



Fédération Internationale
de Natation

FINA Doping Panel 03/14 12 May 2014

PRESIDENT

DR. JULIO MAGLIONE
Uruguay

HONORARY SECRETARY

PAOLO BARELLI
Italy

HONORARY TREASURER

PIPAT PANIANGVAIT
Thailand

VICE PRESIDENTS

HUSAIN AL MUSALLAM
Kuwait

TAMAS GYARFAS
Hungary

DENNIS MILLER
Fiji

DALE NEUBURGER
United States of America

SAM RAMSAMY
South Africa

MEMBERS

LINO CANDIDO LOURENCO
Angola

FERNANDO CARPENA
Spain

ERROL CLARKE
Barbados

DIMITRIS DIATHESOPOULOS
Greece

DR. MOHAMED DIOP
Senegal

MATTHEW DUNN
Australia

BEN EKUMBO
Kenya

ANDREY KRYUKOV
Kazakhstan

EUGENIO MARTINEZ
Cuba

JESUS MENA CAMPOS
Mexico

DR. MARGO MOUNTJOY
Canada

COARACY NUNES FILHO
Brazil

VLADIMIR SALNIKOV
Russia

KAZUO SANO
Japan

ERIK VAN HEIJNINGEN
Netherlands

QIUPING ZHANG
China

HONORARY LIFE PRESIDENT

MUSTAPHA LARFAOUI
Algeria

EXECUTIVE DIRECTOR

CORNEL MARCULESCU

FINA Doping Panel

comprised of

Robert Fox	(SUI)	Chairman
William Bock, III	(USA)	Member
Raymond Hack	(RSA)	Member

In the proceedings against

the swimmer **Yulia Efimova**
affiliated to the Russian Swimming Federation

represented by: Mr. Howard Jacobs
West Lake Village,
United States

I. THE PARTIES

1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing disciplines related to swimming. FINA has established and is carrying out, *inter alia*, a doping control program, both for in-competition as well as out-of-competition testing.

1.2 The RUSSIAN SWIMMING FEDERATION (RSF) is a member of FINA. RSF is required to recognize and comply with FINA's anti-doping rules which are set out in the FINA Doping Control Rules ("FINA DC"). The FINA DC is directly applicable to, and must be

followed by, *Competitors, Competitor Support Personnel*, coaches, physicians, team leaders, and club and representatives under the jurisdiction of the RSF.

1.3 Ms. Yulia Efimova is a twenty-two (22) year old elite international swimmer, a native of Russia. She has enjoyed extraordinary success as a swimmer since her middle teens.

1.4 Ms. Efimova competed for Russia in the 2008 Beijing Olympic Games. In the 2012 London Olympic Games she won the bronze medal in the 200m breaststroke. Ms. Efimova won the gold medal in the 50m and 200m breaststroke races at the 2013 FINA World Championships in Barcelona and set the long course world record in the 50m breaststroke.

1.5 In 2010 at the age of 18 Ms Efimova moved to Los Angeles, California, in the United States of America in order to be coached by David Salo and to swim with the Trojan Swim Club. Prior to moving to Los Angeles to pursue her swimming career Ms. Efimova had been coached by her father, Andrey Efimov, and for the five years prior to her move she was coached by Irina Vyatchanina.

II. NATURE OF THE CASE

2.1 On 31 October 2013, Ms. Efimova provided a urine sample as a result of an out of competition doping control conducted by FINA.

2.2 Ms. Efimova's sample was received at the World Anti-Doping Agency (WADA) accredited laboratory in Montreal, Canada on 4 November 2013.

2.3 On 29 November 2013, the Laboratory reported to FINA that Ms. Efimova's sample was positive for the prohibited substance 7-keto DHEA and its metabolites, a prohibited anabolic agent in Class S1 of the WADA Prohibited List.

2.4 On 3 January 2014, the FINA Doping Control Review Board recommended that the positive drug test be considered an adverse analytical finding.

2.5 As discussed below, because Ms. Efimova waived the B analysis and did not contest the laboratory finding, the primary issues for the hearing concerned the appropriate period of ineligibility and the proper start date for her sanction.

