

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

ALEXANDER EMMANUEL RODRIGUEZ,

Plaintiff,

v.

MAJOR LEAGUE BASEBALL, OFFICE OF
THE COMMISSIONER OF BASEBALL and
MAJOR LEAGUE BASEBALL PLAYERS
ASSOCIATION,

Defendants.

COMPLAINT

Plaintiff Alexander Emmanuel Rodriguez (“Plaintiff” or “Mr. Rodriguez”), by his attorneys, brings this Complaint pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, to vacate the Arbitration Award of the Major League Baseball Arbitration Panel (Fredric R. Horowitz, Chair), dated January 11, 2014. In support, Mr. Rodriguez alleges as follows:

PRELIMINARY STATEMENT

1. On August 5, 2013, Major League Baseball (“MLB”) and its commissioner, Allan H. “Bud” Selig (“Commissioner Selig” or “Selig”), imposed an unprecedented 211 game suspension upon Mr. Rodriguez, alleging (without a positive test result) Mr. Rodriguez used illegal performance-enhancing substances (“PES”) that are banned under the relevant collectively bargained agreements among MLB and Major League Baseball Players Association (“MLBPA”). After Mr. Rodriguez filed a Grievance (as defined below) challenging this wholly unjustified suspension and the baseless and unprecedented allegations upon which it was premised, a 12 day arbitration hearing was held at MLB’s headquarters in New York before a three-member arbitration panel chaired by Arbitrator Fredric R. Horowitz (the “Arbitrator” or

“Arbitrator Horowitz”). The hearing culminated in an award, dated January 11, 2014, reducing the unprecedented suspension to a still wholly unjustifiable suspension of 162 games (the “Arbitration Award”).¹ This action seeks to vacate that Arbitration Award, to hold MLBPA responsible for its breaches of the duty of fair representation owed to Mr. Rodriguez prior to and during the Grievance process, and to hold MLB responsible for its violation of the collectively bargained agreements between MLB and MLBPA by imposing a suspension upon Mr. Rodriguez without just cause.

2. As set forth fully below, the Arbitration Award must be vacated because, among other things, it does not draw its essence from the collectively bargained agreements between MLB and MLBPA; it demonstrates that Arbitrator Horowitz exhibited a manifest disregard for the law; it makes clear that Arbitrator Horowitz acted with evident partiality; and the record in the arbitration makes clear that Arbitrator Horowitz refused to entertain evidence that was pertinent and material to the outcome.

3. For example, as set forth fully below, during the Grievance proceedings Arbitrator Horowitz – who has been widely described as a hard core baseball fan – repeatedly took actions that evidenced his blatant partiality toward MLB and were in disregard of well-settled legal principles. These actions include, among other things, his decisions: (i) to deprive Mr. Rodriguez of his right to select a fair and impartial arbitrator to represent his interest on the Arbitration Panel; (ii) to deprive Mr. Rodriguez of his right to face his accuser and examine Commissioner Selig, the man responsible for imposing Mr. Rodriguez’s unprecedented suspension, who was described in testimony during the arbitration as the sole ultimate decision maker; (iii) to deprive Mr. Rodriguez of his right to a full and complete cross-examination of

¹ A true and correct copy of the Arbitration Award is attached hereto as Exhibit A.

Anthony Bosch, the primary fact witness whom MLB relied upon in imposing the unprecedented suspension; (iv) to deprive Mr. Rodriguez of his right to inspect the BlackBerry devices which MLB claims contained the material correspondence between Mr. Rodriguez and Bosch concerning the alleged used of banned substances; and (v) permitting MLB and its officials – including one member of his own Arbitration Panel – to continuously leak confidential and prejudicial information concerning Mr. Rodriguez and the arbitration to the media. These are only some of the many egregious actions taken by Arbitrator Horowitz during the Grievance process, each of which standing alone warrants vacatur of the Arbitration Award; and together they demonstrate the inherent unfairness and pre-ordained result attendant to the arbitration process.

4. As if this were not enough, MLBPA – the exclusive bargaining representative for Mr. Rodriguez and all MLB players, and supposedly the most powerful union in sports – completely abdicated its responsibility to Mr. Rodriguez to protect his rights under the agreements between MLB and MLBPA by: failing to intervene to stop the continuous leaking of prejudicial information concerning Mr. Rodriguez and the Grievance by MLB and its officials; failing to stop MLB’s commencement of a sham lawsuit in Florida solely aimed at obtaining evidence to be used against MLB players like Mr. Rodriguez; and failing to stop the abusive investigative tactics taken by MLB and its investigators to obtain evidence against Mr. Rodriguez. To make matters worse, MLBPA even went so far as to make public statements to the media, through its Executive Director, falsely declaring Mr. Rodriguez’s guilt and stating that he should accept a suspension and resolve the Grievance at issue – all, of course, without Mr. Rodriguez’s consent and without even consulting with him.

5. MLBPA determined early on that it did not want to “take on” MLB over the alleged use of PES by Mr. Rodriguez and, instead, would “save its fire” for other issues where it would be across the table from MLB. As a result, it engaged in numerous acts that were arbitrary, capricious and taken in bad faith, each of which constitutes a breach of MLBPA’s duty of fair representation, and each of which have undermined the entire Grievance process to Mr. Rodriguez’s detriment.

6. This inaction by MLBPA created a climate in which MLB felt free to trample on Mr. Rodriguez’s (and indeed all players’) confidentiality rights. Indeed, just last night, in an unprecedented breach of confidentiality, Commissioner Selig, MLB COO Rob Manfred (himself a panelist at the arbitration), and MLB’s central witness, Bosch, appeared on the national television program *60 Minutes* in a long planned, pre-taped, carefully orchestrated smear campaign against Mr. Rodriguez. In this segment, extensive evidence from the arbitration was disclosed without, of course, the corresponding cross-examination and/or contrary arguments presented by Mr. Rodriguez.

7. This unseemly display further undermines the credibility of the Grievance procedure and should and will cause MLB players to have to think twice before challenging MLB’s actions in the future for fear that their entire case will be laid bare on national television, rather than respected as confidential. MLB’s intended message has already had its effect, with numerous players expressing concern that their rights are being trampled immediately upon airing of the *60 Minutes* piece.

8. In sum, as set forth fully below, the Grievance process was tainted against Mr. Rodriguez, and the Arbitration Award – which is based solely upon inadmissible hearsay and selective and unreliable documents and testimony – must be vacated.

PARTIES

9. Plaintiff, Alexander Rodriguez, is an individual residing in Tampa, Florida.

10. Defendant Major League Baseball is an unincorporated association whose members are the 30 Major League Baseball Clubs. MLB is headquartered at 245 Park Avenue, New York, New York, 10167.

11. Defendant Office of the Commissioner of Baseball (“OCB”) is an office created pursuant to the Major League Agreement entered into by the member clubs of Major League Baseball, and is located at 245 Park Avenue, New York, New York. Upon information and belief, the OCB has the power to act for and bind MLB in business matters centralized in the league.

12. Defendant Major League Baseball Players Association is a labor organization representing Plaintiff and other professional MLB ballplayers. MLBPA is headquartered at 12 East 49th Street, New York, New York 10017.

JURISDICTION AND VENUE

13. Pursuant to 28 U.S.C. § 1331, this Court has federal question jurisdiction over the claims presented herein arising under the Labor Management Relations Act of 1947, as amended (“LMRA”), 29 U.S.C. § 185.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) because Defendants conduct business in this District, Defendants are subject to personal jurisdiction in this District, and the arbitration took place in this District.

STATEMENT OF FACTS

I. BACKGROUND

15. This case arises out of the Arbitration Award dated January 11, 2014 wherein the Arbitrator upheld in part an unprecedented, 211 game suspension of Mr. Rodriguez for alleged violations of the collectively bargained agreements between MLB and MLBPA.

16. MLBPA is the union that represents professional MLB players. In 1968, it entered into the first collective bargaining agreement, the Basic Agreement (“BA”), with MLB. This agreement governs the terms and conditions of MLB players’ employment. The current agreement was entered into by MLB and MLBPA on December 12, 2011, and expires on December 1, 2016.

17. In addition, MLBPA entered into a Joint Drug Prevention and Treatment Program (the “JDA” and together with the BA, the “Agreements”) with MLB, which seeks to deter the use of banned substances, including anabolic steroids and other PES, and to “provide for... an orderly, systematic, and cooperative resolution of any disputes that may arise concerning the existence, interpretation, or application” of the policy itself.

18. MLB and MLBPA amended the Joint Drug Agreement to allow for a more rigorous system of testing and punishment for use of PES. Among the changes were: the expansion of surprise mandatory testing of ballplayers from one to two times a year, an increase

in the number of substances tested for, to a total of eighty-five, and the enlargement of penalties from a ten-game suspension for first time users to fifty games, and from a thirty to a 100 game suspension for a second offense. These penalties for PES usage remain in effect today.

19. In January 2013, the JDA was once again amended, this time to allow for the use of in-season testing for human growth hormone, and other enhanced testing techniques.

20. In addition to setting forth a disciplinary structure for PES use, the JDA recognizes that the confidentiality of player information is “essential to the Program’s success” and prohibits the revelation of information “relating to a Player’s involvement in the Program.”

21. The Notice of Discipline in this matter was served on August 5, 2013 pursuant to Section 7.G.2 of the JDA and Article XII(B) of the BA. The Notice of Discipline – signed by Commissioner Selig – imposed an unprecedented 211 game suspension on Mr. Rodriguez and stated, among other things, that such suspension was based upon Mr. Rodriguez’s (i) “intentional, continuous and prolonged use and possession of [PES]” and (ii) attempts to cover up violations of the program by obstructing MLB’s investigation of Biogenesis of America, LLC (“Biogenesis”) and Bosch. The Notice was issued, in part, on the basis of evidence adduced in a lawsuit filed by MLB in Florida state court (the “Biogenesis Suit”).

22. As a result of the Notice of Discipline, Mr. Rodriguez filed a Grievance stating that the suspension “constitute[d] discipline without just cause...and [was] otherwise improper” (the “Grievance”). A 12-day arbitration Hearing occurred at MLB’s headquarters in New York on September 30, 2013 - October 4, 2013; October 16, 2013 - October 18, 2013; and November 18, 2013 - November 21, 2013 (the “Hearing”).

23. During the Hearing, MLB produced and proffered wholly unauthenticated documents and hearsay evidence – in many instances third and even fourth party hearsay – all obtained by theft, coercion or payment, as the basis for its suspension of Mr. Rodriguez. Arbitrator Horowitz permitted all of this dubious evidence to be placed into the record, and ultimately relied upon much of it in his Arbitration Award.

24. Arbitrator Horowitz ultimately issued an Arbitration Award on January 11, 2014, upholding Mr. Rodriguez's suspension in large part, resulting in a suspension of 162 games plus the 2014 postseason, if applicable. This decision clearly does not draw its essence from the Agreements; reflects the partiality of the Arbitrator; constitutes an egregious manifest disregard for the law; and highlights Arbitrator Horowitz's misconduct, specifically the exclusion of evidence pertinent and material to the controversy.

25. To make matters worse, prior to and during this Grievance process, MLBPA has idly stood by while MLB has run roughshod over the protections afforded by the Agreements. And before the arbitration process began, the Executive Director of MLBPA appeared on a national radio show, declared Mr. Rodriguez's guilt based on his review of the evidence, and stated that he should accept some amount of punishment. Such behavior makes clear beyond cavil MLBPA's own prejudicial attitudes toward Mr. Rodriguez, and demonstrates unquestionably its failure to fully and fairly defend Mr. Rodriguez. Simply put, MLBPA acted arbitrarily, discriminatorily, and in bad faith, undermining the entire Grievance process.

II. MLBPA'S BREACH OF THE DUTY OF FAIR REPRESENTATION

26. As Mr. Rodriguez's exclusive collective bargaining representative, MLBPA has a duty to represent all MLB players, including Mr. Rodriguez, fairly, in good faith, and without

discrimination pursuant to federal labor law. MLBPA has violated this duty at every turn of MLB's campaign against Mr. Rodriguez by, among other things: (i) refusing to act upon Mr. Rodriguez's requests that MLBPA object to MLB's breaches of the Agreements; (ii) refusing to act on Mr. Rodriguez's multiple requests to intervene in and seek dismissal of a sham state court proceeding designed to inappropriately amass evidence against Mr. Rodriguez; and (iii) making derogatory public statements about Mr. Rodriguez, including its Executive Director appearing on a national radio show, declaring Mr. Rodriguez's guilt based on his review of the evidence, and stating that he should accept some amount of punishment. Despite having these issues brought to its attention, MLBPA refused to allow Mr. Rodriguez to select an arbitrator of his choosing. These violations by MLBPA seriously undermined the fairness and impartiality of the arbitration process and Mr. Rodriguez's Grievance.

A. MLBPA's Failure to Act in Response to MLB's Rampant Breaches of the Confidentiality Provisions of the JDA

27. Despite the firm restrictions on the disclosure of any information concerning an investigation into compliance with the JDA, or even its existence, MLB and its agents violated the letter and spirit of the agreement by continuously leaking information about the investigation into Mr. Rodriguez to multiple media outlets. As a result, the play-by-play of MLB's investigation into Mr. Rodriguez and other players was reported on a daily basis in newspaper reports and media outlets around the country. Despite Mr. Rodriguez's appeals to take action in the face of such blatant violations, MLBPA arbitrarily stood by and permitted MLB to breach the Agreements, in violation of the union's duty to fairly represent Mr. Rodriguez's interests.

28. The JDA prohibits MLB and MLBPA from disclosing information concerning the investigation or testing conducted, or discipline enacted pursuant to the JDA to "the public, the

media or other Clubs.” Moreover, the JDA prohibits revealing “[a]ny and all information relating to a Player’s involvement in the Program, including...the results of any Prohibited Substance testing to which the Player may be subject, and any discipline imposed upon the player.” The **only** public disclosure permitted by the JDA is the name of a player suspended pursuant to the agreement, and the term of the suspension.

29. MLB has consistently violated the confidentiality provision of the JDA by leaking information, and misinformation, concerning the discipline imposed upon Mr. Rodriguez and the supposed evidence amassed by MLB. Indeed, despite the fact that the only public disclosure that should have been made was that Mr. Rodriguez had been suspended for 211 games, MLB disseminated details about Mr. Rodriguez’s suspension on the day it was issued in a press release stating:

Rodriguez’s discipline under the Joint Drug Prevention and Treatment Program is based on his use and possession of numerous forms of prohibited performance-enhancing substances, including Testosterone and human Growth Hormone, over the course of multiple years. Rodriguez’s discipline under the Basic Agreement is for attempting to cover-up his violations of the Program by engaging in a course of conduct intended to obstruct and frustrate the Office of the Commissioner’s investigation.

30. Both before and after the issuance of the Notice of Discipline, MLB leaked “chapter and verse” about its investigation and the suspension. Such leaks have included:

- **February 1, 2013:** Several sources, speaking on the condition of anonymity, told ESPN that documents they reviewed detailed the drug regimens and schedules Mr. Rodriguez allegedly received.²

² T.J. Quinn and Mike Fish, Sources: *Bosch injected A-Rod*, ESPN, (February 1, 2013), available at http://espn.go.com/espn/otl/story/_/id/8904501/operator-miami-clinic-linked-peds-mlb-treated-yankees-alex-rodriguez-directly.

- **June 5, 2013:** “Two baseball sources” told the *New York Daily News* that MLB was hoping to consummate a deal that would lead to a “100-game” suspension for Mr. Rodriguez.³
- **June 26, 2013:** “[S]ources close to the ongoing drama” told the *New York Daily News* that Mr. Rodriguez intended to claim that he was physically unable to perform immediately after returning to the active roster so that he could collect his entire salary before MLB suspended him. The source was quoted as saying: “It’s all about him getting his money and not losing it to suspension.”⁴
- **July 22, 2013:** ESPN reported that “sources familiar with the investigation” said the evidence connecting Rodriguez to Biogenesis is “far beyond” what the league had against Braun.⁵
- **July 31, 2013:** A “person familiar with the discussions” told the Associated Press “on condition of anonymity because no statements were authorized,” that MLB was “threatening to kick Mr. Rodriguez out of the game for life unless the New York Yankees star agrees not to fight a lengthy suspension for his role in the sport’s latest drug scandal.”⁶
- **August 4, 2013:** Sources “familiar with baseball’s investigation” told *Sports Illustrated* that MLB was prepared to announce Mr. Rodriguez’s suspension for the remainder of this season and all of next season for allegedly using PES and interfering with MLB’s investigation. They further noted that the planned suspension could effectively end Mr. Rodriguez’s career.¹⁰
- **August 5, 2013:** *New York Daily News* reporter Bill Madden appeared on a news show on SNY TV, stating that baseball sources told him that they did not seek a lifetime ban on Mr. Rodriguez because it would face a skeptical reception before the arbitrator, and because the 211 game ban would effectively end Mr. Rodriguez’s career.

³ Bill Madden, *JUICE IS SPILLING MLB seeks to ban A-Rod & others with clinic founder near deal to share detail*, N.Y. DAILY NEWS, (June 5, 2013), at Sports p. 56.

⁴ Bill Madden, *Yankees' Alex Rodriguez planning to return and retire to collect fat salary before MLB suspension hits: sources*, N.Y. DAILY NEWS, (June 26, 2013), available at <http://www.nydailynews.com/sports/i-team/sources-a-rod-hoping-cash-114-m-mlb-nails-article-1.1383664#ixzz2bxQjD689>.

