

**Appeal to the Director
of the Grand Slam Board**

APPEAL OF ANNA TATISHVILI

Javier H. Rubinstein, P.C.
Lauren F. Biksacky
KIRKLAND & ELLIS LLP
300 North LaSalle, Chicago, IL 60654

Gabriella Bornstein
Brett Shandler
KIRKLAND & ELLIS INTERNATIONAL LLP
30 St Mary Axe
London EC3A 8AF

Attorneys for Anna Tatishvili

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Anna Tatishvili, through her undersigned counsel, and pursuant to Article III.X of the 2019 Grand Slam Code of Conduct, hereby appeals to the Director of the Grand Slam Board the Code Violation Record issued to her dated May 30, 2019.

I. INTRODUCTION AND SUMMARY

In June 2016 at Wimbledon, Anna Tatishvili's 20-year tennis career came to a halt: during the Wimbledon singles main draw first round, an ankle injury forced her to retire from the match. Over the next three years, Anna's health, courage, and perseverance were tested as she battled to diagnose and overcome the injury. Anna underwent several unsuccessful ankle surgeries and countless rounds of physical therapy in her fight to return to competition.

In March 2019, the WTA confirmed that Anna was eligible to compete in the first round main draw at the French Open, using her WTA Special Ranking. Anna's surgeon, as well as two French open doctors and two WTA physical therapists, examined Anna and determined she was fit to return to professional tennis and play at Roland Garros.

On May 28, 2019, Anna played her first round match at the French Open against Maria Sakkari, the No. 29 seed who then was ranked No. 30 in the world women's singles rankings and was coming into the French Open with a hot winning streak. Anna lost to Ms. Sakkari 6-1, 6-0. Despite the match score, the match was competitive and hard fought, as confirmed by match statistics and the opinions of multiple tennis players and coaches who watched the match. Anna received multiple congratulatory messages after the match and left the court proud of her comeback performance.

The following day, Anna was stunned to learn that Grand Slam officials were reviewing her performance under the Grand Slam Board's First Round Performance Rule (the "Rule"), who refused to tell her why they thought her performance was even arguably not to a "professional standard." Shortly thereafter, Anna was notified that she allegedly violated the First Round

Performance Rule because: (1) she had not played a tournament since October 2017, (2) she entered the French Open with a Special Ranking, and (3) the match lasted 55 minutes. The email transmitting the Code Violation explained that: “[i]n our judgment (reviewing your match live and on video as well as looking at the match facts & statistics) you were not sufficiently prepared to play a Grand Slam.” (5/30/2019 Email and Attached Code Violation from Andreas Egli Regarding First Round Match at 2019 Roland Garros, Exhibit 15.)

For the reasons set out in this Appeal, the Code Violation and sanction imposed on Anna were unlawful and in violation of Anna’s legal rights as a tennis professional under applicable law.

First, the “description of offence” contained in the Code Violation form provides no factual or legal basis for a violation of the First Round Performance Rule. The first two elements of Anna’s supposed “offence”, *i.e.*, that she competed with a Special Ranking and had not previously competed since October 2017, were fully known by French Open officials before the tournament and cannot conceivably constitute an offence under the Rule because they have nothing to do with Anna’s performance during the match. The fact that a match lasts 55 minutes also cannot alone establish that the losing player failed to perform to a “professional standard.”

Second, the Code Violation decision arbitrarily ignored the text of the Rule itself. Instead of determining whether Anna’s performance met the Rule’s undefined “professional standard,” officials instead decided that Anna was “not sufficiently prepared to play a Grand Slam,” thereby holding her to a completely different and irrelevant standard. Moreover, rather than have the tournament Referee alone make the decision, as the Rule requires, the decision was made by an unnamed, ad hoc committee that had no authority to participate in the decision-making process.

Third, the imposition of the Code Violation and sanction violated Anna’s legal right to due process because the First Round Performance Rule gives professionals like Anna no idea as to

what they must do or not do during their first round match to meet the Rule's undefined "professional standard." Even after the match, Grand Slam officials refused to tell Anna why her match performance was under review. Even now, she must pursue this appeal completely in the dark. The imposition of such a drastic and reputationally-damaging sanction under such circumstances violates the basic and universally recognized guarantees of due process.

Fourth, Anna's Code Violation was unlawfully and discriminatorily imposed because of her gender. The official basis for Anna's sanction was threefold: (1) she had not played a tournament since October 2017; (2) she entered the French Open with a Special Ranking; and (3) the match lasted 55 minutes. Yet, a male player who also competed at the 2019 French Open, was subject to the same First Round Performance Rule and met these same three requirements was not sanctioned at all. In fact, his match lasted only 43 minutes—12 minutes shorter than Anna's match against Maria Sakkari. Anna thus has become the latest victim of the intolerable gender-based discrimination that has plagued the sport of women's tennis for years.

Finally, while Grand Slam officials have not explained what "professional standard" Anna was supposed to meet during her first round match at the French Open, statistical and anecdotal evidence establishes that Anna's performance during her match against Maria Sakkari was at the level expected of all tennis professionals, regardless of the overall score and match duration. This is confirmed by the statement of Ms. Sakkari herself, along with statements from other renowned professionals and coaches that watched the match and witnessed her difficult journey back to professional competition. The mere fact that a match lasts 55 minutes in no way proves that match play was "unprofessional." Yet, that absurd conclusion is precisely what the Grand Slam officials found in this case. Such a dangerous precedent cannot be allowed to stand.

The Grand Slam Board’s declaration that Anna did not perform to a “professional standard” represents a direct attack on her character and ignores her courageous three-year journey to overcome serious injury and return to professional competition. Anna’s story is one that should be celebrated, not punished. The Code Violation and sanction must be vacated in their entirety. We urge the Director of the Grand Slam Board to take decisive action to correct the many wrongs that have been committed against Anna Tatishvili, and to restore what has wrongly been taken from her.

II. FACTUAL BACKGROUND

Anna Tatishvili was born in the Republic of Georgia on February 3, 1990. (Statement of Anna Tatishvili, “Tatishvili Statement” Exhibit 1, ¶ 1.) She began her tennis career at the age of four, placing third at the Orange Bowl Junior World Championship by the age of 12. (Tatishvili Statement ¶ 2.) At 13, she moved with her family to Boca Raton, Florida to train at the Evert Tennis Academy. (Tatishvili Statement ¶ 2.) By age 15, after winning three straight top tournaments, she entered the top 20 in the world juniors’ rankings. (Tatishvili Statement ¶ 2.) Anna then successfully transitioned to the professional tour, winning 11 singles titles and 8 doubles titles on the ITF Circuit. (Tatishvili Statement ¶ 3.) By 2012, Anna reached her career-high singles ranking of No. 50 in the world and No. 59 in the world doubles’ rankings. (Tatishvili Statement ¶ 3.) Until 2014, Anna competed for the Republic of Georgia in the Federation Cup and at the 2012 London Olympics. (Tatishvili Statement ¶ 3.) In 2014, Anna became a U.S. citizen and later achieved her first victory against a top 10 player, defeating Karolina Pliskova in the first round of the 2015 U.S. Open. (Tatishvili Statement ¶ 3.)

A. Anna’s 2016 Ankle Injury at Wimbledon and the Journey to Her 2019 Return

Anna injured her right ankle while playing a doubles match in the qualifying round at Wimbledon in June 2016. (Tatishvili Statement ¶ 4.) WTA physical therapists and Wimbledon

doctors who evaluated her concluded it was a minor strain, and cleared her to play. (Tatishvili Statement ¶ 4.) During the Wimbledon singles main draw first round, Anna's ankle pain forced her to retire from the match. (Tatishvili Statement ¶ 4.) During the ensuing three years, following several unsuccessful ankle surgeries, countless rounds of physical therapy, and traveling the world to find a doctor who could properly diagnose and treat her ankle, Anna battled to regain her health and return to tennis.

