

**BEFORE NEW ERA ADR**

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| United States Anti-Doping Agency | ) |                           |
|                                  | ) |                           |
| Claimant,                        | ) |                           |
|                                  | ) |                           |
| v.                               | ) | New Era Case No. 24062803 |
|                                  | ) |                           |
|                                  | ) |                           |
| Calista Liu,                     | ) |                           |
|                                  | ) |                           |
| Respondent.                      | ) |                           |

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**CONSENT AWARD**

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This Consent Award sets forth the relevant background facts, applicable legal framework and terms upon which between the United States Anti-Doping Agency (“USADA”) and Calista Liu (“Ms. Liu”) agree regarding this matter currently pending before New Era ADR (“New Era”).

**I. BACKGROUND**

1. Ms. Liu is an 18-year-old American artistic swimming athlete who submitted an out-of-competition dried blood spot (“DBS”) sample on May 13, 2024. The World Anti-Doping Agency (“WADA”) accredited laboratory in Lausanne, Switzerland reported the sample as positive for dorzolamide at an estimated concentration of 3.6 ng/mL.<sup>1</sup>

2. Dorzolamide is a specified substance and is classified as a diuretic and masking agent according to S5 of the World Anti-Doping Agency (“WADA”)

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<sup>1</sup> Ex. 1, Laboratory Documentation.

Prohibited List. Dorzolamide is prohibited at all times except when administered via ophthalmic route (*i.e.*, via the eye).<sup>2</sup>

3. The presence of a prohibited substance in an athlete's sample and the use/attempted use of a prohibited substance are anti-doping rule violations under Articles 2.1 and 2.2 of the World Anti-Doping Code (the "Code"), respectively.

4. USADA notified Ms. Liu of her potential rule violations on June 20, 2024 and requested that Ms. Liu submit initial submissions and supporting documentation.<sup>3</sup> Ms. Liu requested testing of her B Sample on June 21, 2024<sup>4</sup> and on June 23, 2024, provided USADA with submissions and supporting documentation in response to the potential rule violations.<sup>5</sup> On June 28, 2024, before the laboratory analyzed the B Sample, Ms. Liu waived testing of her B Sample.<sup>6</sup>

5. USADA charged Ms. Liu on June 28, 2024, and Ms. Liu immediately requested a hearing.<sup>7</sup> The same day, USADA contacted New Era to initiate an expedited arbitration because Ms. Liu is scheduled to compete in multiple upcoming Protected and/or significant competitions, namely the 2024 World Aquatics Artistic Swimming World Cup Super Final on July 5, 2024.<sup>8</sup> Additionally, she has also been named as an alternate to the national team for the Paris Olympics, and teams must

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<sup>2</sup> Ex. 2, WADA Prohibited List.

<sup>3</sup> Ex. 3A, Notice Letter (June 20, 2024).

<sup>4</sup> Ex. 3B, Letter from Ms. Liu's Counsel, Yama Otung of Livida Sport (June 21, 2024)

<sup>5</sup> Ex. 8, Explanation of Calista Liu – Initial Submissions & Exhibits (June 23, 2024).

<sup>6</sup> Ex. 4, Email from Ms. Liu's Counsel, Yama Otung of Livida Sport (June 28, 2024).

<sup>7</sup> Ex. 5, Charging Letter (June 28, 2024).

<sup>8</sup> Ex. 6, New Era Initiation Letter (June 28, 2024).

be officially submitted by July 7, 2024. Therefore, the parties understand that this matter must be resolved on or before July 4, 2024.

## II. APPLICABLE RULES

6. This matter is governed by the USADA Protocol for Olympic and Paralympic Movement Testing (the “Protocol”), which has incorporated the provisions of the Code.<sup>9</sup> The relevant articles, provisions, and definitions in this matter are provided below:

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

The *Anti-Doping Organization* shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether the *Anti-Doping Organization* has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel, bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where the *Code* places the burden of proof upon the *Athlete* or other *Person* alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, except as provided in Articles 3.2.2 and 3.2.3, the standard of proof shall be by a balance of probability.

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

10.2.1 The period of *Ineligibility*, subject to Article 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 *Specified Method*, unless the *Athlete* or other *Person* can establish the anti-doping rule violation was not intentional.

10.2.2 If Article 10.2.1 does not apply, subject to Article 10.2.4.1, the period of *Ineligibility* shall be two (2) years.

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<sup>9</sup> Ex. 7, USADA Protocol for Olympic and Paralympic Movement Testing.

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

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

### ***10.15 Automatic Publication of Sanction***

A mandatory part of each sanction shall include automatic publication, as provided in Article 14.3.

### ***No Fault or Negligence***

The *Athlete* or other *Person's* establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had *Used* or been administered the *Prohibited Substance* or *Prohibited Method* or otherwise violated an anti-doping rule. Except in the case of a *Protected Person* or *Recreational Athlete*, for any violation of Article 2.1, the *Athlete* must also establish how the *Prohibited Substance* entered the *Athlete's* system.