⁵ Wallace Matthews, *Source: A-Rod tries to make deal with MLB*, ESPN, (July 22, 2013), available at http://espn.go.com/blog/new-york/yankees/post/_/id/60347/source-a-rod-trying-to-make-deal-with-mlb.

⁶ Ronald Blum, *Person familiar with discussions: MLB threatening Rodriguez with lifetime ban in drug probe*, ASSOCIATED PRESS, (July 31, 2013), available at <http://www.startribune.com/sports/twins/mlb/217708251.html>.

¹⁰ Tom Verducci, *Years of Mistrust Color MLB's Impending Suspension of Alex Rodriguez*, SPORTS ILLUSTRATED, (August 4, 2013), available at <http://mlb.si.com/2013/08/04/alex-rodriguez-suspension-mlb-biogenesis-ped/>.

- **August 5, 2013:** The Associated Press reported specific details of the “confidential” evidence MLB amassed against Plaintiff and the other suspended ballplayers, including, BlackBerry instant message transcripts, records of text messages, and Facebook profiles.⁷
- **August 19, 2013:** In an interview with ESPN’s Outside the Lines, T.J. Quinn stated that he had “seen” and received descriptions of certain of MLB’s alleged evidence concerning Mr. Rodriguez.
- **September 1, 2013:** *New York Post* reporter Joel Sherman reported details of MLB’s evidence obtained from Bosch, including the timing of alleged PES usage.⁸
- **September 24, 2013:** The *New York Daily News* stated that MLB will open the proceedings and produce Bosch, who is expected to authenticate and explain what sources have described as a devastating trove of documentary evidence.⁹
- **September 27, 2013:** “One baseball person” told the *New York Daily News* regarding Mr. Rodriguez that “What you have here is a player who has purposely engaged in activity designed to save his butt, despite the fact that he knows damn well he’s guilty.”¹⁰
- **October 2, 2013:** The *New York Daily News* incorrectly reported that Mr. Rodriguez’s “introduction” to his case included the argument that he believed he was taking innocent legal supplements, although he was obtaining illegal supplements from Bosch.¹¹
- **October 16, 2013:** The *New York Daily News* reported that during Bosch’s testimony in the Hearing, the Biogenesis founder “authenticated a pile of documents and electronic communications” that MLB says reflect the League’s conclusion that Rodriguez acquired banned substances from Bosch.¹²

31. MLB’s leaks were not limited to allegations concerning Mr. Rodriguez’s

supposed PES use and his suspension. In April 2013, media outlets started reporting

⁷ *Electronic trail helped MLB with bans*, ASSOCIATED PRESS, (August 5, 2013), available at http://espn.go.com/mlb/story/_/id/9546552/mlb-built-biogenesis-case-facebook-texts-report-says.

⁸ Joel Sherman, *2009 Words Get in the Way of A-Rod’s 2013 PED Explanation*, N.Y. POST, (September 1, 2013) available at http://www.nypost.com/p/sports/more_sports/words_get_in_way_of_rod_ped_explanation_PA0Qn88DiFSikUm1ryRztM/1.

⁹ Teri Thompson, Michael O’Keefe, Christian Red and Nathaniel Vinton, *Yankees slugger Alex Rodriguez, MLB set to take swings in PED duel*, N.Y. DAILY NEWS, (September 24, 2013), available at <http://www.nydailynews.com/sports/i-team/juicy-fight-a-rod-mlb-set-swings-ped-duel-article-1.1466734>

¹⁰ Bill Madden, *A-Rod done both on and off field*, N.Y. DAILY NEWS, (September 27, 2013), at Sports p. 56.

¹¹ Teri Thompson, Michael O’Keefe, Christian Red and Nathaniel Vinton, *Alex Rodriguez tells panel he was duped into taking steroids: source*, N.Y. DAILY NEWS, (October 2, 2013), available at <http://www.nydailynews.com/sports/i-team/a-rod-tells-panel-duped-steroids-source-article-1.1473603>.

¹² Teri Thompson, Michael O’Keefe, Bill Madden and Nathaniel Vinton, *MLB’s HEAVY HITTER COO Manfred up next in A-Rod case*, N.Y. DAILY NEWS, (October 16, 2013), at Sports p. 59

(incorrectly) that Mr. Rodriguez interfered with MLB's investigation by attempting to pay off witnesses and buy and destroy incriminating documents. The leaked reports, either explicitly or implicitly attributed to MLB and its agents include:

- **April 12, 2013:** "Multiple baseball sources" told the *New York Daily News* that Mr. Rodriguez bought Biogenesis documents in order to keep them from MLB investigators.¹³
- **April 12, 2013:** *Yahoo Sports* reported that according to "two people briefed on the matter," investigators for Major League Baseball uncovered evidence that a representative of Alex Rodriguez purchased medical records from a person connected to Biogenesis.¹⁴

32. One particularly egregious example of MLB's leaks was vividly demonstrated on August 13, 2013, when *New York Daily News* columnist Bill Madden appeared for an interview on WFAN's Mike Francesa Show where he discussed confidential details of Mr. Rodriguez's investigation, punishment, and appeal. Mr. Madden stated several times in the interview that the information he discussed was known only to MLB, and was provided to Madden by MLB officials.

33. On August 22, 2013, in response to Mr. Madden's statements, Mr. Rodriguez implored MLBPA to take action and defend his rights by initiating a Grievance against MLB, or by other means. In a reply letter, dated that same day, MLBPA declined to do so and simply stated it "disagreed" with Mr. Rodriguez's contention that the MLBPA had failed to fairly and effectively represent his interests in connection with the matter

¹³ Bill Madden, *Sources: Alex Rodriguez bought Biogenesis documents as MLB probe into latest doping scandal intensifies*, N.Y. DAILY NEWS, (April 12, 2013), available at <http://www.nydailynews.com/sports/i-team/sources-a-rod-bought-biogenesis-documents-article-1.1315322#ixzz2bs4HyThO>.

¹⁴ Mark Townsend, *Reports: Representatives for Alex Rodriguez purchased Biogenesis documents*, YAHOO SPORTS, (April 12, 2013), available at <http://sports.yahoo.com/blogs/mlb-big-league-stew/report-representatives-alex-rodriguez-purchased-biogenesis-documents-222949996--mlb.html>.

34. On September 27, 2013, the *New York Law Journal* stated that the *Daily News*, which clearly has become MLB's paper of record, sought sealed and confidential grand jury testimony. In its request, the *Daily News* cited a "'good faith' belief" that the documents pertained to Mr. Rodriguez. MLB also sought this same confidential information. On the same day the *Daily News* attempt was disclosed, Mr. Rodriguez requested that MLBPA bring this outrageous conduct to Arbitrator Horowitz's attention. MLBPA declined this invitation.

35. On October 23, 2013 the *Daily News* described BlackBerry Messenger conversations between Mr. Rodriguez and Tony Bosch that were central to MLB's case against Mr. Rodriguez, and as such, were to remain confidential.¹⁵

36. In response, shortly thereafter, Mr. Rodriguez pled with MLBPA to take "immediate and forceful action" to "remedy the untenable state of affairs" created by MLB's blatant disregard for its confidentiality obligations. Mr. Rodriguez requested that the MLBPA institute an action in federal court seeking the enforcement of the confidentiality provisions of the Agreements. Such action remained the only possible remedy as MLB repeatedly ignored the orders and admonitions of confidentiality from Arbitrator Horowitz. In response, the MLBPA refused, stating that the proper venue was the ongoing Grievance procedure – a procedure that had proven entirely ineffective at halting MLB's media campaign.

37. In the face of MLB's consistent disregard of its confidentiality obligations under the Agreements, Mr. Rodriguez repeatedly appealed to the MLBPA to take action and to stop MLB's incessant leaks to the media. MLBPA, apparently fearful of standing up to MLB, and

¹⁵ Teri Thompson and Michael O'Keefe, *Legal Team Admits Alex Rodriguez Bought Evidence Linked to Biogenesis Investigation*, N.Y. DAILY NEWS, (October 23, 2013), available at <http://www.nydailynews.com/sports/i-team/a-rod-reps-yes-bought-evidence-stand-article-1.1494837>.

without good reason, did nothing to stop these blatant violations of the Agreements, completely abdicating the responsibility owed to Mr. Rodriguez and undermining the credibility of the arbitration process.

38. As noted earlier, MLB's tactics continue to date, with the airing of extensive evidence from the arbitration proceeding on last night's episode of *60 Minutes*.

**B. MLB's Suit Against Biogenesis And
MLBPA'S Failure to Take Any Action in Response**

39. In January 2013, the *Miami New Times*, a free weekly tabloid, published documents provided to it by Porter Fischer, a disgruntled former employee of Biogenesis, an anti-aging clinic located in Coral Gables, Florida. The documents purportedly identified a number of MLB players who used the clinic to obtain human growth hormone and other PES. Mr. Fischer's stated purpose in releasing the documents he stole from Biogenesis was to embarrass the owner of the clinic, Bosch, who Fischer believed owed him some back pay and other monies. Among the players allegedly connected to Biogenesis was Mr. Rodriguez.

40. Upon information and belief, MLB had been investigating Biogenesis to little effect since the summer of 2012. The *Miami New Times* publication, however, breathed new life into MLB's inquiry. MLB and Commissioner Selig quickly jumped at the opportunity to appear tough on PES, and, although more than a dozen players were identified in the Biogenesis documents, Mr. Rodriguez soon became the main target of MLB's highly publicized investigation.

41. On March 22, 2013, MLB sued Bosch, Biogenesis and others in Miami-Dade County Circuit Court, in order to obtain discovery of the Biogenesis documents discussed in the

Miami New Times article, among others. Although MLB alleged that the defendants in the Biogenesis Suit were causing harm to MLB through tortious interference, MLB's true purpose for the Biogenesis Suit was to seek "evidence" that would allow MLB to publicly shame Mr. Rodriguez and to interfere with his career and business dealings.

42. MLB's suit was immediately criticized by the sports and legal community as lacking merit, and for skirting the procedural safeguards concerning MLB investigations found in the Agreements. For example, one attorney affiliated with NBC Sports wrote that MLB's suit was: "[A] transparent and cynical attempt by Major League Baseball to obtain documents to discipline its employees, not an attempt to vindicate an actual legal injury, and courts do not like to be used in such a fashion... They are now suing with the sole intent of getting documents. Which is problematic because the purpose of the legal system is to redress legal injury, not to be used as a cudgel in some employment dispute involving non-parties to the lawsuit or to help sports leagues with their public relations problems."¹⁶

43. Similarly, a University of Georgia sports law professor opined in a Reuters article that he "doubt[s] Major League Baseball cares much about getting damages from these people... It's about getting to the discovery."¹⁷ A columnist for *Sports Illustrated* called the Biogenesis Suit "a desperation move with little chance of success." Such statements regarding the true purpose of the Biogenesis Suit have proven accurate.

¹⁶ Craig Calcaterra, *Major League Baseball's lawsuit against Biogenesis should be laughed out of court*, NBC HARD TALK SPORTS, (March 22, 2013), available at <http://hardballtalk.nbcsports.com/2013/03/22/major-league-baseballs-lawsuit-against-biogenesis-should-be-laughed-out-of-court/>.

¹⁷ Joseph Ax, *Analysis: In suing clinic over drugs, U.S. baseball may be targeting players*, REUTERS, (March 24, 2013), available at http://articles.chicagotribune.com/2013-03-24/sports/sns-rt-us-usa-baseball-lawsuitbre92n0mw-20130324_1_biogenesis-florida-clinic-miami-new-times.

44. Immediately after filing its complaint, MLB began aggressively pursuing discovery, serving subpoenas for documents and testimony on numerous parties and non-party witnesses including Carlos Acevedo, Juan Carlos Nunez, Ricardo Martinez, Biokem LLC, Porter Fischer, Marcelo Albir, BioGenesis of America LLC, Anthony P. Bosch, RPO, LLC, Paulo da Silveira, AT&T, Federal Express, and T-Mobile. This initial round of discovery was quickly followed up with additional discovery requests, served upon, at least, an additional eleven individuals and entities.

45. The swift timing and extensive scope of the discovery sought by MLB demonstrates that a plan to obtain evidence was in place well before the filing of the complaint, shedding light on the true motive for the Biogenesis Suit.

46. MLB's fervent quest for discovery did not stop with its initial subpoenas. MLB has relentlessly harassed individuals by cancelling and re-noticing depositions countless times. For example, Lazaro Collazo has been served with at least four notices and re-notices of subpoenas for videotaped deposition.

47. Likewise, on August 1, 2013 MLB requested an emergency hearing to address Mr. Fischer's compliance with subpoenas for documents despite his not being represented by an attorney. Notably, this "emergency hearing" to compel production was requested to take place on August 2nd. The matter was preliminarily heard on August 8th with a continued hearing taking place on August 21st, after MLB had imposed its discipline and Mr. Rodriguez had appealed, thus highlighting that the only "emergency" was that MLB now faced an arbitration against Mr. Rodriguez where it would have to defend its unprecedented suspension.

48. Not satisfied with the foregoing, on August 22nd, in a brazen attempt to breach Mr. Rodriguez's attorney-client privilege, and in a further attempt to gather evidence for the arbitration, MLB issued a Notice of Production from Non-Party to Black, Srebnick, Kornspan & Stumpf, Mr. Rodriguez's former attorneys, seeking documents concerning their representation of Mr. Rodriguez. Notably, such documents have no relevance to the Biogenesis Suit and, as a result, that same day, Mr. Rodriguez's counsel asked MLBPA to take action including, but not limited to, seeking to quash these baseless subpoenas – but MLBPA did nothing.

49. MLB clearly breached the Agreements by operating outside the BA to amass evidence through the Biogenesis case, and continuing to collect such evidence after Mr. Rodriguez's suspension was announced, despite the fact that such evidence can have no bearing on MLB's prior decision to suspend Plaintiff.

50. Moreover, MLB's improper tactics were not limited to subpoenas and motion practice but also included its scorched-earth approach to conducting an investigation. On June 21, 2013, the *New York Daily News* reported that the former University of Miami pitching coach Lazaro (Lazer) Collazo, a defendant in the Biogenesis Suit, told the *News* that MLB investigators intimidated him and his family at his Miami home in March seeking information concerning their investigation. Similar allegations were made by a lawyer representing another defendant in the Biogenesis Suit, Carlos Acevedo.

51. Although in its complaint, MLB claimed that it brought the Biogenesis Suit to “preserve and enhance the integrity of the game and the image of baseball” (Biogenesis Complaint ¶13), MLB Defendants quickly demonstrated that such integrity did not extend to the prosecution of their investigation.

52. First, MLB obsessed over maintaining control over the flow of information in the investigation, even at the expense of prosecuting those allegedly complicit in the doping scheme. For example, on June 10, 2013, attorneys for defendant Marcelo Albir sought discovery of documents related to MLB's investigation of Biogenesis, as well as depositions of MLB officials involved in the investigation. Rather than reveal any facts about its investigation – except those that they controlled through leaks to the media – the Commissioner voluntarily dismissed his suit against Albir, who they previously alleged distributed banned PES to MLB players (Biogenesis Complaint ¶ 31), thus demonstrating that MLB Defendants cared more about controlling the information concerning the investigation than punishing those who allegedly enabled and facilitated violations of the Joint Drug Agreement.

53. Second, while busily leaking reports to the media alleging that Mr. Rodriguez was interfering with their investigation, MLB officials were engaged in the very conduct they accused Mr. Rodriguez of perpetrating. On April 11, 2013, the *New York Times* reported that MLB officials were offering cash payments to former Biogenesis employees in exchange for their testimony. The *Times* also reported that MLB was paying a former Biogenesis employee for documentary evidence in the case. One of the baseball sources quoted in the article attempted to justify MLB's conduct by noting that the payments would not exceed "several thousand dollars." On June 20, 2013, the *Miami New Times* interviewed Porter Fischer, the former Biogenesis employee. In the interview, Fischer provided more details on MLB's attempt to bribe him. He told the *New Times* that MLB investigators offered him a \$1,000 per week

salary as a consultant if he would cooperate, and on another occasion, offered him \$125,000 for all the Biogenesis records he had and an affidavit attesting to their authenticity.¹⁸

54. Third, MLB's investigators harassed, intimidated and pressured individuals who they wanted to testify, including:

- Jorge Velasquez, the owner of Boca Body Rejuvenation Center. From January through March 2013, MLB investigators harassed and threatened Mr. Velasquez at his home and place of business. The investigators approached Mr. Velasquez's landlord, a doctor, and implied that Velasquez was under investigation by the state attorney, resulting in the landlord expelling Velasquez.
- Peter Carbone, the operator of a tanning salon. Carbone was offered \$200,000 to cooperate with MLB's investigation. When Carbone refused their offer, they harassed and persecuted him, including by impersonating police officers, and forcing his car to the side of the road while he was driving.
- Marcelo Albir, a former University of Miami ballplayer. MLB's counsel misidentified himself to Albir as a law-enforcement officer, and threatened law enforcement action if Albir did not cooperate. As discussed above, MLB dropped its claims against Albir in an effort to avoid exposing its unethical tactics.