Anna underwent her third ankle surgery on January 30, 2018, followed by an in-depth physical training and rehabilitation program. (Tatishvili Statement ¶¶ 7-9.) In the beginning, she spent 6-7 hours a day undergoing physical therapy and rehabilitation, essentially learning to walk again. (Tatishvili Statement ¶ 9.) In September 2018, while still undergoing physical therapy, Anna resumed her tennis training and dedicated herself fully to return to the professional tour. (Tatishvili Statement ¶ 10.) By November 2018, she attended daily tennis training sessions with her tennis coach, Fernando Martinez, and played multiple practice matches with other players, including Elena Bovina, Mari Osaka, and Salome Devidze. (Tatishvili Statement ¶ 10; Statement of Fernando Martinez "Martinez Statement" Exhibit 2, at 1.)

After many months of hard work, Anna planned her return to the tour in 2019. In March 2019, Anna decided to return to professional competition at the French Open. (Tatishvili Statement ¶ 11; Martinez Statement at 1.) She chose the French Open both because it fell within her WTA Special Ranking window, and because she felt she would be ready for competition by then based on her strength and her training. (Tatishvili Statement ¶¶ 11-12.) She chose not to play in a tournament before the French Open, deciding that instead of traveling to Europe early and playing in a smaller tournament, it was better to stay home and continue her training. (Tatishvili Statement ¶ 12; *see also* Martinez Statement at 2.)

B. WTA Special Ranking

Anna was eligible to play at the 2019 French Open due to the WTA Special Ranking Rule, which allows players who are sidelined with a long-term injury the ability to return to competition to use their ranking from the time of the start of their absence. Under the current version of the Special Ranking Rule, to be eligible for a Special Ranking, a player must submit an application and meet certain criteria, including having a pre-injury ranking between 1 and 375 in singles or 1 and 200 in doubles, along with documentation confirming her medical condition. (*See* 2019 Official WTA Rulebook, Section XIV(C).) To be eligible under WTA Special Ranking Rules, a player must also have been unable to compete in a tournament for at least 26 weeks due to injury. (*See* 2019 Official WTA Rulebook, Section XIV(C)(1)(d).)

When Anna was injured at Wimbledon in 2016, her WTA singles ranking of No. 107 was frozen under the WTA Special Ranking Rule, and was valid for two years. (Tatishvili Statement ¶ 11.) Prior to the 2019 French Open, Anna played her last match on October 10, 2017 at the tournament in Sumter, South Carolina, where she was forced to withdraw due to her ankle injury. (Tatishvili Statement ¶ 16.) While Anna was injured, the WTA amended the Special Ranking Rule and extended her Special Ranking to be valid for a total of three years. (Tatishvili Statement ¶ 11.)

On March 11, 2019, Evan Charles, the WTA's Entries Coordinator, emailed Anna to confirm that her Special Ranking eligibility was extended to June 24, 2019. He confirmed that Anna could play six tournaments in both singles and doubles and could use her Special Ranking "for entry into Roland Garros." (*See* March 11, 2019 WTA Email regarding "SR Freeze Provisional Approval: Tatishvili", Exhibit 10.)

C. The First Round Performance Rule and “Lucky Loser” Rule

At Wimbledon in 2017, seven men retired during their first-round matches, including opponents of Novak Djokovic and Roger Federer in back-to-back matches on Centre Court.¹ Following this wave of players retiring mid-match, the Grand Slam Board instituted two new tandem rules in 2018: the First Round Performance Rule and the “Lucky Loser” Rule.² News reports indicated the rules changes were implemented to combat the recent wave of retirements mid-match at Grand Slam Tournaments.³

The First Round Performance Rule provides in full as follows:

“All players are expected to perform to a professional standard in every Grand Slam match.

With respect to the First Round Performance in the Qualifying and Main Draw, if in the opinion of the Referee the player did not perform to the required professional standard, the Referee may determine that the player be subject to a fine of up to first round prize money.

Factors that may be considered by the Referee in making such a determination include, but are not limited to, the following:

- i. the player did not complete the match;
- ii. the player did not compete in the 2-3 week period preceding the Grand Slam;
- iii. the player retired from the last tournament he/she played before the Grand Slam;
- iv. the player was using a Protected or Special Ranking for entry;

¹ The New York Times, “Players Pull Out At Wimbledon and Calls for Reform Flood In” *available at* <https://www.nytimes.com/2017/07/06/sports/tennis/players-pull-out-at-wimbledon-and-calls-for-reform-flood-in.html?module=inline>.

² See 2018 Official Grand Slam Rulebook, <http://www.wimbledon.com/pdf/GrandSlamRulebook2018.pdf>.

³ See, e.g., The New York Times, “Retirements Are Down at the Australian Open. Is Money the Reason?” *Available at* <https://www.nytimes.com/2018/01/16/sports/tennis/australian-open-retirements.html>; Tennis World USA, “Wimbledon Introduces Strict Rules to Prevent First-Round Retirements” *available at* https://www.tennisworldusa.org/tennis/news/Tennis_Stories/54458/wimbledon-introduces-strict-rules-to-prevent-firstround-retirements/.

v. the player received a Code Violation for failure to use Best Efforts.”

(2019 Official Grand Slam Rulebook at Article III(G), at 42.)

The First Round Performance Rule does not define the term “professional standard.” Nor does it provide any guidance as to what it means to play to “a professional standard”, where that “standard” comes from, or what factors or criteria will be considered in assessing whether “the player did not perform to the required professional standard.”

To further the goal of avoiding mid-match withdrawals, the 2019 Official Grand Slam Rulebook also was amended to provide that “[a] player who withdraws from the Main Draw singles competition prior to his/her first match shall receive 50% of the first round prize money”, with the player’s replacement or “Lucky Loser” receiving the other 50% if certain procedural conditions are met, including the Tournament Doctor’s declaration that the player is unfit to play. (2019 Official Grand Slam Rulebook at Article I (J.1a.), at 5.) As Roger Federer noted prior to the rules amendments, “[a] player should not go on court if he knows he should not finish,” said Federer. “The question is, did they truly believe they were going to finish? If they did, I think it’s okay that they walk on court. Otherwise, I feel they should give up the spot.”⁴

D. The Lead Up to Roland Garros - April and May 2019

On April 17, 2019, Anna’s doctor at Baptist Health South Florida, Dr. Thomas San Giovanni, cleared Anna “to return to full activity.” Her only limitation was that she would “require a standard ankle taping to prevent inversion of the ankle, whenever she is playing tennis or performing high impact/cutting/twisting motions.” (04/17/2019 Medical Clearance from Dr. Giovanni, Exhibit 11.)

⁴ The Telegraph, “Roger Federer calls for rule change after Wimbledon retirements leave fans frustrated,” *available at* <https://www.telegraph.co.uk/tennis/2017/07/04/roger-federer-calls-rule-change-wimbledonretirements-leave-fans/>.

On May 14, 2019, Evan Charles, the Entries Coordinator for the Women's Tennis Association emailed Anna "to check in on [her] status for Roland Garros" and confirm whether she was "planning on playing?" She responded, "Yes all is good practicing" and that she intended to play in the tournament. Charles then replied by emailing Anna a copy of the First Round Performance Rule to "make sure that [she was] aware of [it] as [she was] returning to competition using [her] Special Ranking in Roland Garros." (05/14/2019 WTA Email regarding Roland Garros Playing Status, Exhibit 12.)

By the time she arrived at Roland Garros, Anna and her coach were confident she was ready to play. (Tatishvili Statement ¶ 13; Martinez Statement at 2.) Upon her arrival, she was required to undergo further physical evaluations of her ankle and be deemed medically fit to play. (Tatishvili Statement ¶¶ 14-15.) On May 22, two WTA physical therapists evaluated Anna on-site at Roland Garros and deemed her fit to play. (Tatishvili Statement ¶ 14.) Additionally, that same day, two French Open physicians examined Anna, and likewise declared her "fit to play." (05/22/2019 French Open Medical Examination Clearances, Exhibit 13.) In his examination notes, Dr. Vincent Guillard wrote that Anna's "[m]uscular strength [was] symmetrical", her "mobility of the sub-Astragalian [was] normal" and that she presented "a stable ankle with small residual stiffness in dorsal flexion." (05/22/2019 French Open Medical Examination Clearances, Exhibit 13 at 1.)

