletes were subject to more tests in 2021 than athletes in any sport, which has largely been the case each year throughout USADA's existence.

D. Is the Respondent entitled to a reduction in the length of sanction?

67. The Respondent acknowledges that he has tested positive for four prohibited substances but maintains that he does not know the source of the positive test. He confirms that in terms of

length of sanction, the positive test from September, 2023 can be considered a second violation, following the sixteen-month suspension that he agreed to in 2022 as a result of supplement contamination.

68. When determining the appropriate sanction for a second violation, one must look to Article 10.9.1.1 of the World Anti-Doping Code (the "Code").

> 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-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.

69. In determining whether an anti-doping rule violation involving a non-specified substance was intentional, the Code places the burden upon the athlete, who is required to meet that burden by a balance of probability.

70. Numerous CAS cases have determined that only in the rarest of circumstances will an athlete be able to prove lack of intent without first establishing the source of their positive test. In the present case, the Respondent has not offered any explanation other than to speculate that without the testing of his B sample, he cannot be certain that there was no error or tampering at the UCLA testing laboratory. The only explanation that the Respondent can offer is to state that he has never taken performance enhancing drugs and has never done anything to disadvantage his competitors. He also stresses that none of his prior positive tests have occurred in competition.

71. Dr. Fedoruk has ruled out contamination as a possibility in this case. The Respondent has provided no evidentiary basis to demonstrate that the use of these four powerful doping agents was anything but intentional, save for his protestations of innocence and statements of good character. The fact that the Respondent may have been tested over 30 times from 2017 to 2023 with negative results carries no evidentiary weight. The Respondent's claim that he has never tested positive in competition is irrelevant. Dr. Fedoruk explains in his supplemental expert report, a fact well known to those who work in this field, that athletes taking banned substances often complete their doping regimen well outside of competitions because they will still receive the performance enhancing benefit during the competition, even after the banned substance has cleared their system. The fact that the Respondent has never tested positive for banned substances during competition is of little assistance to him in this analysis.

72. The Respondent's inability to provide persuasive evidence regarding intent and the source or circumstances of his positive test for three powerful anabolic agents and one metabolic modulator, has essentially closed the door to any reduction for this second anti-doping rule violation treating it as a first violation. If the Respondent cannot receive a reduction from four years were this to be treated as a first violation, the relevant range to consider for sanction under Code Art. 10.9.1.1 is from 64 months to eight years.

73. In order to arrive at the appropriate sanction between the range of 64 months and eight years, the Code states 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." USADA has submitted that a consideration of "the entirety of the circumstances," would weigh heavily in determining whether the Respondent's ADRV's were intentional and the evidence that the Respondent brings to bear on intent and fault.

74. When considering the entirety of the circumstances, the Sole Arbitrator has taken into account the fact that the Respondent tested positive for three anabolic agents and a metabolic modulator which are some of the most notorious and performance enhancing substances known to sport. Other factors that were considered are the Respondent's experience as an Olympian; an elite athlete who spent almost ten years in USADA's Registered Testing Pool, and who had received considerable anti-doping education during that period. In addition to his lengthy anti-doping education history, the Respondent would have had unique insight into the strict liability anti-doping rule violation regime and the consequences of intentionally or unintentionally running afoul of those rules.

75. Yet, with all of that experience and education, the Respondent has been unable to provide any insight into how he tested positive for three anabolic agents and one metabolic modulator except to state that it was not from supplement contamination because he ceased taking any supplements or medication after his 2022 ADRV. Other than a baseless attack on USADA, inferring that the Claimant had pursued him as a form of harassment, and the equally baseless attack on the WADA accredited UCLA laboratory, he has offered nothing to the Tribunal that would support a basis for a reduction of sanction.

76. Upon consideration of all of the circumstances of this case, the Sole Arbitrator finds that an eight year period of eligibility is appropriate.

IX. PERIOD OF INELIGIBILITY AND RESULTING CONSEQUENCES

A. Sanction Start Date

77. USADA provisionally suspended the Respondent on October 17, 2023, the date on which USADA sent the Respondent the notice letter. The Code permits an athlete to receive credit for the period during which a provisional suspension is imposed and respected. No information has been presented at the hearing to suggest that the Respondent has not respected his provisional suspension. As a result, the appropriate start date for the Respondent's eight year period of ineligibility is October 17, 2023.

B. Disqualification of Results

78. Article 10.10 of the Code states in relevant part, "all…competitive results of the *Athlete* obtained from the date a positive *Sample* was collected…through the commencement of any *Provisional Suspension* or *Ineligibility* period, shall, unless fairness requires otherwise, be *Disqualified* with all the resulting *Consequences* including forfeiture of any medals, points and prizes." Although there is no evidence that the Respondent was competing at the time of sample competition, the rules require disqualification of any results obtained by the Respondent on and after the date of sample collection. Accordingly, any results obtained by the Respondent on and after September 20, 2023 are disqualified.

X. AWARD

79. The Arbitrator therefore rules as follows:

A. The Respondent has committed anti-doping rule violations for the presence of LGD-4033 metabolite di-hydroxy-LGD-4033, ostarine, RAD-140, and SR9009 metabolites SR9009 M2 and SR9009 M6 and the use of LGD-4033, ostarine, RAD 140, and SR9009.

B. The Respondent has not discharged his burden of proving, by a balance of probability, that his anti-doping rule violation was not intentional.

C. This is the Respondent's second anti-doping rule violation for purposes of sanction. Pursuant to the provisions of Article 10.9.1.1 of the Code, the Respondent's period of ineligibility is set at eight years.

D. The start date of the Respondent's period of ineligibility is the date of his provisional suspension, October 17, 2023.

E. All competitive results achieved by the Respondent after September 20, 2023 are disqualified.

F. The Parties shall bear their own attorney's fees and costs associated with this Arbitration.

G. The administrative fees of New Era ADR and the compensation and expenses of the Arbitrator shall be borne by the USOPC.

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

Dated: June 18, 2024

Hon. Hugh L. Fraser, O.C.

Arbitrator