55. MLB's ethically challenged behavior reached rock bottom in their negotiations with Bosch, the alleged mastermind who controlled Biogenesis. Multiple media outlets have reported that MLB negotiated with Bosch to drop its suit against him in exchange for his full cooperation in providing evidence and testimony against MLB players. In exchange for his assistance, MLB has also promised to provide Bosch with personal security, pay his legal bills, and indemnify him for civil liability that may arise from his cooperation. Mr. Bosch – MLB's

¹⁸ Tim Elfrink, *MLB Steroid Scandal: How Porter Fischer Exposed the Coral Gables Clinic*, MIAMI NEW TIMES, (June 20, 2013), available at <http://www.miaminewtimes.com/2013-06-20/news/mlb-steroids-alex-rodriguez/full/>.

“star” witness – is now under investigation by at least the U.S. Attorney’s Office in Miami for providing steroids to minors.¹⁹

56. While MLB was busy trampling on ballplayers’ rights in Florida state court, MLBPA sat on its hands in New York. Indeed, on June 11, 2013, counsel for Mr. Rodriguez wrote to MLBPA requesting that MLBPA “immediately intervene in the Biogenesis [Suit], move for its dismissal, and seek a stay pending a final ruling on the motion to dismiss” and “[s]imultaneously file a [g]rievance to halt MLB’s egregious investigatory tactics.” The June 11th letter, which was followed by multiple requests for MLBPA to intervene in the Biogenesis Suit, also furnished MLBPA with details of the harassing and unethical investigatory conduct perpetrated by MLB. In the face of such overwhelming wrongdoing by MLB and in response to Mr. Rodriguez’s pleas, MLBPA took no action to stem MLB’s rampant misconduct with respect to the Biogenesis Suit.

57. Again, on August 22, 2013, Mr. Rodriguez’s counsel submitted a letter to the MLBPA outlining the need for MLBPA to either intervene in the Biogenesis Suit or commence a federal lawsuit to assert preemption of MLB’s inappropriate state court lawsuit. MLBPA responded to Mr. Rodriguez’s appeals for fair representation by taking no action. To compound its wrongdoing, MLBPA, upon information and belief, leaked the August 22nd letter from Mr. Rodriguez’s counsel to the media. Indeed, an October 5, 2013 *New York Times* article reported details of the letter.²⁰

¹⁹ Julie K. Brown, *Grand jury digs into MLB steroid use*, Miami Herald, (August 16, 2013), available at <http://www.miamiherald.com/2013/08/16/3567784/grand-jury-digs-into-mlb-steroid.html#storylink=cpy>.

²⁰ Serge F. Kovalski and Steve Eder, *Rodriguez, Citing Missed Opportunities, Rejected the Players Union*, NEW YORK TIMES, (October 5, 2013), available at http://www.nytimes.com/2013/10/06/sports/baseball/a-frustrated-rodriguez-turns-on-the-players-union.html?_r=0.

58. Also on August 22nd, MLBPA refused to intervene in the Biogenesis Suit to quash a subpoena that MLB issued to Mr. Rodriguez's former public relations firm, baselessly stating that any motion would be "vigorously opposed" and was unlikely to "be decided in time to have an impact on the scope or timing of discovery."

59. In sum, MLBPA did nothing to stop the blatant violations of the BA and the JDA by MLB, nor did MLBPA seek to intervene in MLB's improper lawsuit or to file its own federal lawsuit to assert preemption of MLB's improper state lawsuit under the Labor Management Relations Act. MLBPA's failure to take action to protect the sanctity of the BA, the JDA, and the arbitration process is uniquely harmful to Plaintiff's rights since, as the players' sole collective bargaining representative, MLBPA is the best, and indeed arguably the sole, party with standing to effectively mount such a challenge. MLBPA's failure to take any action to protect Mr. Rodriguez in the wake of MLB's misconduct with respect to the Biogenesis Suit permitted MLB to improperly garner evidence against Mr. Rodriguez, which ultimately resulted in the Arbitration Award upholding most of the baseless suspension.

C. The Damaging Public Remarks Made by MLBPA

60. Michael Weiner ("Mr. Weiner") was the Executive Director of MLBPA. Mr. Weiner joined MLBPA in September 1988, became its General Counsel in 2004, and was named its Executive Director in December 2009. As MLBPA's Executive Director, Mr. Weiner was the chief officer and representative of the labor organization representing Mr. Rodriguez and the other MLBPA collective bargaining unit members.

61. On July 16, 2013, MLB's 2013 All-Star Game took place in New York. As a global audience focused its attention on professional baseball and the "Mid-Summer Classic," Mr. Weiner participated in a press conference before scores of reporters for national and, indeed, international media outlets. During that press conference, Mr. Weiner commented on MLB's investigation of the Biogenesis matter and, by implication, of Mr. Rodriguez. In doing so, however, Mr. Weiner disregarded and violated the confidentiality provisions of the JDA. The following day, Mr. Weiner was quoted in a *New York Daily News* article entitled "Union: Drug Bans Might Wait Till 2014," as saying:

Our players that deserve suspensions we will try to cope with their suspensions. Our players that don't deserve suspensions we will try to argue that they don't deserve suspensions.

62. One day later, on July 18, 2013, the *New York Daily News* published an article entitled, "Not So Fast, A-Rod: Weiner Warns Drug Cheats Could Face Major Road Block," in which Mr. Weiner was quoted saying:

I can tell you, if we have a case where there really is overwhelming evidence, that a player committed a violation of the program, our fight is going to be that they make a deal... We're not interested in having players with overwhelming evidence that they violated the (drug) program out there. Most of the players aren't interested in that. We'd like to have a clean program.

63. Those July comments seemed to "set the stage" for what was to come in August. Indeed, on August 6, 2013, Mr. Weiner appeared on Chris Russo's radio show on XM Radio to discuss his views of MLB's investigation of Mr. Rodriguez and others. When Mr. Weiner was asked whether he would advise Mr. Rodriguez to accept an offer by MLB to settle its investigation in exchange for a suspension, Mr. Weiner shockingly disclosed the advice that he had offered Mr. Rodriguez (of course without Mr. Rodriguez's consent):

I don't want to give a number [of games] *but there was a number that I gave A-Rod and advised him to take it*, and he was never given that number.

64. Mr. Weiner then was asked: "Wouldn't that be an admission that A-Rod did steroids then if you gave him a number that would have been acceptable?" In response, Mr. Weiner stated, in relevant part:

As to whether [Mr. Rodriguez] used or not, *based on the evidence we saw, we made a recommendation [to accept a suspension]...*"

65. By letter dated August 7, 2013, Mr. Rodriguez (through counsel) voiced his "extreme shock and disappointment" in Mr. Weiner's comments to MLBPA. MLBPA responded with a self-serving letter stating nothing more than Mr. Weiner's remarks in no way prejudiced Mr. Rodriguez.

66. Moreover, Mr. Weiner's statements were clearly inconsistent with MLBPA's duty to fairly and ardently represent Mr. Rodriguez, particularly because Mr. Weiner was the Executive Director of the MLBPA. Indeed, they reflect a prejudgment by MLBPA concerning Mr. Rodriguez's guilt that irreparably corrupted the arbitration process, particularly when made by his union's then highest ranking official.

67. Moreover, Mr. Weiner's conduct contravenes his own statements regarding the integrity of the Grievance process provided for by the Agreements. In a press release dated July 12, 2013, Mr. Weiner stated that "[r]epeated leaks threaten to harm the integrity [of the JDA]" and "call into question the required level of confidentiality needed to operate a successful prevention program." The statement went on to note that baseball's testing program "guarantees each player due process rights accompanied by strict confidentiality provisions." Mr. Weiner's

statements concerning Mr. Rodriguez, therefore, offend not only the MLBPA's contractual and legal obligations but its own, previously stated guidelines as well.

D. Additional Violations of the Duty of Fair Representation by MLBPA

68. In addition to disparaging Mr. Rodriguez and idly standing by as MLB violated the Agreements, MLBPA breached its duty of fair representation by failing to allow Mr. Rodriguez to appoint an arbitrator to the Arbitration Panel.

69. The Agreements provide that the parties may elect to have a Grievance decided by a three-person arbitration panel consisting of a neutral and one arbitrator each as appointed by MLB and MLBPA. In light of MLBPA's failure to adequately represent Mr. Rodriguez's interests – and particularly in light of Mr. Weiner's public comment proclaiming MLBPA's pre-judgment of Mr. Rodriguez's violation of the Agreements – Mr. Rodriguez requested that MLBPA permit him, and not MLBPA, to select the MLBPA-appointed arbitrator.

70. Despite the lack of any compelling reason to deny Mr. Rodriguez's request, but apparently fearful that a true party arbitrator would "take on" MLB forcefully, MLBPA arbitrarily refused to allow Mr. Rodriguez to select an arbitrator for the Arbitration Panel. While the arbitrator appointed by MLB at all times advocated on behalf of MLB's interests and MLB's interests alone, the MLBPA-appointed arbitrator consistently advised Mr. Rodriguez that he represented the interests of the union as a whole, and not Mr. Rodriguez individually, and thus had to act accordingly. Thus, the capricious decision by MLBPA to prevent Mr. Rodriguez from selecting an arbitrator further undermined the fairness of the Grievance arbitration.

71. Moreover, MLBPA's representation of Mr. Rodriguez at the Hearing was perfunctory at best. MLBPA continually sat on its hand throughout the Hearing all while, among other things, dubious evidence was presented to the Arbitration panel, confidential information regarding the arbitration was leaked to the media, and the Arbitrator manifestly disregarded the law. Such flagrant violations of the duty of fair representation crippled Mr. Rodriguez's ability to have the discipline adjudicated in a fair and impartial manner.

72. Finally, on the same day on which Arbitrator Horowitz issued the Arbitration Award, MLBPA released a statement contemporaneously with Arbitrator Horowitz's release of his decision, and without consultation with Mr. Rodriguez or his counsel. In its statement, MLBPA noted that: "The MLBPA strongly disagrees with the award issued today in the Grievance of Alex Rodriguez, even despite the Arbitration Panel's decision to reduce the duration of Mr. Rodriguez's unprecedented 211-game suspension. We recognize that a final and binding decision has been reached, however, and we respect the collectively-bargained arbitration process which led to the decision..."

73. Thus, despite MLBPA's disagreement with the discipline imposed upon Mr. Rodriguez, it has refused to seek an overturn of the Arbitration Award. Such an approach – where the rights of Mr. Rodriguez are trampled upon while MLBPA passively looks on – is consistent with MLBPA's frequent violations of the duty of fair representation that have pervaded Mr. Rodriguez's Grievance.

III. MLB'S BREACH OF THE COLLECTIVELY BARGAINED AGREEMENTS

74. In addition to the acts of misconduct alleged herein, MLB has also violated the Article XII of the BA between MLB and MLBPA by baselessly issuing a Notice of Discipline and suspending Mr. Rodriguez for 211 games without just cause.

75. The BA provides that “[t]he Parties recognize that a Player may be subjected to disciplinary action for just cause by...the Commissioner. Therefore, in Grievances regarding discipline, the issue to be resolved shall be whether there has been just cause for the penalty imposed. If discipline imposed upon a Player is determined to be improper by reason of a final decision under this Grievance Procedure, the Player shall promptly be made whole.”

76. With respect to Mr. Rodriguez, MLB violated the BA by imposing discipline upon Mr. Rodriguez without just cause and garnering the Arbitration Award upholding the bulk of the suspension.

77. Such breach of the BA has directly and proximately caused injury to Mr. Rodriguez by resulting in a flawed Arbitration Award which denied in large part Mr. Rodriguez's Grievance.

IV. THE ARBITRATION HEARING, DECISION, AND GROUNDS FOR VACATUR OF THE DECISION

78. Throughout the entire Grievance process, Arbitrator Horowitz acted with manifest disregard for well-settled principles of law and demonstrated evident partiality towards MLB. He also refused to hear evidence pertinent and material to the Grievance process and engaged in other misconduct which prejudiced Mr. Rodriguez's right to a fair and impartial arbitration. Further, the Arbitration Award does not draw its essence from the Agreements.

A. The Award Does Not Draw Its Essence From the JDA or BA

79. In the Arbitration Award, Arbitrator Horowitz upheld, in part, MLB's discipline of Mr. Rodriguez, suspending him for 162 games (the entirety of the 2014 MLB season) as well as the 2014 postseason. The Arbitrator's decision to impose a 162 game suspension amounted to his own brand of industrial justice as the suspension contravenes the progressive, disciplinary framework set forth in the JDA.

80. Section 7(A) of the JDA provides in relevant part:

A Player who tests positive for a Performance Enhancing Substance, or otherwise violates the program through the use or possession of a Performance Enhancing Substance, will be subject to the discipline set forth below.

1. First violation: 50-game suspension;
2. Second violation: 100-game suspension;
3. Third violation: Permanent suspension [with possible, discretionary reinstatement by the Commissioner after two years].

81. During the time frame set forth in the Notice of Discipline – 2010 to 2012 – Mr. Rodriguez was subjected to eleven drug tests pursuant to what MLB claims is the “toughest, most comprehensive” drug program in sports. Mr. Rodriguez passed each and every test he underwent. The Arbitration Award notes that Mr. Rodriguez has never been suspended for a violation of the JDA, and had passed eleven drug tests during the timeframe at issue.

82. After baselessly finding that MLB's suspension was justified, Arbitrator Horowitz should have considered Mr. Rodriguez to be a first-time offender under the JDA and thus subject to a 50 game suspension. Instead, Arbitrator Horowitz justified the unprecedented discipline imposed upon Mr. Rodriguez by coupling together multiple alleged violations of the JDA and citing the continuing nature of the alleged violations. The JDA and BA, however, do not

contemplate such an approach to disciplining MLB players as doing so eviscerates the progressive discipline set forth in Section 7(A) of the JDA.

83. Accordingly, the Arbitrator ignored the clear, disciplinary language of the JDA and suspended Mr. Rodriguez for an entire season and postseason, manifesting infidelity to his obligation to ground the Arbitration Award in the collectively bargained agreements between MLBPA and MLB. Accordingly, the Arbitration Award is not legitimate as it does not draw its essence from the JDA or BA.

84. Further, when discussing the appropriateness of Mr. Rodriguez's suspension, the Arbitrator relied upon the suspension of an MLB player that was found to have violated the JDA on multiple occasions, but deliberately ignored the suspensions of other MLB players that, like Mr. Rodriguez, had never before violated the JDA. The Arbitrator's reliance on inapposite precedent further displays the Arbitration Award's departure from the essence of the collectively bargained agreements.

85. In addition to being in contravention of the JDA, the Arbitration Award, in at least one respect, exceeds the scope of the Notice of the Discipline which suspended Mr. Rodriguez "for the remainder of the 2013 season (including postseason) and the entire 2014 regular season." By its terms, the Notice of Discipline did not suspend Mr. Rodriguez for the 2014 post-season, a penalty Arbitrator Horowitz saw fit to impose on his own accord and which further demonstrates the Arbitrator's partiality toward MLB.

B. The Arbitrator's Rulings on Testimonial Evidence Prejudiced Mr. Rodriguez and Manifestly Disregarded the Law

86. As one of the most egregious examples of his numerous erroneous rulings during the course of the arbitration, on November 20, 2013, Arbitrator Horowitz ruled that Mr. Rodriguez would not be permitted to call Commissioner Selig – the man responsible for issuing Mr. Rodriguez's unprecedented 211 game suspension – as a witness at the hearing, meaning that Mr. Rodriguez would have to engage in a Grievance proceeding without having the right to cross-examine his accuser. Mr. Rodriguez would never get an opportunity to question the man responsible for his unprecedented 211 game suspension on why the suspension was imposed, what facts Commissioner Selig relied on when imposing the suspension, or why the suspension grossly exceeded those given to other MLB players accused of taking banned substances.

87. Incredibly, while Mr. Selig did not come to the arbitration and testify under oath and subject himself to cross-examination, he saw no problem in sitting down with *60 Minutes* to discuss the reasons for Mr. Rodriguez's suspension. This, too, makes a mockery of the arbitration procedure and the confidentiality supposedly attendant to it.

88. In place of Commissioner Selig, Arbitrator Horowitz permitted Robert Manfred, Chief Operating Officer of MLB and a member of the Arbitration Panel deciding Mr. Rodriguez's Grievance, to testify as to the decision-making process underlying the Notice of Discipline issued to Mr. Rodriguez. Mr. Manfred, however, testified that he merely made "recommendations" to Commissioner Selig and that the ultimate authority rested with and was exercised by Commissioner Selig alone. As such, the ruling by Arbitrator Horowitz deprived Mr. Rodriguez of the ability to test a critical component of MLB's case.

89. Moreover, Arbitrator Horowitz's ruling placed the supposed trier of fact in the position of offering testimony on material factual issues; stripping the Hearing of any modicum of due process and undermining the impartiality of the Arbitration Panel.

90. Furthermore, Arbitrator Horowitz ruled that Mr. Rodriguez could not offer evidence concerning Bosch's treatment of other MLB players with non-banned nutritional supplements, testimony that would have corroborated Mr. Rodriguez's argument that he merely sought nutritional guidance from Mr. Bosch and was treated with non-banned nutritional supplements such as amino acids, vitamins, Bioefa, alpha lipoic acid, cider vinegar, ginseng and fish oil.

91. To compound the situation, when Arbitrator Horowitz did permit testimony, he did so in a way which ensured that such testimony would be selective and one-sided.

92. For example, Arbitrator Horowitz permitted Bosch to testify in an unfettered manner against Mr. Rodriguez on direct examination by MLB, while allowing Bosch to avoid answering material and relevant questions posed by Mr. Rodriguez on cross-examination under the guise of the Fifth Amendment.