E. Anna's French Open Match against Maria Sakkari

On May 28, Anna played her first round match against Maria Sakkari, the No. 29 seed who then was ranked No. 30 in the world women's singles rankings and was coming into the French Open with a hot winning streak, especially on clay. Prior to the French Open, Ms. Sakkari had a 13-4 record in main draw play on clay this season (15-4 with qualifying wins included), including a semifinal showing at Rome and her first WTA singles title in Rabat.

The early games of the match were closely fought, with Ms. Sakkari needing 18 points and over 10 minutes to break Anna's serve in the second game. Anna raced to a 0-40 lead in the third game, before Ms. Sakkari clawed back with two aces and two in-rally winners to hold serve and lead 3-0. Ms. Sakkari took hold of the momentum and went on to win the first set 6-0. Despite the score in the first set, coaches and players observed that "Anna played really well from [the] baseline and her shots were very clean." (See Statement of Sofia Kvatsabaia, "Kvatsabaia Statement," Exhibit 6 at 2; see also Martinez Statement at 2).

Anna broke Ms. Sakkari's serve in the opening game of the second set to lead 1-0. "Her returns were working really well especially attacking the second serve of Maria Sakkari." (Kvatsabaia Statement at 2.) This observation is supported by the expert statistical analysis performed by Scott Carr, PhD, and Michal Malkiewicz, senior professionals at Ankura Consulting Group with advanced training and expertise in quantitative and statistical analysis (the "Expert Statistical Analysis"), which outlines that Anna's performance in winning 53 percent of points after a successful second serve by Ms. Sakkari is at the 84th percentile relative to other WTA matches between 2016-2018. (Exhibit 3.)⁵

Ms. Sakkari broke back in the next game to level the set at 1-1 and was able to hold the momentum to take a 5-1 lead. At 5-1, Anna saved four match points on Ms. Sakkari's serve in a nine-minute long, 16-point game. "[Anna] was very calm and focused" throughout the match. (Kvatsabaia Statement at 2.) Ms. Sakkari served three aces in the final game, along with two in-rally winners. Ms. Sakkari won the match on her 5th match point. Fighting to the end, "Anna always competed and behaved like a true professional not only in competition but also with our tennis environment." (Statement of Sven Groeneveld "Groeneveld Statement", Exhibit 5 at 1.)

⁵ The "percentile" for a given statistic is the percent of matches in the dataset that has a value less than or equal to the value from Ms. Tatishvili's match.

Despite the uneven overall match score, the competitiveness of the games themselves is confirmed by the match statistics. For example, the Expert Statistical Analysis demonstrates that the average number of strokes per game (23.6 strokes per game) “is at the 50th percentile” relative to over 8,000 WTA matches played from 2016-2018 (the data period), *i.e.*, right in the middle of the distribution set. (Exhibit 3 at 8.) Anna “fought for each point at the maximum of her ability.” (Statement of Garry Cahill “Cahill Statement”, Exhibit 7 at 1.) The average number of points played per game (7.15) “is at the 85th percentile relative to other WTA matches” in the data period, while the average strokes per point (3.3) “is at the 38th percentile relative to other WTA matches.” (Exhibit 3 at 8.) The average duration of games in Anna’s match was 4.2 minutes, greater than 36 percent of other WTA matches played during the data period. (Exhibit 3 at 8.)

Regardless of the the overall score, the match was competitive and hard fought. In fact, Maria Sakkari herself has confirmed this:

“I truly believe that despite the score it was a tough match, I had to bring out my best tennis, try and work hard on every point. Anna fought hard and she definitely didn’t “tank” the match. We played many long games and rallies and really felt the pressure from the beginning until the end of the match.

Anna definitely doesn’t deserve to be fined, she tried her best on a very good day and period of mine.”

(Statement of Maria Sakkari “Sakkari Statement”, Exhibit 4 at 1.)

Immediately following the match, Anna received numerous congratulatory messages. For example, Kathy Rinaldi, the U.S. Federation Cup Captain, and Ola Malmqvist, the USTA’s Director of Coaching, both congratulated Anna on her return to the tour and complimented her on how cleanly she struck the ball. (*See* 5/29/2019 Text Messages of Kathy Rinaldi, Exhibit 14.) (Malmqvist congratulated Anna verbally after the match). The WTA also published an article right after the match complimenting Anna’s performance, stating that:

“Tatishvili acquitted herself well at the start of the match, hanging with her seeded foe in protracted games. Sakkari had to fight very hard in a nearly 10-minute game to earn a break for 2-0, and the Greek needed to stave off three break points to hold for 3-0.”⁶

Anna left Roland Garros following the match, proud of her performance and excited to be back on the professional tour. (Tatishvili Statement ¶¶ 19-21.)

F. The Code Violation

The day after Anna’s match, on Wednesday, May 29, Anna went to the prizemoney office, where Anna was told that her account was blocked and that she was unable to receive her prizemoney. She was told to go to the head referee’s office. (Tatishvili Statement ¶ 22.)

When Anna walked into the head referee’s office, there were four men there she did not know. (Tatishvili Statement ¶ 23.) Laura Ceccarelli, the WTA supervisor, was also in the room. (Tatishvili Statement ¶ 23.) The four men did not introduce themselves to Anna and never explained their roles. (Tatishvili Statement ¶ 23.) Anna was told her account was frozen and that her match was under review. (Tatishvili Statement ¶ 23.) One of the men stated that after reviewing her performance, they would inform Anna of their official decision. (Tatishvili Statement ¶ 23.) When Anna asked what the issue was with her match and why they were reviewing it, the officials replied that she had not played a recent tournament before the French Open. (Tatishvili Statement ¶ 24.) They also referred to the May 14 email that WTA sent Anna notifying her of the First Round Performance Rule. (Tatishvili Statement ¶ 24; Exhibit 12.) Anna pointed out that French Open was fully aware before the tournament that she had not played a tournament since 2017 and asked why they let her play at all? (Tatishvili Statement ¶ 24.) The

⁶ WTA, “French Open Day 3 roundup: Sakkari continues colossal clay season with first-round win,” *available at* <https://www.wtatennis.com/news/french-open-day-3-roundup-sakkari-continues-colossal-clay-season-first-round-win>.

unknown officials did not answer Anna's questions, and simply repeated that her performance would be reviewed and they would inform her of their decision. (Tatishvili Statement ¶ 24.)

Later that day, while on-site at the Roland Garros courts, Anna saw Ms. Ceccarelli again and asked why her performance was under review. (Tatishvili Statement ¶ 26.) Laura responded that officials were "using the fact that [Anna] did not play a tournament prior to the French Open" as the reason for potentially penalizing Anna. (Tatishvili Statement ¶ 26.) When Anna asked Laura if it was mandatory under the Grand Slam Rules to play a tournament prior to the French Open, Laura said that it was not, and that the determination "is based on a subjective decision." (Tatishvili Statement ¶ 26.) Anna left her conversations with Ms. Ceccarelli with the impression that someone wanted to make an example of her. (*See* Tatishvili Statement ¶ 28.)

The following day, on May 30, 2019, Andreas Egli, a Grand Slam Supervisor, emailed Anna to notify her that the Grand Slam was issuing her a Code Violation, stating as follows:

"This is to inform you that the Roland Garros Referee, Remy Azemar, in consultation with the Grand Slam Supervisors, after reviewing your match has come to conclusion that you violated Grand Slam Code of Contact Article III G, First Round Performance

In our judgment (reviewing your match live and on video as well as looking at the match facts & statistics) you were not sufficiently prepared to play a Grand Slam.

