

**BETWEEN:**

**(1) MAMADOU SAKHO**

**(2) MS TOP LIMITED**

**Claimants**

**- and -**

**WORLD ANTI-DOPING AGENCY**

**Defendant**

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**STATEMENT IN OPEN COURT**

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**Counsel for the First Claimant**

1. The First Claimant, Mamadou Sakho ("**Mr Sakho**"), is an elite professional footballer. Since 2017, he has played for Crystal Palace Football Club. Between 2013 and 2017 he played for Liverpool Football Club. He has played on numerous occasions for the French national senior squad, making 28 appearances between 2011 and 2016 and he was recalled in 2018. He captained the French national team at youth levels.
2. The Defendant is the World Anti-Doping Agency ("**WADA**"), which is an independent international agency responsible for setting and enforcing international standards to prevent doping in sport. In this capacity, WADA publishes the World Anti-Doping Code (the "**WADA Code**"), an international standard for anti-doping programmes and the Prohibited List, which is a list of the substances which are prohibited under the WADA Code.
3. In January 2016, WADA published the Prohibited List for 2016. The S3 Class of the Prohibited List concerned Beta-2 Agonists and provided, so far as relevant, that: "*All beta-2 agonists... are prohibited.*"

4. On 17 March 2016, Mr Sakho was selected to provide a urine doping control sample (the “**Sample**”) following a UEFA Europa League match between Liverpool Football Club and Manchester United Football Club.
5. In March 2016, UEFA sent the Sample to one of WADA’s accredited laboratories, in Cologne, Germany, to be tested (the “**Cologne Laboratory**”). The Cologne Laboratory analysed the Sample and detected the presence of Higenamine in it. Higenamine is a naturally occurring substance derived from plants and is an ingredient in a number of dietary supplements, including Alphamine, which Mr Sakho had previously taken and which was the source of the Higenamine found in the Sample.
6. The Cologne Laboratory, being uncertain as to how WADA classified Higenamine, wrote to WADA asking it to clarify its position as to the status of Higenamine. After some internal deliberation, on 21 April 2016, WADA replied that it considered Higenamine to be a Beta-2 Agonist falling within the S3 Class of the Prohibited List.
7. Upon receipt of WADA’s confirmation, the Cologne Laboratory reported an adverse analytical finding in relation to the Sample to UEFA. UEFA then commenced disciplinary proceedings against Mr Sakho, on the basis that he had breached the UEFA Anti-Doping Regulations. UEFA’s Control, Ethics and Disciplinary Body (“**CEDB**”), at Mr Sakho’s request, agreed to a voluntary provisional suspension from all matches, as a result of which Mr Sakho did not play football competitively for the remainder of the 2015/2016 season.
8. On 7 July 2016, a hearing in the disciplinary proceedings took place before the CEDB.
9. On 8 July 2016, the CEDB dismissed the case against Mr Sakho. The CEDB’s reasons for dismissing the case were published on 15 July 2016 and included a number of conclusions which were critical of WADA. In summary, the CEDB’s conclusions included that:
  - a) It had not been proven that Higenamine was on WADA’s prohibited list.
  - b) Indeed, significant doubts existed as to whether Higenamine was even a Beta-2 Agonist.
  - c) There had been a clear lack of communication by WADA, which left even its own accredited laboratories unsure about the status of Higenamine.
  - d) The fact that the majority of WADA’s accredited laboratories did not test for Higenamine at the material time was inconsistent with the principle of legal certainty.

10. The CEDB's decision stated that "[i]t is unreasonable to expect an athlete to have a greater understanding of a substance than a WADA accredited laboratory and its scientists". WADA decided not to appeal the CEDB's decision, and acknowledges and accepts that decision.
11. In January 2017, WADA specifically included Higenamine by name on its Prohibited List.
12. In a statement published to the *Daily Telegraph* on 23 August 2016 and to at least the sports digital media content provider *Perform Group* ("**the First Press Statement**"), WADA alleged that Mr Sakho was guilty of taking a prohibited, performance-enhancing substance which fell within the S3 class of WADA's Prohibited List, in breach of the WADA Code. However, his low degree of fault was such that it was uncertain whether it would justify more than the one month's suspension he had already served voluntarily.
13. In a further statement published to the *Guardian* on 20 April 2017 and to at least the sports news website *insidethegames.biz* ("**the Second Press Statement**"), WADA alleged that Mr Sakho was guilty of taking a prohibited, performance-enhancing substance which had been prohibited since 2004 and fell within the S3 class of WADA's Prohibited List, in breach of the WADA Code, and that this conduct was culpable.
14. As was foreseeable at the time of WADA's publication of the First Press Statement and the Second Press Statement, the defamatory allegations contained in them were republished by a very large number of media organisations to many millions of readers, causing very serious harm to Mr Sakho's reputation.
15. Mr Sakho brought proceedings for defamation against WADA in respect of the First Press Statement and the Second Press Statement. WADA has apologised, and agreed to pay a substantial sum by way of compensation and not to repeat the allegations.

#### **Counsel for the Defendant**

16. On behalf of WADA, I accept everything that My Learned Friend has said. WADA retracts and apologises for the defamatory allegations made in the First Press Statement and the Second Press Statement.
17. WADA accepts that it should not have made the defamatory allegations it did in the First Press Statement and the Second Press Statement given that Mr Sakho had been acquitted by UEFA. WADA accepts that Mr Sakho did not breach the UEFA Anti-Doping Regulations, did not cheat, had no intention of gaining any advantage, and acted in good faith. WADA regrets the damage

the defamatory allegations caused to Mr Sakho's reputation and the distress, hurt and embarrassment caused to him.

18. To indicate the sincerity of this apology, WADA has agreed with its insurers to pay Mr Sakho a substantial sum of damages. WADA has also agreed to bear Mr Sakho's reasonable costs.

**Counsel for the First Claimant**

19. Thank you, my Lord/Lady.