93. Specifically, Bosch's decision to freely answer questions on direct examination waived his Fifth Amendment protections with regard to the subject matter of those questions. Because Bosch asserted his Fifth Amendment privilege during cross-examination as to questions he willingly answered during direct examination, counsel for Mr. Rodriguez did not have the opportunity to question him or challenge the veracity of his direct examination statements. Bosch's repeated assertion of the Fifth Amendment – utilized because of his concern over criminal prosecution – caused the Arbitration Panel to receive a distorted view of the truth. As a

result, the Arbitration panel was unable to develop a complete factual record on subject matters which Bosch addressed on direct examination.

94. For example, during two days of cross-examination, Bosch pled the Fifth Amendment in response to questions posed by Mr. Rodriguez's counsel regarding the following material issues:

- Bosch's illegal possession of banned and illegal substances;
- Bosch's use of forged prescription slips;
- Bosch's unlicensed practice of medicine;
- Bosch's receipt of monies from the sale of banned and illegal substances;
- The source of the banned and illegal substances Bosch provided to clients; and
- The names and inscriptions, specifically the letters "H.S." (referring to high school athletes whom he treated with steroids), appearing in Bosch's Notebooks.

95. Bosch refused to answer questions pertaining to the above-referenced topics on cross examination, despite having willingly answered questions on the same subject matter when posed by counsel for MLB. Bosch's willingness to testify on behalf of MLB on the subjects constituted a waiver of his Fifth Amendment privilege, yet Arbitrator Horowitz still permitted Bosch's selective testimony to stand.

96. By permitting Bosch to assert his Fifth Amendment privilege in response to questions on the same subject matter on cross-examination, Arbitrator Horowitz acted with manifest disregard for well-settled legal principals and excluded evidence pertinent and material to the Grievance process. Since Bosch was unable to provide a complete factual record on

subject matters which he addressed on direct examination, his direct testimony should have been stricken from the record and disregarded by the Arbitration panel.

C. The Arbitrator Prevented Mr. Rodriguez's Expert From Analyzing Key Evidence

97. Much like his one-sided rulings regarding Bosch's invocation of the Fifth Amendment, Arbitrator Horowitz allowed the same practice to ensue with respect to expert analysis of Bosch's BlackBerry devices.

98. Throughout the Hearing – and even through pre-Hearing leaks to the media – MLB trumpeted the strength of its “evidence” and specifically BlackBerry Messenger messages (“BBM”) supposedly between Bosch and Mr. Rodriguez. MLB was permitted to have two separate experts analyze the Bosch BlackBerries for purposes of adducing what MLB considered to be key evidence against Mr. Rodriguez. Despite MLB's reliance upon this evidence to issue the Notice of Discipline and suspend Mr. Rodriguez, Mr. Rodriguez was given no opportunity to conduct a review of the Bosch BlackBerries.

99. Specifically, Arbitrator Horowitz arbitrarily denied Mr. Rodriguez's request, made by letter dated September 19, 2013, to have his experts examine Bosch's BlackBerry devices, even though such devices had previously been within the exclusive possession of MLB. Rather than permit both sides to have access to such devices, in rulings dated September 24, 2013 and September 26, 2013, Arbitrator Horowitz declined Mr. Rodriguez's request and instead directed the parties to consider the use of a neutral expert (again ignoring the fact that MLB had two of its own experts analyze the devices).

100. In fact, when it became clear that Arbitrator Horowitz would not grant Mr. Rodriguez's experts access to the devices, Arbitrator Horowitz even denied Mr. Rodriguez's supplemental requests to require MLB's BlackBerry expert to: (i) provide Mr. Rodriguez's counsel with an expert report detailing his work and his findings; or (ii) be subject to a deposition prior to the time he offered testimony before the Panel. As a result, while MLB's experts were afforded an opportunity to perform whatever tests or searches of the devices he deemed necessary months previously, Mr. Rodriguez's expert was never given access to the devices.

101. Accordingly, Mr. Rodriguez's expert was not permitted to conduct his own forensic examination of the BlackBerry devices to determine whether the BBMs had been subject to manipulation, and was not permitted to search the devices for potentially exculpatory evidence. Without an independent forensic examination, Mr. Rodriguez was denied an opportunity to test the validity of the BBMs – a key piece of evidence relied upon by Arbitrator Horowitz. Indeed, when Mr. Rodriguez's expert did review the summary report prepared by MLB's expert, such report was rife with material discrepancies and other troubling inconsistencies which alone call into question the validity of the BBM evidence presented by MLB.

102. Arbitrator Horowitz's failure to permit Mr. Rodriguez to conduct an expert analysis of key evidence presented by MLB – essentially a refusal to entertain evidence which would have been material to the Hearing – was in blatant disregard of the law and displays the Arbitrator's partiality toward MLB.

D. The Arbitrator Admitted Unreliable, Inauthentic Evidence at the Arbitration

103. Arbitrator Horowitz demonstrated a manifest disregard for the law by admitting into the arbitration record and relying upon unreliable evidence, wholly unauthenticated documents, and hearsay testimony.

104. Arbitrator Horowitz consistently permitted hearsay testimony to be entered throughout the arbitration. For example, the testimony of MLB's star witness, Bosch, was rife with hearsay – even of the third, fourth and fifth party varieties – yet it was admitted into evidence as direct evidence in support of MLB's heavy burden of proof in the hearing (namely clear and convincing evidence), without any further testimony from other witnesses or supporting documents to corroborate its veracity.

105. As just one example, Arbitrator Horowitz permitted Bosch to testify that he was allegedly told by an associate of Mr. Rodriguez that Mr. Rodriguez had stated that he was interested in meeting with Bosch and becoming a Bosch client. The record created by the Arbitrator's manifest disregard of the law is rife with similar examples of indirect, attenuated and otherwise specious evidence.

106. Moreover, Arbitrator Horowitz improperly allowed MLB to admit into evidence entirely unreliable documentary evidence, and then relied upon such documents in issuing the Arbitration Award. These documents, however, were previously stolen on multiple occasions, were not original documents, bore no indicia of reliability and were illegible, out of order, and contained multiple inconsistencies. Further, Bosch – the witness provided by MLB to authenticate the documents – reviewed only a small portion of the documents, admitted that certain of the documents were not in his handwriting and otherwise failed to offer a proper basis for admission of the documents.

107. Arbitrator Horowitz's reliance upon and admission of inauthentic and unreliable evidence constitutes a manifest disregard of the law.

E. Arbitrator Horowitz Permitted Leaks of Confidential Information Throughout the Hearing

108. The Agreements contain confidentiality provisions mandating that the confidentiality of Mr. Rodriguez's Hearing be preserved at all times. Arbitrator Horowitz utterly failed to maintain the confidentiality of the Hearing and such persistent leaking of confidential information by MLB, and even the MLB-appointed arbitrator, tainted the arbitration and the resulting Arbitration Award.

109. Throughout the course of the Hearing, confidential information was consistently provided to the media by MLB. For example, on October 16, 2013, the *New York Daily News* reported that during his testimony in the arbitration sessions, Bosch "authenticated a pile of documents and electronic communications" that MLB says reflect the League's conclusion that Rodriguez acquired banned substances from Bosch. Given that the report was critical of Mr. Rodriguez, such information could only have come from MLB.

110. On October 19, 2013, Mr. Manfred – the MLB-appointed arbitrator – violated the confidentiality attaching to his own testimony by voluntarily discussing it with the media. Specifically, Mr. Manfred stated: "What I testified to was that our sole obligation was to determine whether players had violated the Basic Agreement and the Joint Drug Agreement and the enforcement of laws, baseball has been a leader through its support of the Taylor Hooton Foundation in preventing steroid abuse by young people, and we are proud of our track record in

that regard.”²¹ Mr. Manfred’s breach of the confidentiality provisions was clear as his public statements selectively described testimony that he offered at the Hearing.

111. Moreover, on October 31, 2013, Mr. Manfred made disparaging remarks regarding Mr. Rodriguez that also conveyed Mr. Manfred’s view of the evidence presented by MLB, as well as his opinion as to the weight of the evidence that had been put forth in the Hearing: “This latest, sad chapter in Mr. Rodriguez's tarnished career is yet another example of this player trying to avoid taking responsibility for his poor choices... Given the disappointing acts that Mr. Rodriguez has repeatedly made throughout his career, his expressed concern for young people rings very hollow. Mr. Rodriguez's use of PEDs was longer and more pervasive than any other player, and when this process is complete, the facts will prove it is Mr. Rodriguez and his representatives who have engaged in ongoing, gross misconduct.”²²

112. Mr. Rodriguez’s counsel brought these flagrant violations to the attention of Arbitrator Horowitz in a letter dated November 4, 2013. Rather than accede to Mr. Rodriguez’s request for MLB and Mr. Manfred to honor the confidentiality owed to Mr. Rodriguez under the Agreements, Arbitrator Horowitz stood by and continued to permit MLB to trample on the confidentiality that should have been afforded to Mr. Rodriguez and the Hearing.

113. Arbitrator Horowitz permitted these rampant breaches by MLB of the confidentiality provisions of the Agreements to continue unchecked and unabated. In doing so, Arbitrator Horowitz – a member of the National Academy of Arbitrators – not only prejudiced

²¹ *AP: Clinic sales to minors not MLB concern*, USA Today, (October 19, 2013), available at <http://www.usatoday.com/story/sports/mlb/2013/10/19/ap-clinic-sales-to-minors-not-mlb-concern/3078525/>

²² Andrew Marchand, *Rob Manfred Blasts Alex Rodriguez*, ESPN, (October 31, 2013), available at <http://espn.go.com/espn/print?id=9909186&type=story>

Mr. Rodriguez but also violated the *Code of Professional Responsibility for Arbitrators of Labor-Managements Disputes* (1972, amended 2007) (the “Code”). Section 2(c)(1) of the Code provides that “[a]ll significant aspects of an arbitration proceeding must be treated by the arbitrator as confidential unless this requirement is waived by both parties or disclosure is required or permitted by law.”

114. During the Hearing, Arbitrator Horowitz permitted another Panel member to make public statements that conveyed confidential information regarding the arbitration and otherwise failed to prevent MLB from breaching the confidentiality provisions of the Agreements. Such failure clearly violates the Arbitrator’s professional responsibility obligations and served to taint the arbitration and resulting Arbitration Award. Indeed, in the Arbitration Award, Arbitrator Horowitz paid lip service to confidentiality breaches, but failed to take action against MLB for its clear breaches.

115. The disclosure of confidential information by MLB and disparagement of Mr. Rodriguez – which went unchecked by the Arbitrator – evidences Arbitrator Horowitz’s partiality towards MLB and prejudiced Mr. Rodriguez.

F. Arbitrator Horowitz is Incentivized to Rule in MLB’s Favor

116. Arbitrator Horowitz’s manifest disregard for the law and refusal to hear all evidence pertaining to this case is not surprising in light of his partiality to MLB.

117. Under the Article XI(A)(9) of the BA, both MLB and MLBPA are empowered to terminate the impartial arbitrator appointed to oversee the Grievance process.

118. Arbitrator Horowitz has been characterized as “somewhere between ‘a casual fan and a junkie’” when it comes to baseball.²³ Beyond his love of baseball, the role of the independent arbitrator for MLB/MLBPA Grievance proceedings is known as “one of the higher profile assignments in the arbitration profession.”²⁴ As such, Arbitrator Horowitz has a deep personal interest in maintaining his position as the arbitrator of all MLB/MLBPA Grievance arbitrations.

119. Arbitrator Horowitz has an incentive to keep MLB happy with his decisions as MLB terminated his predecessor, Shayum Das. Arbitrator Das served as the MLB/MLBPA independent arbitrator for thirteen years but was terminated by MLB after he overturned the suspension of Ryan Braun, citing an unreliable chain of custody, but outraging league officials.²⁵ Das’s firing sent a clear signal to future arbitrators that job security is contingent upon favorable rulings for MLB. MLBPA, however, upon information and belief, has never terminated an arbitrator. Accordingly, Arbitrator Horowitz has personal incentives to maintain his position as the neutral arbitrator for all MLB/MLBPA arbitrations by doing MLB’s bidding.

120. This incentive is highlighted by the fact that the original suspension imposed by MLB would have kept Mr. Rodriguez off the field until the end of the 2014 season, which, not coincidentally, coincides with Commissioner Selig’s retirement.

²³ Steve Eder, *Arbitrator Becomes a Baseball Power*, N.Y. TIMES, (July 26, 2013), available at <http://www.nytimes.com/2013/07/27/sports/baseball/a-new-name-in-baseballs-investigation-the-arbitrators.html>.

²⁴ *Id.*

²⁵ Michael O’Keefe and Christian Red, *Major League Baseball fires arbitrator who ruled for Milwaukee Brewers’ Ryan Braun*, N.Y. DAILY NEWS, (May 14, 2012), available at <http://www.nydailynews.com/sports/baseball/major-league-baseball-fires-arbitrator-ruled-milwaukee-brrwers-ryan-braun-article-1.1078242>.

121. Similarly, at all times when MLB discussed a potential settlement of the Grievance with Mr. Rodriguez, it insisted upon a 162 game suspension. Lo and behold, this is the exact same suspension that Arbitrator Horowitz decided to uphold on January 11, 2014, fulfilling MLB's dual goals of "getting" Mr. Rodriguez for 162 games and keeping him off the field until Commissioner Selig retires.

CLAIMS

Count One – Breach of the Duty of Fair Representation by MLBPA

122. Plaintiff restates and re-alleges the foregoing paragraphs of this Complaint as if fully set forth herein.

123. By virtue of the foregoing facts, MLBPA has arbitrarily, discriminatorily, and/or in bad faith, breached its duty of fair representation to Mr. Rodriguez.

124. As a result of MLBPA's wrongdoing, Mr. Rodriguez has been injured, the arbitration process has been seriously undermined, and the Arbitration Award must be vacated.

Count Two – Breach of the Collective Bargaining Agreements by MLB

125. Plaintiff restates and re-alleges the foregoing paragraphs of this Complaint as if fully set forth herein.

126. By virtue of the foregoing facts, MLB violated the Labor Management Relations Act by breaching the collective bargaining agreements between it and MLBPA when it disciplined and suspended Mr. Rodriguez without just cause.

127. By virtue of said breach, Mr. Rodriguez has been injured, and the Arbitration Award must be vacated.

Count Three – Vacatur of the Arbitration Award

128. Plaintiff restates and re-alleges the foregoing paragraphs of this Complaint as if fully set forth herein.

129. By virtue of the foregoing facts, the Arbitrator demonstrated partiality, refused to hear evidence pertinent and material to the controversy, engaged in misbehavior by which the rights of Plaintiff have been prejudiced, manifestly disregarded the law and issued an Arbitration Award that does not draw its essence from the collectively bargained agreements.

130. By virtue of such violations, Plaintiff has been injured, and vacatur of the Arbitration Award is proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court enter judgment as follows:

- A. Finding that Defendant MLBPA has breach its duty of fair representation to Plaintiff;
- B. Finding that Defendant MLB has breached the collectively bargained agreements;
- C. Vacating the Arbitration Award; and

D. Entering such other and further relief as the Court deems just, proper and equitable.

Dated: January 13, 2014
New York, New York

REED SMITH LLP

By: 

James C. McCarroll, Esq.

Jordan W. Siev, Esq.

Casey D. Laffey, Esq.

599 Lexington Avenue

New York, New York 10022

Tel: (212) 521-5400

Fax: (212) 521-5450

-and-

TACOPINA SEIGEL & TURANO, P.C.

By: Joseph Tacopina, Esq.

275 Madison Avenue

New York, New York 10016

Tel: (212) 227-8877

Attorneys for Plaintiff

Alexander Emmanuel Rodriguez

Exhibit A

CONFIDENTIAL PER SECTION 6.A.3. OF THE JDA

BEFORE THE MAJOR LEAGUE BASEBALL ARBITRATION PANEL

| | | |
|-------------------------------|---|------------------------|
| in the Matter of Arbitration |) | |
| |) | |
| between: |) | Panel Decision No. 131 |
| |) | |
| MAJOR LEAGUE BASEBALL PLAYERS |) | |
| ASSOCIATION |) | |
| |) | Grievance No. 2013-02 |
| and |) | (Alexander Rodriguez) |
| |) | |
| OFFICE OF THE COMMISSIONER OF |) | |
| BASEBALL |) | |
| |) | |
| |) | |
| |) | |

Arbitration Panel: David M. Prouty, Esq., Players Association Member
 Robert D. Manfred, Jr., Esq., Office of the Commissioner
 Member
 Fredric R. Horowitz, Esq., Panel Chair

Appearances:

Players Association ("MLBPA"):

Ian M. Penny, Esq.
Matthew R. Nussbaum, Esq.
Robert A. Lenaghan, Esq.
Robert M. Guerra, Esq.

Office of the Commissioner ("MLB"):

Daniel R. Halem, Esq.
Paul V. Mifsud, Jr., Esq.
Jonathan D. Coyles, Esq.
Steven P. Gonzalez, Esq.
Patrick J. Houlihan, Esq.

CONFIDENTIAL PER SECTION 6.A.3. OF THE JDA

PROSKAUER ROSE LLP
Howard L. Ganz, Esq.
Neil H. Abramson, Esq.
Adam L. Lupion, Esq.
Joshua Fox, Esq.