We also understand, that on the 14th May you were informed by email from the WTA about this particular rule and that you therefore knew that you took a risk playing a Grand Slam which you entered with a Protected or Special Ranking and without having played a professional tournament since October 2017."

(Exhibit 15 at 1.)

In the attached Roland Garros Grand Slam Code Violation Record dated May 30, 2019 (the "Code Violation"), the "description of offence" section states only the following:

“Player Tatishvili entered the tournament with a Protected Ranking⁷ and without having played a professional tennis match since October 2017. Match duration: 55 minutes.”

(Exhibit 15 at 3.) As a sanction for the purported Code Violation, Anna was fined the entirety of her first round prizemoney, which was €46,000 or approximately \$51,520 USD. (Exhibit 15 at 3.)

No other factual basis or rationale for imposing the Code Violation was provided in Mr. Egli’s email or the Code Violation form. The Grand Slam Board has not provided any further rationale or explanation for the issuance of the Code Violation. While the Grand Slam Board has previously stated publicly that “investigations would precede any penalty for performances considered below [the] standard”,⁸ the details of any such investigation in this case—to the extent there was one—have not been provided to Anna.

G. History of Grand Slam Code Violations for First Round Performance

Since its adoption in 2018, the First Round Performance Rule has rarely been used to penalize players, and never to sanction a player who completed their entire first round match based on the quality of their play, much less to order the complete forfeiture of their prize money.

In January 2018 at the Australian Open, Mischa Zverev was fined \$45,000 USD, or nearly all of his prize money, after he quit the match midway through his second set and retired.⁹ Mr. Zverev was the only man or woman to retire from a first-round singles match at the 2018 Australian Open. He cited an illness the day of the match.¹⁰

⁷ The Code Violation refers to it as a “Protected Ranking,” but that term does not exist in women’s tennis under WTA Rules; that term instead refers to the ranking system implemented in men’s tennis. The WTA Rules utilize “Special Rankings.”

⁸ See New York Times, “Mischa Zverev Is Fined After First-Round Retirement” *available at* <https://www.nytimes.com/2018/01/23/sports/tennis/mischa-zverev-fine-australian-open.html>

⁹ The Guardian, “Mischa Zverev Fined Record \$45,000 for Poor Performance,” *available at* <https://www.theguardian.com/sport/2018/jan/23/tennis-mischa-zverev-fined-record-45000-for-poor-performance>

¹⁰ New York Times, “Mischa Zverev Is Fined After First-Round Retirement” *available at* <https://www.nytimes.com/2018/01/23/sports/tennis/mischa-zverev-fine-australian-open.html>

In May 2018, at the French Open, Peter Gojowczyk was sanctioned under the First Round Performance Rule and fined €25,000 for retiring during his opener against Cameron Norrie. Mr. Gojowczyk retired from his match citing hip pain while trailing Norrie 1-6, 0-2.¹¹ Unlike Anna, both of these players were sanctioned after retiring mid-match.

Amir Weintraub, a male player who competed in the qualifying round at Roland Garros, also was subject to the First Round Performance Rule.¹² Mr. Weintraub had not competed since January 2017 and, like Anna, used his Protected Ranking (the ATP equivalent of a Special Ranking) for entry. Mr. Weintraub played Lukáš Rosol (ranked No. 149) in the men's qualifying first round at the 2019 French Open, losing 6-3, 6-1 in 43 minutes—12 minutes less than Anna's match. Mr. Weintraub was not issued any Code Violation; nor was he sanctioned.

The sanction imposed against Anna in this case apparently represents the first time that a professional tennis player has ever been sanctioned for failing to play to a “professional standard” after completing their first round match.

III. THE CODE VIOLATION AND SANCTION WERE UNLAWFULLY IMPOSED ON ANNA AND MUST BE VACATED

A. On its Face, Anna's Alleged Violation of the First Round Performance Rule Has No Factual or Legal Basis

The Code Violation assessed against Anna states only the following under the “Description of offence”:

“Player Tatishvili entered the tournament with a Protected Ranking and without having played a professional tennis match since October 2017.
Match duration: 55 minutes.”

¹¹ UBITennis.net, “Peter Gojowczyk Fined €25,000 For ‘Poor Performance’ At The French Open” *available at* <https://www.ubitennis.net/2018/05/peter-gojowczyk-fined-e25000-poor-performance-french-open>

¹² The First Round Performance Rule applies “to the First Round Performance in the Qualifying and Main Draw.” (2019 Official Grand Slam Rulebook at Article III(G), at 42).

(Exhibit 15 at 3.) Yet, these three grounds alone cannot lawfully support a finding that the First Round Performance Rule was violated, nor can they conceivably justify the sanction imposed.

The first two bases—that Anna had not competed since October 2017 and that she was using a Protected Ranking for entry—alone cannot support the imposition of a Code Violation. To begin with, although the official Code Violation references a “Protected Ranking,” the term “Protected Ranking” only applies to the ATP and male players. Anna entered Roland Garros under the WTA’s Special Ranking Rule. So on its face, the Code Violation is factually incorrect. Assuming, however, that this violation sought to invoke the WTA’s “Special Ranking” protections, the ITF recognizes the WTA’s system of Special Rankings for players returning from injury (or coming back from parental leave). As set out above, to be eligible under the WTA rules, a player must have been unable to compete in a tournament for at least 26 weeks due to injury. The WTA confirmed Anna’s eligibility for her Special Ranking. (*See* Exhibit 10) Anna cannot therefore legally be sanctioned for competing with a Special Ranking.

It is also inevitably the case that a player entering a tournament with a Special Ranking will not have played “a professional tennis match” for a significant period of time. In fact, the very purpose of the Special Ranking Rule is to preserve a player’s right to direct entry into tournaments when they have not played professionally in over 6 months due to injury. French Open officials and doctors also knew full well that Anna came into the tournament with a Special Ranking and had not competed since October 2017; they nevertheless cleared her to participate. (Exhibit 13.) In short, the fact that Anna had not played a tournament since October 2017 and entered the tournament with a Special Ranking cannot lawfully be cited as an “offence” under the First Round Performance Rule.

At most, the fact that a player enters a tournament not having played a match for more than three weeks using a Special Ranking merely *triggers* the First Round Performance Rule. An actual violation of the Rule can only legally be based on the player's actual *performance* during the first round match. Neither of the first two facts cited in the offence description, however, have anything whatsoever to do with Anna's performance during her first round match.

If, as Grand Slam officials suggested to Anna, the Grand Slam Board wishes to deter formerly injured players from returning to competition at a Grand Slam, the appropriate way to do that is to adopt a rule that clearly states that players using a Special or Protected Ranking *must* play at least one tournament prior to entry into the main draw or qualifying round of a Grand Slam. Trying instead to discourage players indirectly from returning to competition at a Grand Slam by threatening to sanction them for failing to meet an undefined "professional standard" is wholly improper and, as explained below, unlawful.

If left to stand, the Code Violation in Anna's case would destroy the concept of a Special or Protected Ranking. As explained by tennis professional and coach Sven Groeneveld, "If Anna choose the French open to return to competition, [it] is her cho[ice] and her right to apply the protective ranking No law or bylaw [exists] to prevent her from entering the French Open as her first event and use it as her platform to jump back into competing on the tour." (Groeneveld Statement, Exhibit 5 at 2.)

Aside from Anna's Special Ranking and the fact she had not played a tournament since October 2017 due to injury, the only remaining factual basis cited in the offence description of the Code Violation form is the fact that the match lasted 55 minutes. Yet, the mere fact that a match lasts 55 minutes does not establish that a player is not playing at a professional level. There are

countless professional matches that last 55 minutes or less, including a number of other matches played at the 2019 French Open (in qualifying and the main draw), including the following:

- ES. Liang v. E. Rybakina (1-6; 2-6) (40 minutes);
- S. Celik v. K. Juvan (1-6; 0-6) (42 minutes);
- A. Weintraub v. L. Rosol (3-6; 1-6) 43 minutes;
- S. Halep v. I. Swiatek (6-1; 6-0) (45 minutes);
- S. Zhang v. V. Lepchenko (6-1; 6-1) (52 minutes);
- H. Laaksonen v. D. Brands (6-3; 6-0) (52 minutes);
- S. Ofner v. Y Hanfmann (2-6; 1-6) (53 minutes);
- I. Swiatek v. Q. Wang (6-3; 6-0) (53 minutes);
- J. Konta v. V. Kuzmova (6-2; 6-1) (54 minutes); and
- J. Ward v. O. Otte (1-6; 2-6) (55 minutes).