III. PROCEEDINGS

3.1 By separate letters dated 6 January 2014, the FINA Executive Director notified Ms. Efimova and the President of the Russian Swimming Federation of the positive test.

3.2 Because the positive test involved an anabolic agent Ms. Efimova was provisionally suspended by the FINA Executive on 21 January 2014.

3.3 On 24 January 2014, less than three (3) weeks after notification of her positive test, Ms. Efimova through her counsel, Mr. Howard Jacobs, waived the B sample analysis and identified the source of her positive test as a supplement known as "Cellucor CLK" which she had purchased on September 16, 2013, at a General Nutrition Center (GNC) store near her residence in California.

3.4 By letter dated 29 January 2014 Mr. Jacobs was advised by the FINA Executive Director that Ms. Efimova's case would be forwarded to the FINA Doping Panel (the "FINA DP") for further consideration.

3.5 The FINA DP was formed pursuant to FINA Rule C 23.10.

3.6 On 13 February 2014, the Chairman of the FINA DP advised Mr. Jacobs of his opportunity to submit additional information to the FINA DP and of Ms. Efimova's right to a hearing before the FINA DP.

3.7 By letter dated 27 February 2014, Ms. Efimova, through her counsel, requested a hearing.

3.8 The FINA DP hearing was held on 28 April 2014, at the FINA offices in Lausanne (SUI) before the undersigned members of the FINA Doping Panel.

3.9 Ms. Efimova was present at the hearing and was represented by counsel. Also present was a representative of the Russian Swimming Federation and an interpreter.

3.10 Ms. Efimova testified at the hearing and was questioned at some length by all members of the FINA DP.

3.11 FINA was represented at the hearing by Ms. Katarzyna Jozwik.

IV. JURISDICTION AND APPLICABLE RULES

4.1 The jurisdiction of the FINA Doping Panel arises out of the following provisions of the FINA Rules: C 23.9., C 23.10 and FINA DC 8.1.

4.2 The applicable Rules in this case are the FINA Doping Control Rules in effect since 1 January 2009 (amended on the occasion of the FINA General Congress on 24 July 2009).

V. MOTIONS AND CONTENTIONS

A. MS. EFIMOVA'S CONTENTIONS

5.1 Ms. Efimova accepted that she had violated FINA DC 2.1 through the presence of 7-keto DHEA, a banned anabolic agent, in her urine sample and that a period of ineligibility of between twelve (12) and twenty-four (24) months was required for her first doping offense.

5.2 However, she contended that she did not bear significant fault for her positive test and that pursuant to FINA DC 10.5.2 the minimum possible period of ineligibility of only twelve (12) months should apply.

5.3 Ms. Efimova asserted that she had adequately proved the cause of her positive test by: (a) identifying the Cellucor CLK product which contains 7-Keto DHEA as a listed ingredient, (b) establishing that she only used the Cellucor CLK product for an approximately one (1) week period, ending just days before her positive test, (c) observing that doping controls in the week before and after use of the Cellucor CLK product were negative, and (d) noting that the use of the Cellucor CLK

product was the only significant change in her supplementation routine prior to the positive test.

5.4 Ms. Efimova presented a detailed explanation regarding why, in her view, her actions in purchasing Cellucor CLK were not significantly negligent.

5.4.1 Ms. Efimova contended that the evidence was strong that she did not intend to enhance her athletic performance.

5.4.2 She was tested on numerous occasions in 2013 (at least thirteen (13) times during the year) and only one (1) test was positive, suggesting her use of the product was limited in time.

5.4.3 She gave a detailed explanation regarding her purchase of the Cellucor CLK product as follows:

5.4.3.1 She had consumed the substance L-carnitine as a regular part of her training dietary regimen since she was a teenager.

5.4.3.2 L-carnitine is a nutrient found in many dietary supplements and Ms. Efimova presented evidence indicating that there is not substantial scientific evidence indicating it is performance enhancing.

5.4.3.3 In the past she had obtained liquid L-carnitine from her father who resided in Russia.

5.4.3.4 However, in the summer of 2013 Ms. Efimova's father moved to Los Angeles and was therefore no longer in position to obtain L-carnitine for her in Russia.