Alexander Rodriguez (“Rodriguez”):

GORDON & REES LLP
Wm. David Cornwell, Sr. Esq.
Benjamin Levine, Esq.

REED SMITH LLP
Jordan W. Siev, Esq.
James C. McCarroll, Esq.
Christopher P. Hoffman, Esq.

TACOPINA SEIGEL & TURANO PC
Joseph Tacopina, Esq.
Dina Nesheiwat, Esq.
Matthew G. DeOreo, Esq.

LAW OFFICES OF HOWARD L. JACOBS
Howard L. Jacobs, Esq.

Hearings Held: September 4 and 30, 2013
 October 1-4 and 16-18, 2013
 November 18-21, 2013
 New York, New York

Executive Session: December 20, 2013

INTRODUCTION

This arbitration arises under the collective bargaining agreement (“Basic Agreement” or “BA”) between the 30 Major League Clubs (“Clubs”) and the Major League Baseball Players Association (“MLBPA”) effective December 12, 2011 [JX 1] and Major League Baseball’s Joint Drug Prevention and Treatment Program (“JDA”) established by agreement of the Office of the Commissioner of Baseball (“MLB”) and the MLBPA effective December 12, 2011 [JX 2]. MLB

CONFIDENTIAL PER SECTION 6.A.3. OF THE JDA

and the MLBPA concur that the grievance at issue has been processed pursuant to the dispute resolution procedures in the BA and JDA and is properly in arbitration before this Arbitration Panel.¹

BACKGROUND

Alex Rodriguez (“Rodriguez”) is a 38 year-old infielder with the New York Yankees. Prior to the imposed suspension at issue, Rodriguez had not been suspended by MLB for a violation of the JDA.

This case arose out of the activities of Anthony Bosch, who provided hormone replacement and nutritional medicine services to a variety of clients at his “anti-aging” clinic in South Florida. The clinic operated under a variety of names, including Biokem and Biogenesis. His parents are both physicians. In 2007, he received a doctor of medicine degree from Central America Health Sciences University School of Medicine in Belize. Bosch was never licensed to practice medicine in the United States, but he ran a nutrition program for endocrinologists in El Paso, Texas and later ran a hormone replacement, anti-aging, and nutritional program for a group of urologists in Florida. At Biogenesis, Bosch aspired to build a nutritional consulting practice with an emphasis on clinical nutrition, research, education, and product development.

One of Bosch’s clients was Jorge “Oggi” Velazquez. In 2009 or early 2010, Velazquez introduced Bosch to his friend Yuri Sucart, who is a cousin of Rodriguez. Bosch treated Sucart for excessive weight and related health issues. At some point Sucart informed Bosch that he worked for Rodriguez, who Sucart often referred to as “primo” (cousin) or “cacique” (chief). Among the supplements Bosch provided to Sucart were lozenges called troches containing testosterone obtained from compounding pharmacies. Testosterone is an anabolic steroid and one of the Performance Enhancing Substances (“PES”) that Major League Baseball Players are prohibited from possessing and/or using by the JDA. As used herein, PES refers to any substance banned under Section 2.B of the JDA.

¹ Article XI(9) of the Basic Agreement provides for arbitration by a tripartite panel composed of an impartial arbitrator and two party arbitrators, one appointed by the Players Association and one appointed by MLB. The impartial arbitrator is the Panel Chairman, and is the author of this opinion. The Players Association appointed David Prouty, its General Counsel, to serve as its party-arbitrator, and MLB appointed Robert Manfred, its Chief Operating Officer, to serve as its party-arbitrator. Under the parties’ longstanding past practice, party-arbitrators serve as advocates for the positions asserted in the arbitration by the parties they represent, and may testify as witnesses if called by either party.

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In early 2010, Sucart told Bosch that use of a troche had given him an unbelievable sense of energy recovery. Sucart added that Rodriguez had also used one and loved it because of its explosive effect. Sucart inquired if a troche would produce a positive drug test, and Bosch replied not likely because they contained a low percentage of testosterone and were fast-acting. Sucart also inquired whether Bosch recommended human growth hormone ("hGH"), another PES, for use by professional athletes. At some point, Velazquez told Bosch that Rodriguez wanted to meet him to discuss potentially becoming a client.

In late July 2010, Velazquez arranged for Bosch to meet Rodriguez with Velazquez and Sucart in Rodriguez's hotel room after a Yankees game against the Rays in Tampa. Velazquez described Bosch as the best at what he does and said Bosch could provide Rodriguez with everything he needed. Rodriguez inquired about another Bosch client, a prominent Major League Player who Bosch had supplied with various PES and who ultimately tested positive under the JDA. Bosch explained that the Player in question failed to follow his instructions and received an intramuscular injection by someone else at the wrong time. Bosch told Rodriguez that it would be nearly impossible to test positive for any PES he would supply with proper diagnostic blood testing, dosing, and timing of administration. Bosch described in detail the testosterone creams and other substances including other PES he would be recommending for use by Rodriguez.

In early August 2010, Bosch traveled to New York and met Rodriguez at his Manhattan apartment with Velazquez and Sucart present. Bosch insisted on drawing blood from Rodriguez so that he could create an appropriate protocol. Bosch drew the blood with equipment he brought and then returned to Miami with the sample. Before leaving New York, Bosch told Velazquez he required a down payment of \$10,000 to \$12,000. Bosch was assured by Velazquez that he would get the money from Rodriguez to give to Bosch on his next visit. Based on his analysis of the lab report of Rodriguez's blood sample, a consultation with a urologist, and his conversations with Sucart, who said he had taken care of Rodriguez's medical and health care issues, Bosch designed the following protocol for Rodriguez [MLB 7]:

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PHASE 1 (Aug '10)

Subcutaneous

| | | | | |
|---------------|----------|-------------|-------------|-------------|
| Morning | hGH | 1.5 [units] | 6 days "on" | 1 day "off" |
| Evening | GHRP 2/6 | 1.5 | 6 days "on" | 1 day "off" |
| Monday (Noon) | CJC 1295 | 1.3 | | |
| Friday (Noon) | CJC | 1.3 | | |

Intramuscular

| | | |
|-----------------------------|--------|--------|
| Fat Burning/Energy Cocktail | 1.5 ml | Monday |
| Amino Acid Therapy Cocktail | 1.5 ml | Friday |

Transdermal

| | | |
|---------------------|-------------|-----------------|
| Testosterone Cream | As directed | Daily (evening) |
| L-Glutathione Cream | As directed | Daily (morning) |

(or a combination of the two above creams applied in the evening)

Sublingual

| | | |
|---------------------|-------|-------------------------|
| Melatonin | 3 mg | Evening |
| Testosterone Troche | 1-3mg | Prior to game as needed |

Oral

| | |
|-------------------------------|------------------------------|
| Vitamin C | Daily/Orthomolecular Dosages |
| Omega 3,6,9 | Daily/Orthomolecular Dosages |
| DHEA [dehydroepiandrosterone] | Daily/Orthomolecular Dosages |
| Pregnenolone | Daily/Take as directed |
| Multi-Vitamin/Zinc | Daily/Take as directed |
| Clomiphene (10 day therapy) | Daily/Take as directed |

Diet

| | |
|-------------------------------------|------------------|
| Sports Nutrition & Performance Diet | Playing Days |
| Water Loss Diet | Non-Playing Days |

Chelation

Amino Acid
Free Radical
Mitochondrial Repair
Testosterone/Estrogen Balance

PHASE 2 (Sep '10)

After 30 days increase treatment to:

| | | |
|-----------------|----------|-------------|
| Morning | hGH | 1.8 [units] |
| Evening | GHRP 2/6 | 1.8 |
| Tuesday (Noon) | CJC 1295 | 1.4 |
| Saturday (Noon) | CJC 1295 | 1.4 |

6 days "on"

6 days "off"

Continue treatment for 30 days

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PHASE 3 (Oct '10)

After 30 days increase treatment to:

| | | |
|---------|-------|-------------|
| Morning | IGF-1 | 1.1 [units] |
| Evening | hGH | 1.9 |

5 days "on"
2 days "off"

Continue treatment for 30 days

PHASE 4 (Nov '10)

After 30 days increase treatment to:

| | | |
|---------|-----|-------------|
| Morning | hCG | 1.6 [units] |
| Evening | hGH | 1.6 |

5 days "on"
2 days "off"

Continue treatment for 30 days

Bosch returned to New York the following week to meet Rodriguez with Velazquez and Sucart in the same apartment. Bosch explained the entire protocol to Sucart and portions of the protocol to Rodriguez. Bosch gave Sucart pre-loaded syringes containing PES from the protocol for subcutaneous injection. Sucart took two of the syringes to Rodriguez in another room to administer as directed by Bosch. Velazquez gave Bosch \$8,000-\$10,000 in cash for payment stating the money was from Rodriguez. Thereafter, Bosch supplied Sucart with PES and other supplements contained in the protocol to administer to Rodriguez.

In 2011, Bosch met with Rodriguez at least four or five times in New York or Miami to draw blood and infuse him intravenously with substances that always included testosterone and hGH as well as CJC-1295 and GHRP 2/6 (growth hormone releasing peptides that MLB contends are banned under the catch-all provision of the JDA). Bosch made periodic adjustments to the protocol, which he fully explained to Rodriguez and Sucart. Bosch informed Rodriguez of each substance that he provided to him, and discussed the reason for including the substance in the protocol. One such adjustment was made after a visit with Rodriguez in New York [MLB 34]:

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Blood Draw Kit
4 Sub-Q [insulin] shots of IGF-1
Order Activagen
[Order] Creams: L-Glut[athione]
Test @ 10%
Troches @ 19%
Keto[profen]/Ibu[profen]
9 shots of CJC/GHRP @ .7 iv
Cal[cium/mag[nesium]/zinc x 1 AM/ 1 PM
6 shots of hGH @ 2.5 iv
DHEA PM 25-50 mg.
Amino Acids PRN daily
Vit D₃ as directed
Resveratrol as directed

That year Bosch regularly supplied Rodriguez through Sucart with PES, including the testosterone troches and creams, IGF-1 (insulin growth factor), and hGH.² For his services, Bosch was given monthly payments of \$4,000-\$6,000 in cash from Rodriguez through Velasquez.³

In late 2011, Rodriguez fired Sucart, so Bosch began supplying the PES and other supplements directly to Rodriguez. In December 2011, Bosch recorded the following protocol for Rodriguez [MLB 33]:

| | |
|----------------------|------------------------------------|
| [Blue] Testosterone | |
| Cream | PM 4 clicks |
| L-Glutathione | AM 4 clicks |
| Troche | Prior to workout |
| M – W – F | CJC and GHRP .7 AM/ .7 Noon/ .7 PM |
| T – Th | IGF-1 1.4 via iv |
| MIC | 2 x per week |
| AM Supplements: | DHEA |
| | Resveratrol |
| | Melatonin |
| | Glucosamine |
| | Alpha Lipoid acid |
| Pink [Testosterone] | |
| Cream | PRN |
| Ibuprofen/Ketoprofen | |
| Cream | |

Throughout the 2012 season, Rodriguez and Bosch communicated with each other directly by telephone, text messages, and BlackBerry messages (“BBMs”) related to the doses and timing of administration of the PES and other supplements, as well as the payments for

² The record reflects that Sucart and Bosch spoke over 400 times by telephone and exchanged 476 text messages in 2011 alone.

³ Records introduced into evidence show that A-Rod Corporation or Rodriguez made miscellaneous payments to Sucart in 2010 and 2011 totaling more than \$160,000.

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Bosch's services.⁴ Bosch and Rodriguez exchanged over 500 BBMs between March and December 2012 based on the information that was recovered from Bosch's BlackBerry devices. In addition to the BBM exchanges, the record reflects that Bosch and Rodriguez spoke on the telephone 53 times and exchanged 556 text messages in 2012.

In 2012, with Sucart no longer involved, Bosch saw Rodriguez more frequently, and Bosch personally treated Rodriguez at least twice per month. Bosch continued in 2012 to provide Rodriguez with testosterone cream, testosterone troches, hGH, IGF-1 and peptides as part of his monthly protocols. During the course of their relationship, in addition to providing Rodriguez with the infusions discussed above, Bosch personally injected Rodriguez with banned substances between four to six times, including injecting him with testosterone suspension.

The BBMs include numerous references to substances banned by the JDA. Bosch and Rodriguez used code names in the BBMs to refer to banned substances, including referring to banned substances as "food." Once when Bosch sent a message telling Rodriguez that he was going to pick up Rodriguez's "meds," Rodriguez replied "Not meds dude. Food." The BBMs between Bosch and Rodriguez are replete with references to their code names for numerous banned substances, including the following: Gummies (troches containing testosterone); Pink Food or Pink Cream (a transdermal cream containing testosterone); Blue or PM Cream (a transdermal cream containing testosterone); Liquid Soup or Red Liquid (a melted or liquefied form of a troche containing testosterone); and Cojete or Rocket (a subcutaneous syringe containing, among other things, hGH and IGF-1).

The BBMs also show that Bosch and Rodriguez discussed the possibility that Rodriguez would be tested under the JDA. For example, Bosch asked Rodriguez in a BBM sent on April 2, 2012: "[D]o u think they are going to test?" A few days later, Bosch advised Rodriguez that "[i]f by any chance they make you piss, wait the longest you can and don't use the pink until after." When Rodriguez indicated he would not be required to "piss" until after the game was over (until around "11pmish") and asked whether he could use "[p]ink" before the game, Bosch

⁴ All of these BBM's were recovered from devices used by Bosch. Rodriguez did not produce his BlackBerry or similar device, or the content of any BBMs contained on such devices, despite receiving omnibus information requests from MLB. Counsel for Rodriguez represented the Blackberry that Rodriguez used to communicate with Bosch was deactivated on March 15, 2013, and was no longer in Rodriguez's possession.

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told Rodriguez he had “[n]o worries” and was “good to go.” Rodriguez instructed Bosch in one message to “erase all these messages.”

In June 2012, Bosch used the service elevator at Rodriguez’s direction when meeting in his room at the team’s hotel in Atlanta after Rodriguez sent him a message stating “Try to use service elevators. Careful. Tons of eyes.” Similarly, when Bosch made a delivery to Rodriguez’s residence, Rodriguez instructed him not to “tell anyone your full name.” In September 2012, they met in a bathroom at a Starbuck’s in Miami. In October 2012, Rodriguez summoned Bosch to Detroit during the playoffs complaining of poor on-field performance. Bosch gave Rodriguez hGH and peptides while in Detroit.

In or around late December 2012 or early January 2013, Bosch discovered that his composition notebooks in which he recorded for several years handwritten information about his clients were missing from his office. Included in those journals were detailed notes about services he provided Rodriguez and other Major League Players. Bosch later learned those notebooks had been stolen by Porter Fischer, a Biogenesis client who became a disgruntled investor. After Bosch refused Fischer’s demands for repayment of his investment, Fischer gave the books or copies thereof to the *Miami New Times*.

Bosch informed Velazquez of the theft and the contents of his notebooks. Velazquez was upset at this news but assured Bosch he would take care of the matter. That day or the next, Velazquez told Bosch that Roy Black, then an attorney for Rodriguez, or someone in Black’s office had the notebooks, that they had been purchased from Fischer for \$10,000, and that Bosch owed Rodriguez that amount in return. Velazquez inquired about any other documents Bosch might possess that identified Rodriguez as a client, as well as Bosch’s computer. Bosch elected not to relinquish his computer or apparently any other documents to Velazquez.

On January 25, 2013, MLB received copies of letters from the *Miami New Times* to various MLB Clubs advising that an article was being prepared asserting that a Player or Players on those teams were involved in the use of PES. MLB requested the source documents from the *Miami New Times* to enable MLB to investigate those allegations, but the *Miami New Times* refused. On January 29, 2013, the newspaper published the story identifying Bosch and Biogenesis as having supplied PES to several Major League Players. Rodriguez was mentioned prominently as one of the PES users. The article included excerpts from the Bosch composition notebooks, claimed the records had been authenticated, and alleged

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the contents were accurate. Needless to say, publication of this article captured national attention and set the stage for a very public battle between MLB and Rodriguez over the veracity and consequences of those allegations.

In anticipation of imminent publication of the *Miami New Times* article, Velazquez told Bosch not to worry about anything and that Rodriguez would assign him an attorney. Bosch replied that he preferred to select his own. Bosch hired Susy Ribero-Ayala, whom he had known since childhood. Ribero-Ayala testified that the afternoon the article was published, she met with Rodriguez and his lawyers Roy Black and Jared Lopez. After some preliminary discussions, Lopez handed Ribero-Ayala a draft statement that Rodriguez's lawyers had prepared for Bosch denying the allegations in the *Miami New Times* story. Ribero-Ayala's initial reaction was that it would not be a good idea for Bosch to issue a statement of denial. Rodriguez persisted, however, noting that he had already issued a public statement that was consistent with the denial being proposed for Bosch.⁵ After further discussion, Ribero-Ayala made some edits to the draft prepared by Rodriguez's lawyers and approved the statement on behalf of Bosch. That evening, using a wire service recommended by Roy Black, Ribero-Ayala arranged for the statement's release. It read [PA 11]:

MIAMI - - (Business Wire) - -

The following is the statement made by Mr. Bosch's attorney, Susy Ribero-Ayala:

The *Miami New Times* Story dated January 29, 2013 is filled with inaccuracies, innuendo and misstatements of fact. Mr. Bosch vehemently denies the assertions that MLB players such as Alex Rodriguez and Gio Gonzalez were treated by or associated with him.