In fact, matches ending with similar scores and in similarly short times are not uncommon at other Grand Slams and major tournaments, including finals.¹³ For example, Petra Kvitova defeated Eugenie Bouchard in 55 minutes at the 2014 Wimbledon final (6-3 6-0); Sloane Stephens defeated Madison Keys in the 2017 U.S. Open Final in 61 minutes (6-3 6-0); and Serena Williams defeated Maria Sharapova in the 2012 Olympic final in 63 minutes (6-0 6-1). A full list containing

¹³ Examples of women's professional matches that ended in less than 60 minutes in 2019 alone include the following: S. Halep defeated V. Kuzmova 6-0 6-0 in 44 minutes in R16 of the Madrid Open 2019; K. Bertens defeated A. Sevastova 6-1 6-2 in 59 minutes in R16 of the Madrid Open 2019; A. Barty defeated S. Stosur 6-0 6-3 in 58 minutes in R32 of the Miami Open 2019; V. Kuzmova defeated S. Errani 6-1 6-0 in 55 minutes in R64 of the Italian Open 2019; S. Kenin defeated J. Paolini 6-1 6-2 in 59 minutes in R64 of the Italian Open 2019; P. Kvitova defeated Y. Putintseva 6-0 6-1 in 54 minutes in R32 of the Italian Open 2019; B. Andreescu defeated K. Kučová 6-2 6-0 in 55 minutes in qualifiers of the Auckland Open 2019; J. Pegula defeated Z. Diyas 6-1 6-1 in 54 minutes in R128 of Indian Wells 2019; N. Vikhlyantseva defeated Z. Kruger 6-0 6-0 in 53 minutes in qualifiers of Indian Wells 2019; B. Andreescu defeated S. Vogele 6-1 6-2 in 56 minutes in R32 of Indian Wells 2019; B. Andreescu defeated G. Muguruza 6-0 6-1 in 52 minutes in the QF of Indian Wells 2019; A. Petkovic defeated L. Hradecka 6-1 6-1 in 43 minutes in qualifiers of the Brisbane International 2019; H. Dart defeated C. Dolehide 6-0 6-2 in 56 minutes in qualifiers of Brisbane International 2019; V. Golubic defeated N. Bains 6-3 6-0 in 58 minutes in qualifiers of the Brisbane International 2019; L. Tsurenkp defeated M. Buzarnescu 6-0 6-2 in 57 minutes in R32 of Brisbane International 2019; A. Kontaveit defeated C. Saurex Navarro 6-0 6-3 in 52 minutes in R32 of Brisbane International 2019; A. Sevastova defeated H. Dart 6-2 6-0 in 56 minutes in R16 of Brisbane International 2019; D. Vekic defeated A. Sasnovich 6-2 6-0 in 56 minutes in qualifiers at Brisbane International 2019; K. Kozlova defeated J. Larsson 6-1 6-1 in 51 minutes in R32 of the Hungarian Open 2019; A. Petkovic defeated A. Bogdan 6-1 6-0 in 57 minutes in R32 of the Hungarian Open 2019; K. Kozlova defeated M. Brengle 6-0 6-1 in 58 minutes in R16 of the Hungarian Open 2019; B. Schoofs defeated A. Guarachi 6-1 6-0 in 59 minutes in qualifiers for Copa Colsanitas 2019; F. Di Lorenzo defeated A. Samudio 6-1 6-0 in 58 minutes in qualifiers for Copa Colsanitas; J. Paolini defeated J. Wasserson 6-0 6-1 in 37 minutes in qualifiers for Copa Colsanitas 2019; Q. Lemoine defeated V. Ivakhenko 6-1 6-2 in 56 minutes in the qualifiers of the Nuremberg Cup 2019.

123 examples of main draw women’s singles matches from 2016-2018 that lasted one hour or less and involved 12 or 13 total games is attached as Exhibit 17.

There also is no tennis rule, standard, or guideline which indicates that a match must last longer than 55 minutes in order to meet a “professional standard.” As outlined in greater detail in the Expert Statistical Report of Scott Carr PhD and Michal Malkiewicz, although it is a relatively short match duration, the 55-minute duration of Anna’s match against Maria Sakkari is *longer than the median duration of other 13-game matches (i.e., other matches with a final score of 6-0, 6-1 or 6-1, 6-0)*. (Exhibit 3 at 2, 5.) Likewise, the *average minutes-per-game of Anna’s match—4.2 minutes per game—is consistent with other professional matches regardless of the match score*. (Exhibit 3 at 2.) In other words, Anna’s match duration was not an outlier bordering on the “unprofessional,” but rather is what could be expected of any 13-game match. It is also untenable for Grand Slam officials simplistically to suggest that any match lasting 55 minutes or less has not been “professionally” played. Yet, that is *precisely* what the Code Violation here suggests.

As explained in Section IV below, assessing whether a player has played at a “professional” level or whether a match was competitive requires a much deeper assessment of the match and the players’ performances, which in this case unequivocally confirms that Anna played at a professional level in her match with Ms. Sakkari. In any event, the grounds cited in the offence description cannot lawfully establish a violation of the First Round Performance Rule, as a player’s performance cannot be judged solely on the basis of the match’s duration or final score.

B. The Sanction was Arbitrarily and Improperly Imposed in Disregard of the Grand Slam Rules

In communicating the sanctions decision, a Grand Slam Supervisor informed Anna that “[i]n our judgment (reviewing your match live and on video as well as looking at the match facts & statistics) you were not sufficiently prepared to play a Grand Slam.” (Exhibit 15 at 1) (emphasis

added). This communication itself proves that the Code Violation was arbitrarily imposed in disregard of the Grand Slam Rules for at least two reasons.

First, the communication proves that whoever issued the Code Violation decision misapplied the Rule on its face. Article III(G) of the Grand Slam Rules, the only cited basis for the Code Violation, states that “[a]ll players are expected to perform to a professional standard in every Grand Slam match.” The Rule goes on to state that “if in the opinion of the Referee the player did not perform to the required professional standard, the Referee may determine that the player be subject to a fine of up to first round prize money.” The rule thus provides that players in first round matches are expected to perform “*to a professional standard*”, meaning the level of performance that would generally be expected of a tennis “professional.” (emphasis added).

In this case, however, the Grand Slam Supervisor admitted that Anna was held to a different standard, *i.e.*, whether she was “sufficiently prepared to play a Grand Slam.” Yet, that is *not* what the Rule requires. *Nothing* in Article III(G) requires that a player participating in a Grand Slam event must display a higher level of preparation or performance than would otherwise be expected of a professional at a non-Grand Slam tournament. The rule only refers to a single (albeit undefined) “professional standard.” Thus, a finding that a player was not “sufficiently prepared to play a Grand Slam” cannot legally establish a violation of the First Round Performance Rule because that Rule includes no such requirement.

Second, the Supervisor’s email also proves that the sanctions decision itself was not properly made. The Rule states that the sanctions decision must be made by the match referee and no one else. *See* First Round Performance Rule (“if *in the opinion of the Referee* the player did not perform to the required professional standard, *the Referee may determine* that the player be subject to a fine of up to first round prize money.”) (Article III(G) of the Grand Slam Rules)

(emphasis added). In this case, however, the decision was made by an unnamed ad hoc committee that had no legal authority to participate in the decision-making process.