## **III. ANALYSIS**

7. After USADA notified Ms. Liu of her positive test, Ms. Liu explained that she believed the cause was contamination through repeated exposure to her father's prescribed dorzolamide eyedrop medication, which, unbeknownst to Ms. Liu, he had taken twice per day from June 28, 2023 until the end of March 2024.<sup>10</sup> Her father routinely administered his eyedrops each day at 7:00 a.m. and 7:00 p.m. while lying down in his bed, and oftentimes, some of the medication would naturally spill

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<sup>10</sup> Ex. 8, Explanation of Calista Liu (June 23, 2024).

onto his sheets and pillows when he put the drops in his eyes.<sup>11</sup> Ms. Liu provided proof of her father's dorzolamide prescription.<sup>12</sup>

8. Ms. Liu no longer lives with her father having moved out of her family home in September 2022 aged 16, but for the past two years she has regularly visited him at her family home a few nights per month. Ms. Liu further explained that on many of these visits since her father began using his dorzolamide eyedrops, she would lie on her father's bed to talk and spend time with him each evening beginning around 8:00 p.m. and would stay on his bed from 30 to 90 minutes at a time, during which time she would have contact with her father's pillows and bedding.<sup>13</sup> When reacting to a funny or emotional story or video she shared with her father, which was not uncommon, Ms. Liu would sometimes press her face into the pillow while laughing.<sup>14</sup> Ms. Liu explained that as a young child she grew up talking and spending time with both of her parents in their beds while they relaxed and that she had continued with that family tradition when visiting her father, and treasured it all the more since she no longer lived with him.<sup>15</sup>

9. Ms. Liu's father corroborated Ms. Liu's explanation that in June 2023 he was prescribed dorzolamide eyedrops to treat his glaucoma which he administered in his bed twice daily until ceasing use in late March 2024.<sup>16</sup>

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<sup>11</sup> *Id.* at 34.

<sup>12</sup> *Id.* at 33.

<sup>13</sup> *Id.* at 2-3; Ex. 9, Calista Liu Interview Recording at 33:00.

<sup>14</sup> Ex. 9, Calista Liu Interview Recording at 16:45.

<sup>15</sup> Ex. 8, Explanation of Calista Liu (June 23, 2024) at 2-3.

<sup>16</sup> *Id.* at 36.

10. The parties are aware that dorzolamide has a half-life of approximately four months in blood and that dorzolamide has been shown to be readily absorbed through the skin.<sup>17</sup>

11. To the parties' knowledge, dorzolamide is not available in any other formulation other than eyedrop form in the United States or anywhere else in the world, and the parties are similarly unaware of a single instance involving dorzolamide eyedrops being used as a diuretic or masking agent.<sup>18</sup> As eyedrops, which are a permitted route of administration, are not intended for oral administration, which is prohibited, electrolyte imbalance, development of an acidotic state, and possible central nervous system effects may occur with dorzolamide overdosage via oral ingestion.<sup>19</sup> Timolol (the other active ingredient in the eye drops), as a beta-adrenergic blocking agent, carries with it serious side effects with overdosage via oral ingestion such as cardiac failure, severe respiratory reactions, and muscle weakness.<sup>20</sup> These factors make it extremely difficult if not impossible for anyone to use dorzolamide as a performance enhancing substance through oral ingestion, for example.

12. Ms. Liu does not compete in a weight class sport where she may otherwise benefit from a diuretic for the purpose of cutting weight.

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<sup>17</sup> Ex. 10, Dr. Fedoruk Expert Report; Ex. 8, Explanation of Calista Liu (June 23, 2024) at 38.

<sup>18</sup> Ex. 10, Dr. Fedoruk Expert Report ¶¶ 2-3.

<sup>19</sup> Ex. 10, Dr. Fedoruk Expert Report ¶ 3.

<sup>20</sup> *Id.*

13. Ms. Liu does not contest the finding of dorzolamide in her DBS sample collected on May 13, 2024, confirms that she did not use dorzolamide via eye drops, and does not contest that pursuant to Code Articles 2.1 and 2.2, she has committed anti-doping rule violations for the presence and use/attempted use of dorzolamide.

14. The parties agree that, on a balance of probabilities, Ms. Liu has established that repeated and prolonged contact with dorzolamide residue with her skin from her father's prescription eyedrops in the months preceding sample collection was the source of her positive test. The parties also agree that the concentration of dorzolamide in her DBS sample is extremely low—near the laboratory limit of detection—and is consistent with Ms. Liu's explanation of dermal exposure to residues of dorzolamide through contaminated bedding, and that Ms. Liu's negative urine sample on May 31, 2024 supports this assessment.<sup>21</sup>

#### **IV. AWARD**

In consideration of the mutual positions of the parties and their respective Counsel, the evidence and legal analysis described above, and after due deliberation, I, the undersigned Arbitrator, having been designated in accordance with the procedures of New Era ADR and having been duly sworn, hereby incorporate the terms set forth in this settlement as the Arbitrator's AWARD as follows:

1. Ms. Liu has committed an anti-doping rule violation under Articles 2.1 and 2.2 of the Code.

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<sup>21</sup> *Id.*

2. Ms. Liu did not intentionally violate the anti-doping rules under Article 10.2.1, and therefore the default period of ineligibility for the anti-doping rule violation is two years subject to further reduction.

3. Ms. Liu has met her burden that, on a balance of probabilities, prolonged and repeated exposure to a home environment contaminated with dorzolamide residue from her father's prescribed dorzolamide eyedrop medication was the source of her positive test, and that she could not reasonably have known or suspected even with the exercise of utmost caution that her actions could have caused a positive drug test. Therefore, Ms. Liu has discharged her burden of proving under Article 10.5 of the Code that she bears No Fault or Negligence with respect to her violations. Under the rules, Ms. Liu's period of ineligibility is eliminated.

4. Because Ms. Liu's sample was collected out-of-competition, there are no competitive results to disqualify.

5. Under Articles 10.15 and 14.3.2 of the Code, USADA shall publicly disclose Ms. Liu's violation.

6. The parties shall bear their own attorneys' fees and costs associated with this matter.

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



DATED: 7/3/2024

*Jeffrey Mishkin*

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Jeffrey Mishkin  
Arbitrator