Also during this meeting on January 29, 2013, Lopez informed Ribero-Ayala that Rodriguez wished to contribute to Bosch's legal fees. After several discussions, the parties agreed the amount would be \$25,000. On February 19, 2013, \$25,000 was wired from Rodriguez to Ribero-Ayala for this purpose.

Meanwhile, on February 5, 2013, *Yahoo! Sports* published an article containing additional excerpts from the Bosch/Biogenesis documents naming Ryan Braun, Francisco Cervelli, and Danny Valencia as PES clients of Bosch. All are Major League Players whose names

⁵ Rodriguez's January 29th statement [MLB 70] read as follows:

The news report about a purported relationship between Alex Rodriguez and Anthony Bosch are not true. Alex Rodriguez was not Mr. Bosch's patient, he was never treated by him and he was never advised by him. The purported documents referenced in the story – at least as they relate to Alex Rodriguez – are not legitimate.

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were not previously disclosed in the excerpts printed by the *Miami New Times*. MLB requested and was denied by *Yahoo! Sports* those documents or any information from them about the source of those documents.⁶

Subsequent to the publication of the excerpts by the *Miami New Times*, MLB sought to purchase the Bosch composition notebooks from Porter Fischer. Fischer told MLB that he had been given those notebooks by Ricky Martinez, the Chief Financial Officer of Biogenesis. Fischer added he was told by Martinez to destroy the notebooks but he kept them instead. MLB paid Fischer \$5,000 in cash for consulting services, but Fischer ultimately rejected MLB's offer of \$125,000 for the documents. Sometime later, MLB was contacted by a man who identified himself only as "Bobby" and offered the documents for sale. MLB believed Bobby was associated with Fischer and, after some negotiations, paid Bobby \$100,000 in cash for four jump drives containing copies of Bosch's composition notebooks excerpted by the *Miami New Times*. MLB later paid Bobby an additional \$25,000 in cash for Biogenesis documents that MLB determined were not helpful to its investigation of any Player. Thereafter, MLB learned Bobby was actually a man named Gary Jones.

On March 22, 2013, MLB filed a civil complaint against Bosch and others in Miami-Dade County, Florida, alleging unlawful conduct and tortious interference with the JDA by supplying PES to Major League Players. MLB sought monetary damages from Bosch for the cost of its investigation, lost profits, injury to MLB's reputation and fan relationships which, if proven, would exceed millions of dollars. In an amended complaint filed on April 10, 2013, MLB added Bosch's brother as a defendant and subsequently initiated discovery demands from other members of Bosch's family.

On or about April 25, 2013, Bosch was cited by the Florida Department of Health for the unauthorized practice of medicine by holding himself out as a medical doctor by diagnosing and treating patients of Biokem and Biogenesis. Bosch was fined \$1,000 and assessed an additional \$4,000 in costs by the Department. On April 30, 2013, Bosch was approached outside his clinic and interviewed by Pedro Gomez with an ESPN television crew. During this interview broadcast on ESPN, Bosch falsely denied any knowledge of performance enhancing drugs, and he refused to answer any question from Gomez about Rodriguez.

⁶ MLB alleges that the documents were provided to *Yahoo! Sports* by Sitrick and Company, Rodriguez's public relations firm.

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In late May 2013, Velazquez arranged for Bosch to meet with Andrew O'Connell, an investigator working for Rodriguez. O'Connell asked Bosch to sign a document attesting that Bosch never supplied Rodriguez with PES and had no personal knowledge that Rodriguez had ever used them. Bosch insisted on having the document reviewed by his attorney. Velazquez urged Bosch to cooperate, and O'Connell made it clear there would be consideration if he signed but no specific amounts were mentioned. Bosch continued his refusal to sign before consulting his attorney. O'Connell kept the copy of the unsigned statement, and the meeting ended.

On May 31, 2013, Bruli Medina Reyes signed an affidavit in the MLB office attesting to his personal observation of Rodriguez's relationship with Bosch, and to Medina's observation of Sucart and Bosch giving Rodriguez injections. Medina is a native and resident of the Dominican Republic and has been a personal athletic trainer for many professional athletes. Medina met Rodriguez at the 2009 World Baseball Classic. Sucart had arranged for Medina to work for Rodriguez during the 2010 and 2011 seasons. Medina recanted, however, in September 2013 after speaking with Jose "Pepe" Gomez, a business associate of Rodriguez. Gomez told Medina that he would take care of him, and did so by providing Medina with legal representation expenses and separate lodging and expenses from those made available by MLB. Reyes testified herein that he felt pressured by MLB to sign the May 31, 2013 affidavit because MLB investigators told him that his visa to work in the U.S. could be in jeopardy. Medina claimed that statements in his affidavit about observing PES use by Rodriguez were false.

On June 3, 2013, MLB and Bosch entered into a mutual cooperation agreement. Bosch promised to proffer truthful information to MLB and testify if necessary regarding any Major League Player or individuals acting on their behalf regarding the acquisition, possession, or use by them of any PES. In exchange, MLB promised to dismiss Bosch and his brother from MLB's civil suit, to not seek testimony or discovery from Bosch family members, and to inform law enforcement agencies of his cooperation. MLB also promised to pay Bosch's legal fees, pay up to \$2,400 per day for personal security, and hold him harmless from civil liability from any claim brought by a Player, provided Bosch fulfilled his obligations under the agreement. In

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addition, Bosch would be allowed to discuss with anyone the history of his involvement with Players, which could result in book, movie, and/or other media deals.⁷

MLB convened an investigatory interview with Rodriguez on July 12, 2013. At that session, Rodriguez declined to answer any questions about his involvement, if any, with Bosch or Biogenesis on Fifth Amendment grounds. The parties have stipulated that Rodriguez has tested negative for PES under the JDA on the following occasions since 2010: October 5, 2010, January 19, 2011, February 19, 2011, May 25, 2011, July 7, 2011, February 24, 2012, February 28, 2012, May 8, 2012, July 3, 2012, October 17, 2012, January 31, 2013, and August 10, 2013. There were no positive tests conducted under the JDA for Rodriguez during this same period.

On August 5, 2013, Commissioner Allan H. Selig issued Rodriguez the following Notice of Discipline [JX 3]:

Dear Alex:

This letter is to inform you that, pursuant to Section 7.G.2 of Major League Baseball's Joint Drug Prevention and Treatment Program ("Program") and Article XII(B) of the Basic Agreement (and subject to the final paragraph of this letter), you are hereby suspended for 211 regular-season games (plus, if applicable, any 2013 postseason games in which you would have been eligible to play) for violating the Program and for engaging in other conduct that is materially detrimental or materially prejudicial to the best interests of Baseball. This represents a suspension for the remainder of the 2013 season (including postseason) and the entire 2014 regular-season.

Your discipline under Section 7.G.2 of the Program is based on your intentional, continuous and prolonged use and possession of multiple forms of prohibited Performance Enhancing Substances, including but not limited to Testosterone, Human Growth Hormone, and IGF-1, that you received as a result of your relationship with Anthony Bosch beginning in the 2010 championship season and ending in or about December 2012. Considering all of the facts and circumstances of which I am aware, including your statements during prior investigatory interviews regarding your knowledge of, and purported adherence to and support for, the requirements of the Program, the substantial length of time you used Performance Enhancing Substances, the quantity and variety of Performance Enhancing Substances you consumed and the frequency with which you consumed them, and your efforts to conceal such use and avoid a positive test under the Program, I have determined that your conduct in 2010, 2011 and 2012 evinces a wanton and willful disregard for the requirements of a Program that was jointly agreed to and is jointly administered by the Office of the Commissioner and the Major League Baseball Players Association ("MLBPA").

⁷ After it was reported that MLB and Bosch had entered into an agreement, Jim McCarroll, an attorney for Rodriguez, called Ribero-Ayala to ask whether there was anything Rodriguez "could do for Bosch" [TR 1598]. McCarroll subsequently emailed his contact information to Ribero-Ayala, but the two never spoke thereafter.

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Your discipline under Article XII(B) is for attempting to cover-up your violations of the Program by engaging in a course of conduct, beginning in or about January 2013, that was intended to obstruct and frustrate the office of the Commissioner's investigation of Biogenesis and Anthony Bosch.

Moreover, you should be aware that the office of the Commissioner continues to actively investigate allegations that you violated the Program in 2009 by using and possessing Prohibited Substances that you received from Dr. Anthony Galea, and whether you lied to representatives of the office of Commissioner during your April 1, 2010 and August 26, 2011 investigatory interviews on that subject. If I believe that additional discipline is warranted based on that investigation, I will issue a separate notice of discipline.

As you know, my office provided you with the opportunity to explain the allegations against you during an investigatory interview conducted on July 12, 2013 in Tampa. Despite your public proclamations of your innocence, you chose not to answer questions during that interview reportedly based on your Fifth Amendment right against self-incrimination as described in the *Ferguson Jenkins* case (Panel Decision No. 41), including questions about your use of Performance Enhancing Substances provided by Anthony Bosch, questions about attempts by you and your representatives to obstruct the office of the Commissioner's investigation, and questions regarding whether you provided truthful responses in the interviews my office conducted with you regarding your involvement with Dr. Galea. I note this not because your decision to assert the Fifth Amendment during your July 12 interview weighed in my decision regarding the appropriate level of discipline for your conduct (it did not), but rather because, as a result of your refusal to answer questions during the interview, I am unable to consider any explanations that you may have for your conduct in determining discipline. Thus, my disciplinary decision is based on evidence uncovered during the investigation, which clearly establishes your egregious violations of the Program and your violation of Article XII(B) by attempting to obstruct and frustrate our investigation.

Your suspension is effective on Thursday, August 8, 2013. You will be placed on the Restricted List and will be eligible for reinstatement at the conclusion of your suspension. In the event you commit a subsequent violation of the Program in the future, you will be suspended permanently from Major League Baseball.

I also want to make you aware that we have communicated the basis for your discipline to your collective bargaining representative, the MLBPA. Despite numerous statements to the contrary, the MLBPA has now taken the position that your discipline under the Program can only be imposed in accordance with the schedule set forth in Section 7.A. Although we believe the Union is incorrect, in the event the MLBPA prevails in your discipline must be in accordance with the schedule and Section 7.A, the number of individual violations of the Program you have committed will necessitate the discipline be converted to a permanent suspension pursuant to Section 7.A.3.

Sincerely,

Commissioner Allen H. Selig

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On August 6, 2013, MLBPA General Counsel David M. Prouty filed the instant Notice of Grievance challenging the suspension as discipline without just cause in violation of the Basic Agreement and the JDA [JX 4]. On August 13, 2013, MLB Senior Counsel Paul V. Mifsud, Jr., denied the grievance at Step 1 as without merit [JX 5]. On August 22, 2013, MLBPA Assistant General Counsel Ian Penny appealed the grievance to Step 2 [JX 6]. The instant arbitration before the Panel as constituted ensued. In accordance with the provisions of the JDA, imposition of the suspension was stayed until completion of the arbitration process.

The JDA mandates that appeals be conducted expeditiously. Hearing dates were scheduled and convened at the direction of the Panel Chairman as early and often as possible. MLB, the MLBPA, and Rodriguez were afforded a full opportunity to call and cross-examine witnesses under oath, introduce documents, and present argument. A transcript of the proceedings was prepared. Upon receipt of post-hearing briefs and reply briefs, the case was submitted for decision. No useful purpose is served by summarizing the voluminous record of evidence and argument, all of which has been reviewed and considered. Only those matters deemed necessary in deciding the suspension at issue are discussed by the Panel herein.⁸

The Panel takes arbitral notice of the fact, which is a matter of public record, that 13 Major League Players were suspended in 2013 for violations of the JDA in connection with the Biogenesis matter. The parties have represented to the Panel that those suspensions were entered into on a non-precedential basis. This means the fact or length of the suspensions may not be used as precedent or evidence in this case. For this reason, the suspensions of any and all of those Players has not been considered in any way in the development of or the rationale for the opinion and award that follows.

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⁸ The arbitration hearings in this proceeding were conducted pursuant to the "Rules of Procedure" set forth in Appendix A to the Basic Agreement. Under that provision, the Panel Chair "shall be the judge of the relevancy and materiality of the evidence offered and conformity to legal rules of evidence shall not be necessary." Prior to and in the course of the hearing, rulings were made on various evidentiary and discovery issues raised by one party or the other pursuant to this of Procedure. Those rulings, many of which were the subject of separate written orders, shall be deemed incorporated into this decision.

**EXCERPTS FROM THE JOINT DRUG PREVENTION
AND TREATMENT PROGRAM [JX 2]**

2. PROHIBITED SUBSTANCES

All Players shall be prohibited from using, possessing, selling, facilitating the sale of distributing, or facilitating the distribution of any Drug of Abuse, Performance Enhancing Substance and/or Stimulant (collectively referred to as "Prohibited Substances").

* * *

B. Performance Enhancing Substances

Any and all anabolic androgenic steroids covered by Schedule III of the Code of Federal Regulations' Schedule of Controlled Substances ("Schedule III"), as amended from time to time, and the categories of hormones and agents with antiestrogenic activity that are set forth in Nos. 68 - 73 below, shall be considered Performance Enhancing Substances covered by the Program. Anabolic androgenic steroids and agents (including hormones) with antiestrogenic activity, that may not be lawfully obtained or used in the United States (including, for example, "designer steroids") also shall be considered Performance Enhancing Substances irrespective of whether they are covered by Schedule III. The following is a non-exhaustive list of substances that shall be considered Performance Enhancing Substances covered by the Program:

58. Testosterone

65. Human Grown Hormone (hGH)

66. Insulin-like Growth factor (IGF-1), including all isomers of IGF-1 sometimes referred to as Mechano Growth Factors

67. Gonadotrophins (including LH and hCG)

* * *

6. DISCLOSURE OF PLAYER INFORMATION

A. Disclosure of Information

2. Any and all information relating to a Player's involvement in the Program, including, but not limited to, the fact or the results of any Prohibited Substance testing to which the Player may be subject, and any discipline imposed upon the Player by the Commissioner's Office shall remain strictly confidential. Notwithstanding the foregoing, if the Player is suspended by the Commissioner's Office, pursuant to Section 7 below, the suspension shall be entered in the Electronic Baseball Information System as a suspension for a specified number of days for a violation of the Program, and the only public statement from the Commissioner's Office shall be that the Player was suspended for a specified number of days for a violation of the Program. If the Player has tested positive for a Prohibited Substance, the specific substance and the category of Prohibited Substance (e.g., Performance Enhancing Substance or Stimulant) for which he tested positive may also be disclosed by the Commissioner's Office. If the Player's suspension is for a violation of Section 3.F.2 or 3.F.3, the Commissioner's Office

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may so disclose. A Player's Club may issue a public statement in response to a Player's suspension provided that a draft of the statement is sent to the Players Association at least 60 minutes prior to its issuance, and the Club considers in good faith any comments provided by the Players Association.

In addition, other than in the case of a first positive test for a Stimulant, the Commissioner's Office may, without a Player's consent, disclose the Player's status under the Program, including a Player's likely availability to his Club, and/or the reason for any discipline imposed on the Player to the General Manager of the Player's Club, who shall keep such information confidential, except that the General Manager, and only he, may disclose such information to the General Manager of a Club that has expressed an interest in acquiring such Player's contract via assignment, and that General Manager also shall keep such information confidential.

3. Decisions of the Arbitration Panel, and the record of proceedings before the Panel in matters arising under the Program, shall not be disclosed by the Parties, other than to their respective constituents (and with instructions that prohibit further disclosure), unless the Parties agree or the Panel directs otherwise. (See also Section 8.C below.)

4. Notwithstanding anything to the contrary in the Program, either Party may disclose publicly details of a Player's test results, testing history and/or the Player's challenge to discipline imposed pursuant to Section 7 below to the extent necessary to respond to any inaccurate or misleading claims by that Player that could undermine the integrity and/or credibility of the Program.

7. DISCIPLINE

A. Performance Enhancing Substance Violations

A Player who tests positive for a Performance Enhancing Substance, or otherwise violates the Program through the use or possession of a Performance Enhancing Substance, will be subject to the discipline set forth below.

1. First violation: 50-game suspension;
2. Second violation: 100-game suspension; and
3. Third violation: Permanent suspension from Major League and Minor League Baseball; provided, however, that a Player so suspended may apply, no earlier than one year following the imposition of the suspension, to the Commissioner for discretionary reinstatement after a minimum period of two (2) years. The Commissioner shall hear any such reinstatement application within thirty (30) days of its filing and shall issue his determination within thirty (30) days of the closing of the application hearing. A Player may challenge the Commissioner's determination on such application under the Grievance Procedure set forth in Article XI of the Basic Agreement and any such challenge may include a claim that a suspension beyond two (2) years would not be for just cause; provided, however, that the Arbitration Panel shall have no authority to reduce any suspension imposed pursuant to this Section 7.A.3 to a period of less than two (2) years.