5.4.3.5 As Ms. Efimova's supply of L-carnitine dwindled she went to a nearby GNC store and asked for "L-carnitine."

5.4.3.6 She was shown by the sales person two L-carnitine products, Cellucor CLK and a GNC brand L-carnitine. The salesperson, however, recommended Cellucor CLK as the better product.

5.4.3.7 Ms. Efimova said that she asked the salesperson if the products were "doping-free" and was assured that they were.

5.4.3.8 Ms. Efimova notes that her native language is Russian and that her English language skills are limited and self-taught. She advanced her language challenges she has experienced in purchasing products in the United States as a factor to be considered by the Panel.

5.4.3.9 Ms. Efimova noted that based on her experience, and in comparison to her experiences when shopping in Russia, she believed that salespersons at vitamin stores in the United States were well educated and knowledgeable concerning the products they sold.

5.4.3.10 Ms. Efimova said that she was more inclined to question the qualifications of individuals selling supplements in Russia than in the United States.

5.4.3.11 Ms. Efimova also noted that the product she was seeking was L-carnitine, a permissible and non-prohibited substance which she had used for many years without incident. As a consequence, Ms. Efimova did not question the sales person further and did not believe there was a need for further research.

5.4.3.12 The Cellucor CLK product was not obviously marketed as a performance enhancer. The package labeling was provided to the FINA DP and there were no claims of explosive muscle growth or increased energy on the label such as might raise a red flag.

5.4.3.13 However, Ms. Efimova conceded that DHEA was clearly listed as an ingredient on the label of the product.

5.4.3.14 Ms. Efimova testified that at the time she purchased the product she did not know what DHEA was or that it is prohibited, however, she concedes that if she had compared the ingredients on the Cellucor CLK label to the Prohibited List she would likely have been able to determine the product contained a prohibited substance.

5.4.3.15 Ms. Efimova purchased the Cellucor CLK product from GNC on 16 September 2013, and this fact is corroborated by purchase records from GNC which she provided in advance of the hearing.

5.5 Ms. Efimova testified that after purchasing the supplements Ms. Efimova brought the two (2) L-carnitine products home but did not immediately use them.

5.6 Ms. Efimova submits that the fact that she did not immediately use the Cellucor CLK is corroborated by the fact that she was tested by FINA in an out of competition doping control on 23 September 2013 which was negative for prohibited substances.

5.7 On or about 10 October 2013. Ms. Efimova left the United States for the World Cups in Doha, Dubai and Moscow, returning on 22 October 2013.

5.8 Ms. Efimova points out that she was drug tested at each of the foregoing meets on October 13, 17 and 21. Each test was negative, further corroborating her claim that she had not yet used the Cellucor CLK product.

5.9 Ms. Efimova testified that by the time she returned from those competitions on 22 October 2013, she had run out of her supply of L-carnitine.

5.10 Consequently, after she returned to Los Angeles she said she tried the Cellucor CLK product.

5.11 The Cellucor CLK product however was in pill form and her previous use of L-carnitine had been in liquid form.

5.12 Ms. Efimova said she developed an upset stomach after only using the pills for a few days and attributed this to the Cellucor CLK pills.

5.13 Consequently, she testified that she went to another store known as the “Vitamin Shoppe” and purchased a liquid Vitamin Shoppe brand L-carnitine product which she began using.

5.14 Therefore, according to her, Ms. Efimova’s use of the Cellucor CLK product was short, lasting no more than one (1) week.

5.15 On 31 October 2013, Ms. Efimova submitted to an out of competition doping control and forthrightly told the doping control officer that she was using L-carnitine. “L-carnitine” is listed on her doping control form as a product she was taking.

5.16 Ms. Efimova was tested at least two more times in 2013, on 10 November 2013, and in December and these tests were negative for prohibited substances, lending further support to her claim that her use of the Cellucor CLK product was brief and that the Cellucor CLK product was the likely cause of her positive test.

5.17 Ms. Efimova’s drug test on 10 November 2013, followed her setting an unofficial¹ new world record of 28.71 in the 50m breaststroke at the Tokyo World Cup.