Anna was called into a meeting with four men to discuss the potential Code Violation, thus indicating that the sanctions decision was not just being made by the Referee, but rather by a group of people who had no authority to participate in such a decision. The First Round Performance Rule does not contemplate or permit delegating decision-making authority to any ad-hoc body. Yet, that is precisely what occurred here. The email sent to Anna by the Grand Slam Supervisor attaching the Code Violation confirms this, noting that the decision was made by “the Roland Garros Referee, Remy Azemar, *in consultation with the Grand Slam Supervisors.*” (Exhibit 15 at 1) (emphasis added).

The fact that the Referee—the only person empowered to make the decision of whether the First Round Performance Rule was violated—involved other unnamed persons in the decision-making process violates the fundamental principle of law encapsulated in the maxim of *delegatus non potest delegare*, i.e., that “a power should be exercised by the authority upon whom it is conferred.” (See, e.g., *R (British American Tobacco and others) v Secretary of State for Health* [2016] EWCA Civ 1182 at [167]; see also *Meroni & Co., Industrie Metallurgiche, SpA v High Authority of the European Coal and Steel Community* (Procedure) [1958] EUECJ C-9/56.)

The arbitrary misapplication of the Rule also violated Anna’s rights under the European Convention on Human Rights.¹⁴ The case law of the European Court of Justice and the European Court of Human Rights makes clear that one of the fundamental protections of the rule of law is “the prohibition on arbitrary exercise of power.” (See *Stavytskyi v Council (Ukraine)* [2018])

¹⁴ The European Convention of Human Rights is applicable in the sporting arbitration context. (See *Mutu and Pechstein v Switzerland* (Applications no. 40575/10 and no. 67474/10) (ECHR 324 (2018)) (right to a fair trial granted under art 6(1) of the ECHR violated by CAS due to failure to hold public hearing).

EUECJ T-242/16, at [69].) For a decision not to be arbitrary, “[i]t must be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of ... discretion.” (*Placanica (Freedom to provide services)* [2006] EUECJ C-359/04 (16 May 2006) at [121].)

The protection of athletes against arbitrary sanctions is considered so important by the Tribunal Arbitral du Sport / Court of Arbitration for Sport (“CAS”) that it is exempted from the “field of play” rule, which normally prohibits review of decisions made by referees governing the match itself, such as calling a ball “out of bounds.” (*See, e.g., Korean Olympic Committee (KOC) v International Skating Union (ISU)*, Award, CAS Case No. 2002/H/OG 02-007, 23 February 2002.) Though Anna’s case does not involve a “field of play” issue, CAS jurisprudence confirms the strength of the protection against arbitrary measures:

“Sports law has developed and consolidated along the years, particularly through the arbitral settlement of disputes, a set of unwritten legal principles” including “general principles of law drawn from a comparative or common denominator reading of various domestic legal systems and, *in particular, the prohibition of arbitrary or unreasonable rules and measures.*”

(*AEK Athens and SK Slavia Prague v Union of European Football Associations (UEFA)*, Award, CAS Case No. 1998/O/200, 20 August 1999, at [156]. *See also The Gibraltar Football Association (GFA) v Union des Associations Européennes de Football (UEFA)*, Award, CAS Case No. 2002/O/410, 7 October 2003, where it was acknowledged that UEFA’s discretion was limited by the prohibition on arbitrary decision making).

While a rule may allow for the exercise of discretion by the rule maker, “the scope of the discretion and the manner of its exercise” must be articulated and limited “with sufficient clarity to give the individual protection against interference which is arbitrary.” (*See, R (on the*

application of Nicklinson and another) v Ministry of Justice; R (on the application of AM) v Director of Public Prosecutions [2014] 3 All ER 843).

In this case, the First Round Performance Rule sets out the vague standard by which a player's first round performance is to be assessed and the process by which that decision is to be made, both of which were arbitrarily misapplied by Grand Slam officials. This is also not entirely surprising, as the First Round Performance Rule itself is flawed, with an undefined "performance standard" so inherently subjective that not even the Referee charged with its application was able properly to apply or interpret it. Whether the Rule itself is left to stand or not, the inescapable fact remains that Anna's Code Violation must be vacated in its entirety because it was arbitrarily imposed in violation of Anna's legal rights.

C. The Sanction Violated Anna's Due Process Rights

The Code Violation also violates Anna's due process rights in several key respects. *First*, Anna was not provided with any clear notice of how she had to perform to meet the "professional standard" set out in the First Round Performance Rule. Moreover, before imposing the Code Violation, Grand Slam officials refused to provide her with any notice of what she did during the match that arguably violated the Rule. *Second*, Anna was not afforded any hearing where she could review and confront the evidence against her. Indeed, she still has no idea *to this day* the basis for her sanction and thus has been forced to pursue this appeal without any notice and or meaningful opportunity to be heard. And *third*, as explained in Section III(B) above, Grand Slam officials themselves operated outside the bounds of the rules and the law, subjecting Anna to an arbitrary and ad hoc process.

Anna was never given notice of the professional standard she was expected to meet during her match. During the match itself, Anna was not cited for any violation nor any misconduct. Anna completed the match without injury or retirement. When she left the court, Anna had no

reason to suspect that she had done anything wrong. To the contrary, Anna was satisfied that she had played a competitive match and had done her best in her professional return, as reflected in the many congratulatory messages and social media posts that she received right after the match.

Anna was stunned the next day when Grand Slam officials informed her that they were reviewing her match performance. When she asked them what she had done to deserve this review and what was wrong with her match performance, they refused to provide any explanation. She left the head referee's office crying, confused, and humiliated. And as explained above, not even the sanction decision itself explains what Anna did or did not do during her match with Ms. Sakkari that failed to live up to a "professional standard." *To this day*, Anna still has no idea what "professional standard" she was being held to.

CAS jurisprudence makes clear that athletes have a fundamental right to due process, including the right to be clearly notified *in advance* of the rules they are expected to follow in competition, and an opportunity to be heard before a violation of those rules is imposed. Due process requires that "the relevant disciplinary code must proscribe the misconduct with which [the athlete] is charged." While a broad rule is acceptable, an ambiguous one is not. (*See George Yerolimpos v. World Karate Federation (WKF)*, CAS case number 2014/A/3516, 6 October 2014, at [104]-[105], *cited by* CAS 2016/A/4921 & 4922 *Maria Dzhumadzuk, Irina Shulga & Equestrian Federation of Ukraine v. Federation Equestre Internationale (FEI)*, award of 30 May 2017 at [70] "[d]isciplinary regulations must be explicit" as "otherwise they become a tool of arbitrary decisions".)

Grand Slam officials may believe that they satisfied their due process obligations by informing Anna of the text of the First Round Performance Rule before the tournament. In fact, that notice was meaningless because the Rule itself provides no notice to players of what

“professional standard” they are expected to meet, and what specifically they must do or not do during competition.

EU law requires “legal certainty” so that a person is able to understand the rules they are expected to follow; a rule thus must be “certain [in] its application” such that its “legal effects must be clear and precise and must be brought to the notice of the person concerned” (*See, Opel Austria GmbH v Council of the European Union*, Case T-115/94 22 January 1997.) A “lack of precision does not enable individuals to be apprised of the extent to their rights and obligations.” (*See Commission v Spain (Freedom of establishment)* [2003] EUECJ C-463/00 (13 May 2003) at [75]; *Commission v France (Freedom of establishment)* [2002] EUECJ C-483/99 (04 June 2002) at [50]; *Festersen (Free movement of persons)* [2007] EUECJ C-370/05 (25 January 2007) at [42]. The European Convention on Human Rights requires “clarity and foreseeability of [a rule’s] effects . . . vague criteria” will not meet this standard. (*See, Liivik v. Estonia* [2009] ECHR 989 (25 June 2009) at [101].)