* * *

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C. Failure to Comply with an Initial Evaluation or a Treatment Program [Drugs of Abuse]

A Player who is determined by the Treatment Board to have not complied with an Initial Evaluation or a Treatment Program for a Drug of Abuse (other than Marijuana, Hashish and Synthetic THC) will be subject to the discipline set forth in this Section 7.C. If the Treatment Board determines that a Player refused to submit to an Initial Evaluation, or refused to participate in mandatory sessions with his assigned health professional, the Player will be subject to discipline for just cause by the Commissioner without regard to the progressive discipline schedule set forth below. For all other violations, the Player will be subject to the following discipline schedule:

1. First failure to comply: At least a 15-game but not more than a 25-game suspension;
2. Second failure to comply: At least a 25-game but not more than a 50-game suspension;
3. Third failure to comply: At least a 50-game but not more than a 75-game suspension;
4. Fourth failure to comply: At least a one-year suspension; and
5. Any subsequent failure to comply by a Player shall result in the Commissioner imposing further discipline on the Player. The level of the discipline will be determined consistent with the concept of progressive discipline.

* * *

G. Other Violations

2. A Player may be subjected to disciplinary action for just cause by the Commissioner for any Player violation of Section 2 above not referenced in Section 7.A through 7.F above.

L. Notice of Violation

If the notification requirements of Section 3.G are satisfied, a Player will not be disciplined for a second or subsequent violation involving a Prohibited Substance that occurred prior to the time that the Player received actual notice of his first positive test result or non-analytical positive for the same Prohibited Substance, provided that the Player's discipline for his first violation was not overturned or rescinded.

EXCERPT FROM THE BASIC AGREEMENT [JX 1]

ARTICLE XII—Discipline

B. Conduct Detrimental or Prejudicial to Baseball

Players may be disciplined for just cause for conduct that is materially detrimental or materially prejudicial to the best interests of Baseball including, but

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not limited to, engaging in conduct in violation of federal, state or local law. The Commissioner and a Club shall not discipline a Player for the same act or conduct under this provision. In cases of this type, a Club may only discipline a Player, or take other adverse action against him, when the Commissioner defers the disciplinary decision to the Club.

POSITIONS OF THE PARTIES

MLB contends that Rodriguez was disciplined for just cause. MLB maintains Rodriguez committed multiple violations of the JDA over the course of three seasons by the continuous use and possession of a variety of PES. MLB asserts the multiple efforts by Rodriguez to obstruct MLB's investigation of his violations of the JDA violated the Basic Agreement. MLB argues adverse inferences be drawn from Rodriguez's failure to testify under oath in this proceeding or present other witnesses to refute the evidence of his misconduct. MLB contends the penalty in this case is appropriate and justified in light of the scope and gravity of the misconduct by Rodriguez, and that the settlements reached with other Players involved in Biogenesis cannot be considered by agreement of the bargaining parties as previously ruled upon by this Panel. Accordingly, MLB urges the grievance be denied.

Rodriguez contends MLB has failed to meet its burden of proving the alleged misconduct by clear and convincing evidence. Rodriguez argues MLB did not show he possessed and used PES and that the testimony by Bosch, his notebooks, and the BBM's are inherently unreliable, must be stricken, and can be afforded no weight. Rodriguez contends that science establishes he did not use PES. Rodriguez also asserts MLB failed to establish he obstructed MLB's investigation of Biogenesis and Bosch. Rodriguez further maintains that all of the evidence presented by MLB is irrevocably tainted by investigatory misconduct and coercion of witnesses, including Bosch. Finally, Rodriguez claims the suspension is wholly inappropriate when compared to those given other Players with alleged ties to Biogenesis and Bosch. Thus, Rodriguez asks the suspension not be upheld.

The MLBPA joins Rodriguez in the assertion that MLB has failed to prove he violated the BA or JDA as alleged in the Notice of Discipline. If any discipline is warranted, the MLBPA contends the 211-game suspension is unprecedented, inappropriate, and not supported by just cause. The MLBPA asserts the JDA provides a 50-game benchmark for a first offense which is fully consistent with penalties accorded other Players. The MLBPA further asserts there is

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significant precedent to establish that a 211-game suspension is disproportionate with the alleged offenses. Finally, the MLBPA argues that mitigation is required because of blatant misconduct by MLB by coercing Bosch to cooperate and violating Rodriguez's confidentiality rights under the JDA.

OPINION OF THE PANEL CHAIRMAN

Introduction

This is an appeal by Alexander Rodriguez of a 211-game suspension which covered the remainder of the 2013 season and the 2014 season and was issued by MLB for alleged violations of the Basic Agreement and Joint Drug Agreement. The Basic Agreement and JDA contain a grievance procedure which allows a Player who chooses to contest the validity of a suspension to have the matter decided by a neutral arbitrator. These collectively bargained agreements require MLB to have just cause to impose a suspension on any Player. This means that MLB carries the burden of establishing just cause in arbitration by demonstrating that some or all of the alleged offenses occurred, and, if so, that its imposed penalty is appropriate. The sole question presented by the parties for decision by this Panel is whether MLB had just cause to suspend Rodriguez for the remainder of the 2013 season and the 2014 season (211 games) and if not the appropriate remedy.

MLB contends Rodriguez repeatedly violated the JDA over a three-year period by use and possession of multiple banned substances. MLB asserts Rodriguez then aggravated his offenses by obstructing MLB's investigation in violation of the BA. MLB defends the 211-game suspension as appropriate given the nature, extent, and severity of his offenses. In defense of these allegations, Rodriguez through counsel flatly denies any use or possession of PES during the period in question. Rodriguez and the MLBPA assert no credible evidence has been presented by MLB which establishes any violation of the BA or JDA. Alternately, Rodriguez and the MLBPA argue MLB is prevented from imposing any penalty because of egregious misconduct during the course of its investigation. The MLBPA and Rodriguez further contend the 211-game penalty cannot be justified when compared to suspensions received by other Players for drug or PES violations.

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A review of all the evidence and argument presented by all parties in this proceeding clearly and convincingly establishes Rodriguez committed multiple violations of the JDA and BA warranting a substantial disciplinary penalty.⁹ It follows that the suspension imposed by MLB, as reduced by this Panel, will be sustained.

JDA Violations

The evidence confirms that Rodriguez used and/or possessed three discrete PES banned by Section 2.B. of the JDA during the three-year period in question: testosterone, IGF-1, and hGH. Direct evidence of those violations was supplied by the testimony of Anthony Bosch and corroborated with excerpts from Bosch's personal composition notebooks, BBMs exchanged between Bosch and Rodriguez, and reasonable inferences drawn from the entire record of evidence.

In August 2010, Bosch drew blood from Rodriguez, studied the test results, designed a protocol of PES and other supplements that Bosch and Rodriguez believed erroneously or otherwise would enhance his performance on the field. Rodriguez commenced the program that month with those substances supplied by Bosch to Rodriguez's cousin, Sucart. As shown in that protocol, Rodriguez was initially supplied hGH for use six days a week through October 2010 and then five days a week in November 2010. Testosterone was to be used daily in multiple modalities during that period. IGF-1 was added in October 2010 for daily administration, and was continued in November 2010.¹⁰ Significantly, Bosch's testimony regarding the use and possession of these three substances by Rodriguez was neither refuted nor contradicted with testimony under oath by Velasquez or Sucart, whom Bosch identified as witnesses to the violations, or by Rodriguez himself.¹¹ From these un rebutted facts, the conclusion is manifest that in 2010 Rodriguez committed three distinct violations of the JDA by use and/or possession of testosterone, IGF-1, and hGH.

⁹ The parties disagree as to the quantum of proof needed for MLB to establish a non-analytical positive in violation of the JDA and/or a violation of the BA. MLB asserts the standard is no greater than a preponderance of the evidence, while the MLBPA and Rodriguez urge the higher standard of clear and convincing evidence be applied. There is no need to resolve the dispute in this case because the violations of the JDA and BA found herein are established by clear and convincing evidence.

¹⁰ In November 2010, Bosch added hCG (human chorionic gonadotropin) to the protocol but was unable at arbitration to verify with certainty when it was alleged to have been supplied or administered to Rodriguez.

¹¹ Rodriguez elected not testify in this proceeding. Nor did Velazquez or Sucart appear as witnesses.

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In 2011, the evidence establishes Bosch continued to supply Rodriguez through Sucart with testosterone, IGF-1, and hGH. Bosch drew blood from Rodriguez in Miami or New York at least four or five times during the year for the express purpose of monitoring the effect of his protocols and, where necessary, adjusting the protocols. That year Bosch personally administered infusions to Rodriguez that always included testosterone, hGH, and other growth hormone releasing peptides ("peptides").¹² In late 2011, after Rodriguez fired Sucart, Rodriguez communicated directly with Bosch regarding his use and administration of the PES supplied by Bosch. Again, the testimony from Bosch describing these activities was not contradicted or refuted by Rodriguez, Sucart, or Velazquez, the individuals described by Bosch with firsthand knowledge of the possession, use and/or large monthly payments in cash for the PES. From this evidence, a finding Rodriguez continued to violate the JDA in 2011 by use and possession of testosterone, IGF-1, and hGH is established.

In 2012, with Sucart no longer involved, Bosch visited and treated Rodriguez directly at least twice a month with testosterone creams and troches, hGH, and IGF-1. Bosch injected Rodriguez with testosterone suspensions at least four times. BBMs exchanged between Bosch and Rodriguez confirm that Rodriguez was supplied subcutaneous syringes containing hGH and IGF-1. In October 2012, Rodriguez summoned Bosch to Detroit because he was concerned about his poor on-field performance. Bosch traveled to Detroit and delivered hGH to Rodriguez at Rodriguez's hotel. Once again, the testimony from Bosch describing the direct deliveries of banned substances to Rodriguez was not contested by testimony from Rodriguez. Based on these facts, a finding that Rodriguez continued to violate the JDA in 2012 by use and possession of testosterone, IGF-1, and hGH is also established.

Contrary to the claim of Rodriguez, the challenges lodged to the credibility of Bosch's testimony do not effectively refute or undermine the findings of JDA violations. For purposes of this case, it is accepted that Bosch was a "drug dealer" whose activities in obtaining and dispensing prescription medications, including PES, to his clients violated federal and state laws and regulations. It is recognized that immediately after the *Miami New Times* published excerpts from his notebooks, Bosch denied having supplied any PES to Rodriguez in a press release as well as in an April 30, 2013, televised interview with ESPN. On the witness stand

¹² The parties disagree whether the peptides supplied to Rodriguez are banned substances under the "catch-all" language in Section 2 of the JDA. The Panel need not resolve this question in order to resolve the discipline herein, and, in any event, the record of evidence is insufficient to make such a determination.

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herein, Bosch refused to answer by claiming a Fifth Amendment privilege many questions about his activities with other Players, clients who may be minors, the sources of the PES, or his finances related to activities not involving Rodriguez. Bosch also had refused to discuss with MLB his activities with Rodriguez or other players named by the *Miami New Times* until he entered into the June 3, 2013 mutual cooperation agreement. In exchange for providing truthful information, MLB promised to dismiss Bosch and his brother from its civil suit, refrain from seeking information or discovery from other Bosch family members, inform law enforcement of Bosch's cooperation, indemnify Bosch from civil liability by suits from Players as a result of his cooperation, and reimburse Bosch for attorneys fees and security costs in connection with its investigation. Rodriguez argues the significant benefits accorded Bosch in this arrangement motivated him to fabricate his activities with Rodriguez and other players. Yet witnesses who testify in court or in arbitration to criminal or civil violations by others are often participants in those events, and argued to have a motive or incentive to lie. The credibility of those witnesses is always determined by a trier of fact, whether a judge, jury, or neutral arbitrator, on a case-by-case basis.¹³

In this case, the testimony under oath from Bosch about JDA violations by Rodriguez was direct, credible, and squarely corroborated by excerpts from several of the hundreds of pages of his personal composition notebooks that were stolen in late December 2012 or early January 2013. The original notebooks have not been located or produced. Rodriguez asserts the copies in evidence are unreliable because the originals were stolen, the copies introduced were not in order, there is no way to know if the copies are complete, the time and date of many entries are unclear, and the notebooks were never kept in a secure location while in Bosch's possession. Despite these concerns, Bosch verified the entries relied upon herein were in fact his notes made contemporaneously with the events he described. No direct evidence was presented to demonstrate the excerpts he identified from the copies of his notebooks that implicated Rodriguez had been forged or fabricated. Bosch had many clients to whom he prescribed many substances, banned or otherwise. As a practical matter, he needed to keep track of clients, protocols, and payments. Bosch elected to use those composition notebooks to record this information by hand for his own use and reference. The proto-

¹³ In *Vida Blue*, Panel Dec. No. 61 (Bloch, 1984), evidence from a convicted drug dealer was relied upon by the Panel in finding a substance abuse violation and in formulating the penalty.

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cols, visits, and cash payments pertaining to Rodriguez he wrote in the excerpts he identified in this proceeding confirm and corroborate the JDA violations he has described.

Similar support for his testimony is found in the evidence of BBM exchanges between Rodriguez and Bosch. Those messages corroborate the JDA violations described by Bosch as well as illustrate the course and nature of their dealings. The BBMs by and to Rodriguez address doses, timing, and administration of PES to Rodriguez, as well as payment for drugs and services. The BBMs also reflect the deliberate efforts taken by Bosch and Rodriguez to conceal their activities and to avoid a positive MLB drug test. Rodriguez challenges the validity of those messages by targeting a few anomalous entries, unexplained gaps, and MLB's refusal to produce the three BlackBerry devices containing those messages for inspection by his own expert. The expert hired by MLB to study those devices testified credibly that there was no evidence of tampering. The expert hired by Rodriguez countered with conjecture and supposition about the data, but no direct or persuasive evidence of any tampering.¹⁴ Counsel for Rodriguez confirmed the PINs used by MLB to identify the messages came from devices belonging to Rodriguez. Significantly, the key exchanges corroborating the JDA violations were verified by Bosch as accurate. Equally significant is the absence of any direct evidence from Rodriguez, either with testimony or from his devices, which contradicts or refutes any of the BBMs in evidence and/or the testimony from Bosch confirming those exchanges. When viewed as a whole, the hundreds of messages exchanged between Bosch and Rodriguez plainly support the findings of JDA violations herein.

Rodriguez complains the case as presented by MLB lacks specificity concerning the precise dates and times, dosages, and frequency of the alleged violations. Rodriguez decries the absence of documentation concerning the sources of PES obtained by Bosch or introduction of samples which confirm the substances Bosch claimed he used were indeed ones banned by the JDA. Yet these and other deficiencies in MLB's case cited by Rodriguez do not eviscerate credible testimony from Bosch about his activities in supplying and administering PES to Rodriguez over a three-year period or the BBMs and composition notebook pages that confirm the violations occurred. The only reasonable inference to be drawn from the weight of the evidence is that Rodriguez violated the JDA as alleged.

¹⁴ Rodriguez declined the opportunity offered by the Panel to have Bosch's devices examined by an independent expert to confirm or refute the findings of MLB's expert related to the reliability of the data thereon.

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The claim by Rodriguez that science exonerates him in this case is not supported by any evidence in this record. It is recognized Rodriguez passed eleven drug tests administered by MLB from 2010 through 2012. The assertion that Rodriguez would have failed those tests had he consumed those PES as alleged is not persuasive. As advanced as MLB's program has become, no drug testing program will catch every Player. In this case, the blood testing required to detect hGH or IGF-1 had not yet been implemented in the JDA and therefore was not administered during the 2010, 2011, and 2012 seasons. With respect to testosterone, the record establishes that during the period in question it was possible for an individual to pass a drug test despite having recently used the substance, depending on variables such as the route of administration (*i.e.*, transdermal, sublingual, or intramuscular), dosage, concentration, the baseline value of the individual's natural testosterone to epitestosterone ratio ("T/E"), and how soon after use the individual's urine sample is collected.¹⁵ Bosch testified that he considered several of these variables when developing Rodriguez's protocols, and the BBM communications between Bosch and Rodriguez show multiple exchanges where Bosch instructed Rodriguez to use testosterone at such times, and in such forms and doses, as would prevent Rodriguez from testing positive. For these reasons, the absence of a positive test during the three years in question, in and of itself, does not and cannot overcome the unrebutted direct evidence in this record of possession and use. In any event, a positive drug test is not required to establish a violation of the JDA for use or possession of a PES.

Obstruction

MLB charges Rodriguez with violating Article XII(B) of the BA by attempting to cover-up his JDA violations through a course of conduct since January 2013 intended to obstruct and frustrate MLB's investigation of Biogenesis and Bosch. MLB accuses Rodriguez and his representatives of purchasing and then destroying the original Bosch composition notebooks, as well as deactivating and destroying his own BlackBerry to prevent MLB from learning their contents. MLB also claims Rodriguez and his representatives improperly pressured Bruli Medina Reyes to recant the affidavit he gave MLB and to provide untruthful testimony at

¹⁵ Detecting the presence of testosterone in urine samples with a T/E ratio of lower than 4:1 was more difficult prior to 2013 because the IRMS analysis needed to detect exogenous testosterone in a urine sample was typically only triggered by the laboratory when the T/E ratio was 4:1 or greater. In 2013, the parties instituted a longitudinal profiling program that enhanced the ability of the laboratory to detect testosterone in samples with a T/E ratio lower than 4:1 based on changes in a player's T/E ratio from sample to sample.

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arbitration. MLB alleges that Rodriguez's press release on January 29, 2013, falsely denying any relationship with Bosch, and Rodriguez's role in facilitating Bosch's own false public denial later that day, which included a commitment by Rodriguez to pay Bosch \$25,000 for attorneys fees, also violated the BA. MLB further asserts that Rodriguez's attempt on May 31, 2013, to get Bosch to sign a false affidavit and the offer to pay Bosch to leave the country rather than testify in this proceeding constitute additional examples of improper conduct in violation of the BA meriting a severe disciplinary response. For his part, Rodriguez denies through counsel having possessed or destroyed Bosch's original composition notebooks, any improper attempts to influence the testimony of Medina or Bosch, or that the evidence supports any of these charges.