5.18 According to Ms. Efimova, her coach at the Trojan Swim Club, David Salo, is adamantly opposed to the use of supplements of any kind. She said her coach frequently tells his swimmers that they can get all the nutrition they need through a well balanced diet and that supplements are unnecessary.

5.19 Due to Coach Salo’s warnings and because she had heard of other swimmers such as Jessica Hardy testing positive from a

¹ The record is unofficial pending the outcome of this case.

supplement, she only used a few supplements and the ones she used were supplements, such as L-carnitine, that were recommended by her father and that she had used for years without incident before coming to Los Angeles.

5.20 She testified that while she had previously relied upon her father to purchase her supplements, her father's move to Los Angeles was a change in circumstance that led her to purchase her own supplements for the first time.

5.21 Ms. Efimova testified that although she is an elite swimmer who had been through numerous doping controls and although she is aware that she is responsible for what she puts in her body, Ms. Efimova has never been given specific anti-doping education and has never been taught how to be a wise consumer of supplements, a problem her lawyer contended was compounded by the fact that her English is self taught and by her relative unfamiliarity with the supplement market in the United States.

5.22 Shortly after learning of her positive test Ms. Efimova sent the RSF photographs of the labels of each supplement she was using.

5.23 Cellucor CLK was quickly identified as the likely source of her positive drug test and she therefore immediately indicated she did not want the B sample analyzed and accepted the laboratory finding of a positive drug test.

VI. LEGAL DISCUSSION

A. THE FACTS

The FINA DP has found that the following facts were established in this case:

6.1 7-keto DHEA is a prohibited anabolic agent in Class S1 of the 2013 WADA Prohibited List and is therefore prohibited at all times, in and out of competition, pursuant to FINA DC 4.1.

6.2 Athletes subject to the WADA Prohibited List may not use 7-keto DHEA without a valid TUE.

6.3 The FINA DP accepts that Ms. Efimova did not intend to use 7-Keto DHEA in order to enhance her sport performance.

6.4 Rather, the evidence is clear that she ingested 7-Keto DHEA which was an ingredient in a product known as Cellucor CLK which Ms. Efimova purchased as an L-carnitine supplement.

6.5 Ms. Efimova had used L-carnitine products for years without incident.

6.6 L-carnitine is not a prohibited substance and may be used by athletes at any time.

6.7 Although there may be little scientific support for the use of L-carnitine to enhance athletic performance, Ms. Efimova believed L-carnitine would aid her athletic performance as she testified that used it to increase her energy and reduce weight prior to competitions.

6.8 For years Ms. Efimova had obtained liquid L-carnitine from her father residing in Russia, however, in 2013, her father was no longer in a position to provide her L-carnitine and she sought L-carnitine on her own at several supplement shops in Southern California.

6.9 As a consequence, Ms. Efimova went to a GNC store and asked for “L-carnitine.” She was given two products, the Cellucor CLK product and a GNC brand L-carnitine product, and she purchased both of the products.

6.10 She asked the salesperson whether the products were “doping free” and were assured that they were.

6.11 Believing the products she had purchased to be simply L-carnitine and not to contain any other ingredients Ms. Efimova did not read the labels of the products and therefore did not notice that one of the products she had purchased contained 7-keto DHEA. DHEA is a specifically listed substance on the WADA Prohibited List.

6.12 Ms. Efimova was naïve and insufficiently cautious by relying on nutritional advice of a salesperson at the GNC store where she purchased Cellucor CLK.

6.13 Her naïveté is perhaps made slightly more understandable when one considers, as the FINA DP has, her lack of proficiency with the English language and the relatively short time period in which she had lived in the United States.

6.14 Her actions may also possibly have been influenced by the lack of anti-doping education which she testified had been provided by the RSF.

6.15 Nevertheless, her care and caution in purchasing and using supplements and failing to read the ingredients on the label of supplements that she used fell considerably below the level that should be expected from an elite international swimmer and world record holder.

6.16 Ms. Efimova did not use the L-carnitine products she had purchased right away, but rather stored them at her apartment.

6.17 Ms. Efimova's first use of the Cellucor CLK product came after October 22 and ended prior to October 31. Therefore, her use of the product in question was short. She discontinued use of the product after it upset her stomach.