Here, the lack of clarity as to what it means to perform to a “professional standard” is particularly troubling given the punitive nature of the Rule itself, which can potentially result in not only a significant financial penalty, but also carries with it the devastating reputational impact of a finding that a professional tennis player has not competed at a “professional” level. This is particularly disturbing for a player like Anna who has devoted almost her entire life to becoming and competing as a tennis professional, and who generally is regarded in the tennis community as always adhering to standards of professionalism, integrity, and good character. Chris Evert, Anna’s long-time mentor, comments that she has “watched [Anna’s] career and many of her matches and can attest to her fighting spirit and competitiveness on the court” and that based on her 15 plus year relationship with Anna, Evert has “insights into [Anna’s] stellar character.” (*See*

Statement of Chris Evert, “Evert Statement”, Exhibit 8.) Sven Groeneveld likewise confirms that “Anna always competed and behaved like a true professional not only in competition but also with our tennis environment. . . . Her dedication to our sport always was used as an example for many young players in the past.” (Groeneveld Statement, Exhibit 5 at 1; *see also* Cahill Statement, Exhibit 7, at 1 (“I have worked with and know Anna Tatishvili for almost twenty years. She is a person of the highest integrity.”); Martinez Statement, Exhibit 2 at 1 (noting that Anna is a “true professional” and explaining that “[n]ot only is Anna’s effort on the court impeccable, but her habits outside of the court reflect that of someone who is a true professional even when they are not on the court.”); Kvatsabaia Statement, Exhibit 6, at 2 (noting that she has “known Anna since [] early childhood” and that Anna “is the most dedicated and professional tennis player that I have ever met . . .”); Statement of Ean Meyer “Meyer Statement” (Anna’s coach and mentor for over a decade), Exhibit 9, at 1 (“Anna has always conducted herself with professionalism.”).)

Fundamental concepts of due process require a fair hearing, including the athlete’s right to be informed of the case against her and to have all material facts disclosed. (*See Dirk de Ridder (OTUSA Team Member) v. International Sailing Federation (ISAF)*), *Arbitral Award*, CAS Case No. 2014/A/3630, 8 December 2014 at [110] (“There should be a full disclosure of all material in the possession of the prosecution which may be of assistance to the person charged with a disciplinary offenceA person charged should be informed of and given access to the procedures to be applied in his or her case.”); *Home Office v Tariq* [2010] EWCA Civ 462 (4 May 2010) [49] (Lord Scott) (“An essential requirement of a fair hearing is that a party against whom relevant allegations are made is given the opportunity to rebut the allegations. That opportunity is absent if the party does not know what the allegations are. The degree of detail . . . must . . . be sufficient to enable the opportunity to be a real one.”)

CAS repeatedly has recognized the rights of athletes both to know the full factual basis on which an adverse action was taken against them, and the opportunity then to be heard and confront that evidence. (*See, e.g., CAS 2004/A/549, Deffer & RFEG v. FIG*, Award of 27 May 2004, paras. 30–31 (noting a violation of the right to be heard, and in particular critiquing a dispute resolution process whereby a party was not afforded an opportunity to be heard at first instance); *CAS 2002/A/340, S. v. FIG*, Award of 19 March 2002, para. 17 (noting the lack of, or insufficient reasoning in, the impugned decision); and more generally any breach of “natural justice”. (*CAS 2003/O/486, Fulham FC v. Olympique Lyonnais*, Award of 19 December 2003, paras. 28 and 50–51. *CAS 2003/A/524, Duda v. RLVB*, Award of 1 April 2004, para. 24.)

In this case, Grand Slam officials violated Anna’s due process rights, particularly considering the magnitude, severity, and disproportionality of Anna’s sanction. Once again, the Code Violation and sanction must be vacated in their entirety.

D. The Code Violation was Discriminatorily Imposed on the Basis of Anna’s Gender

The evidence also indicates that the Code Violation in this case was unlawfully and discriminatorily imposed on the basis of Anna’s gender. As explained above, Anna was sanctioned because: (1) she had not played a tournament since October 2017, (2) she entered the French Open with a Special Ranking, and (3) the match lasted 55 minutes. Yet, a male player who competed at the *same* French Open, was subject to the *same* First Round Performance Rule, and met these *same* conditions was not sanctioned *at all*.

Amir Weintraub, a male player who competed in the qualifying round at Roland Garros, was subject to the same First Round Performance Rule.¹⁵ Mr. Weintraub, like Anna, did not

¹⁵ The First Round Performance Rule applies “to the First Round Performance in the Qualifying and Main Draw.” (2019 Official Grand Slam Rulebook, Article III(G) at 42.)

compete in the 2-3 week period preceding the Grand Slam and was using his Protected Ranking for entry. His last tournament prior to Roland Garros was the January 2017 Australian Open, *nine months earlier* than Anna’s last tournament.¹⁶

Mr. Weintraub played Lukáš Rosol in the men’s qualifying first round at the 2019 French Open, losing 6-3, 6-1 in 43 minutes, *12 minutes shorter* than Anna’s match against Ms. Sakkari. Yet, Mr. Weintraub was not issued any Code Violation and was not subjected to any sanction. A review of the match facts and statistics demonstrates the arbitrary and discriminatory nature of Anna’s violation when compared to a highly similar performance by a male player who was also subject to the First Round Performance Rule:

Tatishvili	Comparison	Weintraub
55 minutes	Duration	43 minutes
Lost in two sets: 6-1 and 6-0	Match Details	Lost in two sets: 6-3 and 6-1
Opponent won 9 aces against Tatishvili	Aces	Opponent won 7 aces against Weintraub
17	Unforced Errors	17
2 winners vs. opponent’s 26 winners	Winners	7 winners vs. opponent’s 34 winners
33% of the total points in the match (31 out of 93 points)	Points Won	34% of the total points in the match (33 out of 96 points)

Moreover, Mr. Weintraub’s opponent in the qualifying match, Mr. Rosol, was ranked much lower than Ms. Sakkari (No. 30), with a ranking of 149.¹⁷

By any legal measure, the discriminatory treatment that Anna suffered is illegal. Article 21 of the European Charter of Fundamental Rights (ECFR) provides that “[a]ny discrimination

¹⁶ See World Tennis Tour player Details, *available at* <https://www.itftennis.com/procircuit/players/player/profile.aspx?playerid=100001713>.

¹⁷ See Roland Garros, “Player Card Lukas Rosol” *available at* <https://www.rolandgarros.com/en-us/players/8847-1.rosol>.

based on any ground such as *sex*, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.” (emphasis added). Article 14 of the ECHR further provides that “[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as *sex*, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Gender equality also is enshrined in Article 23 of the ECHR and Article 13 of the United Nations Convention on the Elimination of Discrimination against Women.

If the three conditions set out in Anna’s offence description sufficed to warrant the imposition of the Code Violation and sanction (which they did not), the decision not to impose such a sanction on a male player under even more egregious circumstances was obviously discriminatory. Anna’s Code Violation must be vacated for this reason as well, sending a clear message that such gender discrimination has no place in the sport of tennis.

IV. ANNA PERFORMED TO A “PROFESSIONAL STANDARD” AT THE FRENCH OPEN

As explained above, the First Round Performance Rule provides no definition or guidance as to what it means to play to a “professional standard.”¹⁸ The five “factors” referenced in the text of the Rule have nothing to do with the quality of play in the match itself. Although the Rule provides that these five factors that can be considered in deciding whether a Code Violation has occurred, it does not state that a Code Violation can be issued *solely* on the basis of those factors.

¹⁸ Indeed, statements from tennis professionals submitted as exhibits in this appeal note the inherent difficulty with allowing a penalty for poor performance. (See, e.g., Groeneveld Statement, Exhibit 5 at 2) (“What is the definition of poor play? I believe many other players in the draw would have to be fined accordingly if “poor play” was the official reason.”).

If that were the case, a player could be sanctioned solely for returning from disability, pregnancy, or injury. Under the plain language of the Rule, any sanction must necessarily be based on the player's *performance* during a first round or qualifying round match.

Whatever the "professional standard" in Article III(G) of the Grand Slam Rules may be, the evidence establishes that Anna's performance during her match against Ms. Sakkari was the type of performance that could be expected at a professional level, regardless of the final score.