Deliberate efforts to obstruct an MLB investigation under the JDA, or to cover-up misconduct by a Player who is subject to such an investigation, if established, may subject a Player to additional disciplinary sanctions under Article XII(B) of the Basic Agreement. In this case, the evidence considered in its entirety supports a minimum of two such violations. Rodriguez, having himself publicly denied being treated or advised by Bosch – a denial which he knew to be false – played an active role in inducing Bosch to issue his own public denial on January 29, 2013, which Rodriguez also knew to be false. Rodriguez also attempted to induce Bosch to sign a sworn statement on May 31, 2013, attesting that Bosch never supplied Rodriguez with PES and had no personal knowledge that Rodriguez had ever used them, statements that Rodriguez also knew to be false. These actions, viewed in the context of the record as a whole, were clearly designed to cover up Rodriguez's relationship with Bosch and the fact that Rodriguez had received PES from Bosch, to inhibit MLB's efforts to investigate Rodriguez's use and possession of PES, and to avoid punishment under the JDA. The remaining allegations of obstruction, while troubling, need not be addressed because they would not affect the ultimate determination regarding the appropriate penalty in this matter.

Confidentiality

Under the JDA, all involved parties are obligated to maintain the confidentiality of Player information and of the proceedings before the Panel, except in limited circumstances. The JDA also contains an exception to the confidentiality provisions in Section 6.A.4, which states:

Notwithstanding anything to the contrary in the Program, either Party may disclose publicly details of a Player's tests, testing history and/or Player's challenge

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to discipline imposed pursuant to Section 7 below to the extent necessary to respond to inaccurate or misleading claims by the Player that could undermine the integrity and/or credibility of the Program.

In the past, MLB and the MLBPA have been very successful in keeping appeal proceedings private and confidential in matters involving a positive test result. But in this case, the alleged connection between Biogenesis and many MLB Players, including Rodriguez, was widely reported by the media and closely followed by the public for many months. Suffice it to say, media interest remained intense throughout the hearings and the scrutiny will undoubtedly continue until completion of this process and beyond.

At the start of these proceedings, and a number of times thereafter, the Panel reminded the parties to observe the confidentiality requirements of the JDA. Despite these admonishments, each side made public pronouncements concerning evidence and argument elicited during these proceedings.¹⁶ In addition, information developed at the hearings appeared in a number of media reports, which cited either representatives of MLB or Rodriguez as sources. Whenever a breach of the JDA's confidentiality mandate and request for sanctions was brought to the Panel's attention, the charge was met with a denial, a claim the information was already public, or defended as rebuttal to information made public by the other side. The Panel deferred receiving evidence or ruling on these individual claims of breach until the case was submitted for decision.

After reviewing the entire record in this case, no action will be taken by the Panel at this juncture on the respective claims for breach of confidentiality. The stipulated issue presented to the Panel is just cause for the suspension. Given the mandate for expeditious handling of the appeal of the suspension and the amount of time necessary for each side to present its evidence, the Panel deferred making inquiries to determine the sources of those leaks and whether they could be held accountable for their actions.¹⁷ After reviewing all the evidence in this record on the suspension, resort to the various media reports brought to the Panel's attention – however described or ascribed – was not necessary. They had no influence and

¹⁶ The Biogenesis matter involved investigation by public agencies and court actions in Florida initiated well prior to the imposition of player suspensions. MLB went to court to compel production of information from various sources believed to be relevant to its investigation. Soon after commencement of hearings herein, Rodriguez filed a civil suit in New York against MLB that paralleled in many respects the evidence and argument in this proceeding. As a result, much of the evidence and argument herein overlaps with those other matters, which continue to be widely reported in the media.

¹⁷ The Panel does not have authority to enjoin third parties or the media from breaching the confidentiality provisions of the JDA.

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played no role in the deliberations of the Panel or the outcome. For these reasons, the claims by MLB and Rodriguez against the other of improper leaks to the media or the remedies sought for breach of confidentiality will not be addressed in this case.

Penalty

Having determined Rodriguez violated the JDA and the Basic Agreement, the discussion turns to the appropriate disciplinary penalty. The suspension imposed by MLB covered the remainder of the 2013 season and all of 2014, and amounted to 211 games. MLB asserts that the penalty is fully merited given the depth and severity of Rodriguez's offenses. Rodriguez and the MLBPA, however, argue a 211-game penalty is unwarranted and unprecedented. Rodriguez and the MLBPA view 50 games as the maximum suspension allowed by the JDA for a first PES violation. They further maintain any penalty must be reduced, if not eliminated altogether, due to MLB misconduct during the investigation, and that no penalty is warranted for the alleged obstruction violations of Article XII(B) of the Basic Agreement.

MLB, the MLBPA, and the Player agree that Section 7.G.2 of the JDA supplies the governing framework for this case. The record establishes that cases such as this, involving continuous and prolonged use or possession of multiple substances (as opposed, *e.g.*, to a single positive test), were intended to be handled under Section 7.G.2 rather than Section 7.A. Section 7.G.2 of the JDA states that "[a] Player may be subjected to disciplinary action for just cause by the Commissioner for any Player violation of Section 2 above not referenced in Section 7.A through 7.F above." The parties to the JDA both agree that Section 7.A does not reference a violation of the JDA involving the continuous use or possession of multiple Prohibited Substances over a prolonged period of time. Indeed, the express language of Section 7.A specifies a 50-game suspension for first offenders for the use or possession of "a Performance Enhancing Substance" (emphasis added). The parties agree, however, that for violations of the type presented by this case, the Commissioner is not limited to the disciplinary schedule set forth in Section 7.A, but rather can fashion an appropriate penalty, provided that such penalty is supported by principles of just cause.

Section 7.G.2 requires that a just cause standard be applied in the assessment of MLB's disciplinary action. Common factors to be evaluated in the determination of just cause are proportionality (does the level of discipline bear a reasonable relationship to the serious-

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ness and frequency of the offense), whether the discipline is progressive (is the object to correct rather than to punish), and compliance with the labor agreement (is the penalty consistent with a framework adopted by the parties). See St. Antoine, *The Common Law of the Workplace* (2nd ed. 2005) §6.7. Prior Arbitration Panels in baseball have variously described and uniformly applied these factors when assessing just cause discipline imposed on MLB Players.

While, as explained above, Section 7.A does not control in this case, the penalty structure that the parties agreed to in Section 7.A does provide a useful guidepost in evaluating whether the suspension of Rodriguez for the remainder of the 2013 season and the 2014 season is supported by just cause. The parties in Section 7.A adopted a system of progressive discipline for PES violations and established a benchmark of 50 games for one violation, 100 games for a second violation, and a lifetime ban for a third violation. The MLBPA and Rodriguez argue that if Section 7.A were applicable to this case, Rodriguez should receive no more than a 50-game suspension because his use and possession constitutes his first violation of the JDA. But the record here establishes that Rodriguez used or possessed three separate PES on multiple occasions over the course of three years. In Panel Decision No. 121 (*Neifi Perez*) (Das, 2008), the Panel held that the language of the JDA “reasonably implies a general understanding that separate uses are subject to separate discipline.” (*Id.* at 22). While the provisions of Section 7.L protect a player from discipline for a second or subsequent non-analytical positive that occurred prior to the time that the player received actual notice of his first non-analytical positive for the *same* Prohibited Substance, the provision does not protect players from being separately disciplined for each use or possession of a *different* Prohibited Substance prior to being provided notice of the first violation. Thus, it is absolutely clear that if the disciplinary schedule in Section 7.A did apply automatically to this case, Rodriguez would receive a penalty of greater than 50 games based on his separate uses and possession of multiple Prohibited Substances between 2010 and 2012.

MLB asserts that if the Commissioner were bound by the progressive disciplinary schedule set forth in Section 7.A of the JDA, Rodriguez would be subject to a lifetime ban under the holding of *Perez* because he committed at least three separate violations of the Program involving at least three distinct Prohibited Substances, and thus would receive a 50-game suspension for his use of the first substance (*e.g.*, testosterone), a 100-game suspen-

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sion for his use of the second substance (*e.g.*, hGH), and a lifetime ban for his use of the third substance (*e.g.*, IGF-1). Accordingly, MLB asserts that when compared to the lifetime ban that Rodriguez would have received if the Commissioner was bound to follow the progressive penalty structure contained in Section 7.A, the suspension of Rodriguez for the remainder of the 2013 season and the 2014 season was indeed reasonable and appropriate. However, because the Commissioner did not impose a lifetime ban on Rodriguez, and because neither the Commissioner nor this Panel is bound by the penalty structure of Section 7.A, it is not necessary to determine whether a lifetime ban of Rodriguez would be supported by the language of Section 7.A and the *Perez* precedent.

However, at a minimum, it cannot be disputed that if Rodriguez was found to have used three distinct PES -- IGF-1, testosterone, and hGH -- on three separate occasions, and was subjected to a 50-game suspension as a first-offender for each violation (rather than being progressively disciplined pursuant to the 50/100/life structure), Rodriguez still would be assessed a 150-game suspension (*i.e.*, a 50-game suspension for each violation), which is a penalty in the range of the suspension imposed by the Commissioner, without even factoring in Rodriguez's obstruction of MLB's investigation or the prolonged time period (covering parts of three seasons) and frequency with which he used and possessed the three Prohibited Substances. Thus, if the penalty structure in Section 7.A is used as a guide as to the appropriate discipline for violations involving multiple uses/possession of different banned substances, Rodriguez's conduct would merit no less than a 150-game suspension.

Nor is the suspension upheld herein out of line with past just cause precedents in the industry, many of which involve suspensions for use or possession of Drugs of Abuse. As an initial matter, the plain language of the JDA shows that the negotiating parties have placed special emphasis on violations involving PES, as opposed to violations involving Drugs of Abuse, which are punished separately. When compared with the schedule of penalties for Drugs of Abuse in Section 7.C, it is obvious that PES violations are punished far more severely, which is not surprising given that PES more directly affect the integrity of competition and the game as a whole.

The longest individual just cause suspension on record for an MLB Player for any offense is 119 days issued in 1992 to Steve Howe.¹⁸ Howe was a repeat offender for cocaine

¹⁸ *Steve Howe*, Panel Dec. No. 95 (Nicolau, 1992).

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abuse after entering into a “last chance” agreement for this offense two years earlier. After pleading guilty to a charge of attempted cocaine possession, MLB banned Howe for life. In the appeal to that suspension, the Panel found a lifetime ban was not supported by just cause, and that 119 days was more consistent with the suspensions of other Players, as well as reflective of various mitigating factors. The MLBPA and Rodriguez thus maintain any penalty for a first offender cannot approach the length of suspension given Howe, who was a habitual offender. Although instructive with regard to the just cause evaluation required here under the JDA, *Howe* hardly serves as a ceiling to the multiple PES violations committed by Rodriguez. As reflected by the widely divergent penalty schedules set out in Sections 7.A (PES) and 7.C (Drugs of Abuse), the parties view PES violations to be far more serious violations than those involving Drugs of Abuse deserving far more severe penalties. Howe also presented considerable evidence in mitigation of his offense, evidence which is not present here.

The MLBPA's reliance on the 2006 case of Jason Grimsley is also misplaced. Grimsley is the only player on record with a non-analytic positive for PES prior to the initiation of this grievance. But the 50-game suspension ultimately issued to Grimsley arose out of the alleged use or possession of one discrete substance (hGH), involved an alleged period of use or possession that was significantly shorter than the period of use or possession proven here, and also included allegations dating back to 2005, when first-time hGH violations were punishable under the JDA by a maximum 10-game suspension [PA 16] and when the JDA did not expressly cover discipline for “non-analytical positives.” In the current contractual framework, the multiple PES violations committed by Rodriguez make any comparison with Grimsley unavailing.

More informative is the 100-game suspension received in 2012 by Guillermo Mota for a second PES violation. Mota did not contest his 50-game suspension in 2006 for a first offense under the JDA after testing positive for a PES. In 2012, he received a 100-game suspension for a second offense after testing positive for a different PES. On appeal, the Panel upheld the 100-game suspension under the express language of Section 7.A, despite finding Mota's ingestion of a PES contained in a cough syrup taken to treat a cold was unintentional.¹⁹ Even accounting for the progressive nature of Mota's second suspension, Rodriguez's repeated and prolonged use and possession of multiple Prohibited Substances in 2010, 2011, and 2012 are

¹⁹ *Guillermo Mota*, Panel Dec. No. 130 (Horowitz, 2012).

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far more severe than the violations committed by Mota, whether viewed separately or as a whole.

On the other hand, no MLB player has been suspended for any substance abuse violation longer than one season. The suspension imposed by MLB for Rodriguez in August 2013 did not extend beyond the 2014 season. Given the comparative penalties received by MLB Players²⁰ for PES violations and other drug violations in the past, the disciplinary framework of the JDA, the fact that Rodriguez had no prior PES offenses, the number and frequency of Rodriguez's intentional violations of the JDA, the prolonged time period over which Rodriguez's violations occurred (covering portions of three baseball seasons and off-seasons), the number and forms of Prohibited Substances that Rodriguez used and possessed, and the incidents of attempted obstruction discussed above, a suspension of the entire 2014 season and 2014 postseason is supported by just cause. It is recognized this represents the longest disciplinary suspension imposed on a MLB Player to date. Yet Rodriguez committed the most egregious violations of the JDA reported to date, and engaged in at least two documented attempts to cover up that behavior in violation of the Basic Agreement. A suspension of one season satisfies the strictures of just cause as commensurate with the severity of his violations while affording Rodriguez the opportunity to resume his playing career in the 2015 season.

The contentions by Rodriguez and the MLBPA that the period of suspension must be reduced or eliminated due to misconduct by MLB is not supported by the evidence. Rodriguez and the MLBPA argue that mitigation is warranted because Bosch was coerced to cooperate by MLB and improperly compensated for his testimony. Because of the severity of the allegations in the initial *Miami New Times* report, MLB had a legitimate interest in obtaining accurate information about Bosch's involvement with MLB Players. When Bosch refused to cooperate, MLB resorted to civil action to obtain the information it required. Certainly this tactic and the cooperation agreement later reached convinced Bosch to come clean with MLB about his activities with MLB Players. Resort to the legal system, however, does not amount to coercion. Moreover, the benefits accorded Bosch under that arrangement did not involve inducements that the Panel considers to be improper. Rather, it was not inappropriate for MLB to

²⁰ Contrary to the request of Rodriguez, the fact and duration of suspensions received by other players involved in the Biogenesis matter cannot be considered by the Panel. Those cases were settled by MLB and the MLBPA on a non-precedential basis which prevents the Panel from drawing any inferences concerning the culpability of those players or the appropriateness of their suspensions.

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reimburse Bosch for the attorneys fees he incurred as a result of his cooperation with MLB, and the reimbursement of those fees (which he would not have incurred but for his cooperation) did not undermine the credibility of his unrebutted testimony -- testimony which was corroborated by substantial documentary evidence. The reimbursement for security expenses addressed Bosch's legitimate concerns for his personal safety. And unlike the Panel precedents cited by the MLBPA, here it cannot be said that MLB's alleged misconduct contributed in any way to the Player conduct that triggered MLB discipline.

Also unfounded are the charges of improper conduct by MLB investigators during the investigation. It is recognized MLB paid Gary Jones \$125,000 in cash for copies of documents. But counsel for Rodriguez has acknowledged similar payments and offers were made by Rodriguez for those and other documents relating to his case. Regarding the indiscreet sexual liaison by one MLB investigator with a former Biogenesis employee, that liaison did not yield any information relevant to the investigation or the suspension herein. Bruli Medina Reyes testified that MLB induced him to sign the disputed affidavit with threats of immigration difficulties, but without corroboration his claim cannot be credited. Medina was not a credible witness, and his demeanor under oath and contradictory declaration rendered all of his testimony suspect and unreliable. Accordingly, there is no basis in this record to reduce much less expunge the length of the suspension.

Conclusion

Based on the entire record from the arbitration, MLB has demonstrated with clear and convincing evidence there is just cause to suspend Rodriguez for the 2014 season and 2014 postseason for having violated the JDA by the use and/or possession of testosterone, IGF-1, and hGH over the course of three years, and for the two attempts to obstruct MLB's investigation described above, which violated Article XII(B) of the Basic Agreement. While this length of suspension may be unprecedented for a MLB Player, so is the misconduct he committed. The suspension imposed by MLB as modified herein is hereby sustained.²¹

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²¹ In accordance with Section 7.H.2, of the JDA, Rodriguez shall lose 162 days of pay for the 2014 season.

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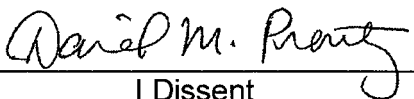
AWARD

The grievance is sustained in part and denied in part.
MLB has just cause to suspend Alexander Rodriguez
for the 2014 season and 2014 postseason.


DATED: January 11, 2014
Santa Monica, California



FREDRIC R. HOROWITZ, Panel Chair



I Dissent
DAVID M. PROUTY
Players Association Member



I Concur
ROBERT D. MANFRED, JR.
Office of the Commissioner Member