6.18 Ms. Efimova declared "L-carnitine" on her doping control form.

6.19 Her testimony regarding the limited time period when she used the product in question is helpfully corroborated by negative drug tests on 21 October and 10 November which occurred on either side of her positive drug test on 31 October 2013.

6.20 These facts put to rest any serious suspicion that she either used the product for a longer time period or that she intended to dope with the product.

6.21 Ms. Efimova was questioned at some length by the members of the FINA DP on each of the forgoing factual matters. She impressed the FINA DP as sincere and honest and appropriately remorseful for her mistake. She did not seek to blame others for her rule violation and she accepted responsibility for her actions and her duties under the rules. Her explanations were logical and fit well with,

and were corroborated by, the test results and other documentary evidence in the case. Consequently, the FINA DP found Ms. Efimova's testimony to be credible and persuasive.

6.22 Upon learning of her positive drug test Ms. Efimova promptly discontinued her use of all supplements and stated she plans to not use supplements in the future.

B. THE LAW

6.23 The FINA Doping Control Rules are founded on the fundamental premise contained in FINA DC 2.1.1 that:

It is each *Competitor's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Competitors* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*.

6.24 Ms. Efimova clearly failed to fully uphold her duty to prevent a prohibited substance from entering her body and she bears fault for her positive test. She did not argue otherwise.

6.25 Consequently, Ms. Efimova must be sanctioned for her inadvertent use of 7-keto DHEA which came about through her limited but negligent use of Cellucor CLK.

6.26 Moreover, because 7-keto DHEA is not a specified substance, as provided for in FINA DC 10.2 and 10.5.2, her period of ineligibility must be at least one year.

6.27 The period of ineligibility for the presence of an anabolic agent in an athlete's sample shall be two years unless the athlete can establish: (1) how the prohibited substance entered the athlete's system, and (2) that he or she bears "no significant fault or negligence" for the rule violation. See FINA DC 10.5.2.

6.28 No significant fault or negligence is generally found, and a reduction of the period of ineligibility given, where the athlete establishes a lack of intent to enhance sport performance. See, e.g., *USADA v. Klineman*, AAA No. 77 190 00462 13 JENF (2013) (athlete had "no significant fault or negligence" and sanctioned for 13 months where she was given a supplement by her mother which contained DHEA); *USADA v. Merritt*, AAA No. 77 190 00293 10 (2010) (athlete had "no significant fault or negligence" and was sanctioned for 21 months where he failed to read the label of a product which listed DHEA on the label); *Squizzato v. FINA*, CAS 2005/A/830 (swimmer had no significant fault or negligence under the FINA DC and was sanctioned for 12 months where she failed to read the label of a topical cream which contained an anabolic agent).

6.29 In addition to her credible testimony, Ms. Efimova produced corroborating evidence which established by a balance of probabilities that she did not intend to enhance sport performance. Such corroborating evidence included:

- a. The short use of the Cellucor CLK product as established by her testimony and corroborated by numerous drug tests in 2013, including tests shortly before and after her positive test;

- b. A receipt establishing purchase of the Cellucor CLK on September 16, 2013, six weeks prior to her positive drug test; and
- c. Declaration of L-carnitine on Ms. Efimova's doping control form.

6.30 Once it is determined that an athlete bears no significant fault or negligence for their violation and that the standard two year period of ineligibility should be reduced, the athlete's degree of fault is the controlling factor determining where within a range of from 12 months to 24 months the sanction should be set.

6.31 A variety of factors have been identified as bearing on an athlete's degree of fault, such as:

- a. a lack of intent to cheat or gain competitive advantage;²
- b. the fact that a supplement was not marketed to body builders;³
- c. a mistaken understanding regarding the nature of the substance ingested;⁴
- d. relative inexperience with the anti-doping system;⁵
- e. level of anti-doping education;⁶
- f. stress being experienced by the athlete at the time;⁷ or

² *USADA v. Klineman*, AAA No. 77 190 00462 13 JENF (2013), ¶8.1; *USADA v. Merritt*, AAA No. 77 190 00293 10 (2010), ¶9.13; *USADA v. Brunemann*, AAA No. 77 190 E 00447 08 JENF (2009), ¶10.7; *Squizzato v. FINA*, CAS 2005/A/830, ¶10.14.

³ *Klineman*, ¶10.15; *Cilic v. ITF*, CAS 2013/A/3327, ¶75.

⁴ *Cilic*, ¶76(d); *Armstrong v. WCF*, CAS 2012/A/2756, ¶8.37; *Brunemann*, ¶9.8; *Cañas v. ATP*, CAS 2005/A/951, ¶8.16.

⁵ *Cilic*, ¶76(a); *Brunemann*, ¶10.7; *Oliveira v. USADA*, CAS 2010/A/2107, ¶9.34.

⁶ *Cilic*, ¶76(c); *Qerlmaj v. IWF*, CAS 2012/A/2822, ¶8.23; *Brunemann*, ¶10.7; *Oliveira*, ¶9.34.

g. false representations made concerning the product.⁸

6.32 A recent case providing a significant degree of analysis in evaluating the various factors relevant to an arbitral panel's consideration of fault is *Cilic v. ITF*, CAS 2013/A/3335.⁹

6.33 The *Cilic* Panel recognized three degrees (or ranges) of fault:

- a. **Significant degree of or considerable fault**, which the Panel said would support a sanction range of 16-24 months.
- b. **Normal degree of fault**, which the Panel said would support a sanction range of 8-16 months.
- c. **Light degree of fault**, which the Panel said would support a sanction range of 0-8 months. *Cilic*, ¶¶ 69-70.

6.34 The *Cilic* Panel also discussed fault in terms of the objective and subjective elements of the level of fault. *Cilic*, ¶¶ 71-77.

6.35 In terms of objective elements the *Cilic* Panel identified factors such as whether the athlete read the product label, cross-checked the label against the ingredients on the prohibited list, made an internet search of the product and consulted appropriate experts. *Cilic*, ¶ 74.

6.36 Ms. Efimova does not fare very well on consideration of these traditional objective elements of fault, however, notably, one reason for her lack of inquiry is that she intended to purchase only L-

⁷ *Armstrong*, ¶8.46; *Kendrick v. ITF*, CAS 2011/A/2518, ¶10.20(b).

⁸ *Kendrick*, ¶10.20(a).

⁹ Although the *Cilic* case is a specified substances case (i.e., a case decided under Article 10.4 of the World Anti-Doping Code), it remains helpful for its analysis of the factors relevant to a fault analysis.

carnitine and did not intend to purchase a multi-ingredient workout supplement. Consequently, checking the ingredient label, while it should have been done, was perhaps of slightly reduced relevance to her because she thought she knew what was in the product. In this respect her situation bears some resemblance to cases such as *Klineman*, *Squizzato*, *Canas v. ATP Tour*, CAS 2005/A/951, and *USADA v. Brunemann*, AAA No. 77 190 E 00447 08 JENF (2009), all cases where the athlete failed to consult the label of the product because the athlete thought they knew what they were getting but were mistaken.

6.37 Another factor, considered by the *Cilic* Panel under the concept of the objective element of fault is whether the product is marketed to athletes as having a performance enhancing purpose. For instance, the *Cilic* Panel noted that a product called “Muscle Pro” would create a higher duty of care.¹⁰

6.38 The FINA DP finds that there was nothing about the label of Cellucor CLK which would induce such a higher level of care. The label of the Cellucor CLK product does not address athletic performance or any other use of the product that should induce higher scrutiny. Therefore, this objective element weighs in favor of a finding of reduced fault.

6.39 In terms of the subjective element of the level of fault as discussed in the *Cilic* case, Ms. Efimova’s situation presents a number of subjective considerations which serve to reduce her personal level of fault.

¹⁰ *Cilic*, ¶ 75.

6.40 The *Cilic* Panel and other cases identify the athlete's youth or inexperience as a relevant factor.¹¹ In Ms. Efimova's case the FINA DP has taken note of Ms. Efimova's relatively young age, as well as the relative unfamiliarity of the environment in which she was living, having moved from Russia to Los Angeles.

6.41 The *Cilic* Panel pointed out that language problems can also be a relevant factor.¹² This factor as well likely contributed somewhat to Ms. Efimova's use of the Cellucor CLK product and therefore diminishes Ms. Efimova's subjective fault under the circumstances of her case.

6.42 "The extent of anti-doping education received by the athlete"¹³ is also relevant. The fact that no anti-doping education was provided to Ms. Efimova by the RSF is disappointing and put her at a disadvantage in fulfilling her responsibility to be a savvy consumer.

6.43 Other "personal impairments" noted in the *Cilic* case include the facts that "an athlete has taken a certain product over a long period of time without incident" and that the athlete's "level of awareness has been reduced by a careless but understandable mistake."¹⁴ In Ms. Efimova's case, her level of awareness was clearly reduced by her mistaken belief that she was merely purchasing L-carnitine, a product which she had used for years and which she knew was not prohibited. As a consequence of this mistaken belief she did not read the product label for the Cellucor CLK product.

¹¹ *Cilic*, ¶ 76(a).

¹² *Cilic*, ¶ 76(b).

¹³ *Cilic*, ¶ 76(c).

¹⁴ *Cilic*, ¶ 76(d).

6.44 Ms. Efimova's failure to read the label of the Cellucor CLK product was negligent, but subjective considerations unique to her situation do justify evaluating her fault at a lower level than if these considerations were not present.

VII. SANCTION

7.1 As explained above, the Panel has noted that under FINA DC 10.5.2 and similar rules adopted by other International Federations, for athletes who have demonstrated: (1) the cause of their positive test, (2) a lack of intent to enhance performance, and (3) that there existed a sound subjective reason why they failed to fully evaluate or closely examine the product label for a product they used have generally received sanctions in the range of 12-21 months. See, e.g., *Squizzato* (12 months), *Klineman* (13 months), *Merritt* (21 months).

7.2 After evaluating the unique circumstances in this case and applying FINA DC 10.5.2, the FINA DP believes a sixteen (16) month period of ineligibility is appropriate.

7.3 The FINA DP recognizes that this is a strong sanction that will cause Ms. Efimova to be denied a world record as well as to sit out more than an entire season while at the height of her competitive career.

7.4 However, Ms. Efimova is a role model and an elite swimmer at the very top of her profession and so must be held to a high standard.

7.5 At the same time, the circumstances in Ms. Efimova's case are such that she should not be penalized for the entire 24 months

that would be required to be served by someone that was intentionally cheating, which she clearly was not.

7.6 Upon balancing all of the relevant factors and after considering many other cases across a wide spectrum of sports the FINA DP has concluded that a sixteen (16) month period of ineligibility is both just and fair under the circumstances of this case.

7.7 Pursuant to FINA DC 10.9.2 due to her timely admission, waiver of the B sample analysis and acceptance of responsibility Ms. Efimova's period of ineligibility shall run from 31 October 2013, the date of sample collection.

7.8 According to FINA DC 10.8 all competitive results obtained from the date of a positive sample through the commencement of any provisional suspension or ineligibility period shall, unless fairness requires otherwise be disqualified.

7.9 Therefore, all competitive results of Ms. Efimova from 31 October 2013, including her world record achieved on 10 November 2013, through and including the date of this decision shall be disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

VIII. SUMMARY OF THE DECISION

8.1 Ms. Yulia Efimova receives a sixteen (16) month period of ineligibility commencing on 31 October 2013, and ending at the conclusion of 28 February 2015, for her first anti-doping rule violation.

8.2 All results obtained by Ms. Efimova on or after 31 October 2013 and through and including the date of this decision are

disqualified. Any medals, points and prizes achieved during that period shall be forfeited.

8.3 All costs of this case shall be borne by the RSF in accordance with FINA DC 12.2.

8.4 Any appeal against this decision may be referred to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of this judgement (FINA Rule C 12.9.3 and DC 13.6).

Robert Fox
Chairman

William Bock III
Member

Raymond Hack
Member

Signed on behalf of all three Panel Members

A handwritten signature in black ink, appearing to be 'R. Fox', written over a horizontal line.

Robert Fox