To begin with, a review of the match statistics¹⁹ confirms that Anna played at a professional level. While Ms. Sakkari achieved a decisive victory in terms of the overall score, Anna kept the points and games during the match competitive. For example:

- Anna had a higher first serve percentage than Ms. Sakkari (58% v. 55%);²⁰
- Anna broke Ms. Sakkari's serve;
- Anna won 66% of second serve return points;²¹
- Anna had fewer double faults in the match than Ms. Sakkari (4 v. 6);²²
- Anna was also 'in' the majority of the games, reaching 30 or deuce in 6 of the games she lost;
- The average minutes per game of 4.2 is consistent with other professional matches regardless of the match score;²³
- The average strokes per point of 3.3 and the average strokes per game of 23.6 are in the mid-range for all professional matches regardless of score;²⁴
- 20 points in the match consisted of 6 shots or more;

¹⁹ Roland Garros, "Infosys Match Centre, Women's Singles - First Round" *available at* <https://www.rolandgarros.com/en-us/matches/SD067> and attached as Exhibit 16.

²⁰ *See also* Martinez Statement, Exhibit 2 at 2.

²¹ *See also* Martinez Statement at 2-3.

²² *See also* Martinez Statement at 2.

²³ Expert Statistical Report, Exhibit 3 at 5.

²⁴ Expert Statistical Report, Exhibit 3 at 5.

- The very last game of the match consisted of 16 points, 4 of which involved rallies of 7 shots or more. Anna also fought hard to stay in the match, saving 4 match points.

As outlined in the Expert Statistical Report of Scott Carr and Michal Malkiewicz, Anna's performance was "typical of the losing players' performance across all 13-game WTA matches" over a 3-year period based on a wide-range of performance-related statistics, which include match duration (54th percentile), points won (58th percentile), points per game (87th percentile), strokes per game (67th percentile), and strokes per point (50th percentile). (Exhibit 3 at 2, 5-6.) The bulk of Anna's individual statistics are in the interquartile range (*i.e.*, the middle 50%), including first serve percentage, second serve percentage, points won after second serve, points won after opponent's first serve in and double fault percentage. (Exhibit 3 at 6.) Thus, unless the Grand Slam Board is prepared to categorize all losing performances in 13-game matches as being below this undefined "professional standard," the performance-related statistics confirm that Anna played to a "professional standard."

There is, however, no statistical formula that can necessarily establish whether a player has met a "professional standard," if there even is such a "standard". (See Exhibit 3 at 2) ("The "professional standard" criterion outlined in Article III.G of the Grand Slam Code of Conduct does not define or equate to an objective quantifiable metric by which a player's performance can be evaluated."). Assessing Anna's performance subjectively, the opinions of many highly respected tennis coaches and players establish Anna played at a "professional standard" during her match with Ms. Sakkari.

Following her match, various tennis professionals congratulated Anna on her return to tennis and her performance. Kathy Rinaldi, the U.S. Federation Cup Captain, sent Anna a text message immediately after the match stating, "Anna, I was SO happy to see you striking that ball extremely well today! Hope you could hear me cheering too! SO happy to have you [b]ack in

action! Let's GO!!!!" (05/29/2019 Text Message from K. Rinaldi, Exhibit 14.) Similarly, WTA staff writers reporting on the match concluded that "Tatishvili acquitted herself well at the start of the match, hanging with her seeded foe in protracted games. Sakkari had to fight very hard in a nearly 10-minute game to earn a break for 2-0, and the Greek needed to stave off three break points to hold for 3-0." WTA staff writers noted that "the Greek star . . . came into Paris on a significant upswing" and commented on "Sakkari's incredible form."²⁵ Again, a victory such as this for Ms. Sakkari is not unexpected in a first round draw where a seeded player is matched with an unseeded player.

Since the Code Violation, a number of prominent tennis coaches, players, and professionals have written statements attesting to Anna's professional performance in the French Open and decrying the Code Violation and fine. Although the statements may understandably differ slightly on their rationale, they all reach the same conclusion: that *Anna performed and prepared for her match at the French Open up to professional standards:*

- **Sven Groeneveld**, tennis professional and coach, explained that from his personal experience with Anna that she is one of the "leading players in our sport" with respect to "[h]er training regimes and dedication to her sport" and that "Anna always competed and behaved like a true professional not only in competition but also with our tennis environment." Groeneveld has volunteered as a "character witness for Anna" and "expect[s] to get an invitation to counter argue the fine." (Groeneveld Statement, Exhibit 5 at 1)
- **Sofia Kvatsabaia**, the national Coach for the Georgian Tennis Federation, who watched Anna's match, notes that "[d]uring the match her composure on court was at a professional level. She was very calm and focused. She never mentally gave up, and kept fighting until the last point. Tactically Anna played really well from [the] baseline and her shots were very clean. . . . Her returns were working really well especially attacking the second serve of Maria Sakkari. . . . The match between Tatishvilli and Sakkari was grand slam level, two players competed against each

²⁵ WTA, "French Open Day 3 roundup: Sakkari continues colossal clay season with first-round win," *available at* <https://www.wtatennis.com/news/french-open-day-3-roundup-sakkari-continues-colossal-clay-season-first-round-win>.

and the better player won, as simple as that. I did not see anything unprofessional from Anna during the match.” (Kvatsabaia Statement, Exhibit 6, at 2)

- **Garry Cahill**, the Performance Director for Tennis Ireland, who watched Anna’s match, maintains that “Anna performed at a professional level in the match. This was evident on the way that she fought for each point at the maximum of her ability. She was unlucky not to have a better score but this is due to the fact that her opponent played particularly well on this occasion.” (Cahill Statement, Exhibit 7, at 1.)
- **Fernando Martinez**, tennis professional and Anna’s coach, details Anna’s training regimen leading up to the French Open and her research of Ms. Sakkari prior to the match for strategy purposes. Martinez concludes after watching the match video that “Anna’s performance was consistent with the standards I expect to see when I watch professional matches.” Martinez bases this conclusion on several factors, including body language and engagement with the match and key match statistics (such as percentage of first serves in, percentage of first serve points won, number of double faults, number of points won on second serve returns, number of unforced errors, number of winners, and the duration of the games within the match. (Martinez Statement, Exhibit 2 at 2.)

It is also important to consider the high level of play and skill demonstrated by Anna’s opponent, Ms. Sakkari. The outcome of a tennis match does not depend solely on the level of play of the losing player, but is also obviously a function of the strength and performance of the winning player. Even with her Special Ranking of 107, Anna was playing an opponent with a far higher ranking, as Ms. Sakkari ranked 30th in the WTA rankings. Ms. Sakkari was the 29th seed at the French Open while Anna was unseeded. It is quite common for first round matches to be shorter in duration when unseeded players are playing against seeded players. Ms. Sakkari herself noted that it was “a very good day and period of mine.” (Sakkari Statement, Exhibit 4 at 1.) Statements from other tennis professionals confirm the high level of skill and play demonstrated by Ms. Sakkari during the match. (*See, e.g.*, Cahill Statement, Exhibit 7, at 1, “[T]his was also due to the fact that her opponent played particularly well on this occasion.”)

Ms. Sakkari came into the tournament on a significant winning streak: after her win against Anna, Ms. Sakkari was 13-4 in main draw play on clay this season (15-4 with qualifying wins

included), including a semifinal showing at Rome. Ms. Sakkari had also recently won her first WTA singles title in Rabat, Morocco, beating Johanna Konta on clay in the final 2-6; 6-4; 6-1. Prior to beating Ms. Konta in the final, Ms. Sakkari also eliminated top seed and defending champion Elise Mertens in the quarterfinals.²⁶ (*See* Groeneveld Statement, Exhibit 5 at 1) (“We must not judge one match and fine her for her performance against a leading WTA player who has been having her best year on clay and won her first title on tour.”).

Anna’s professional performance is further underscored by how hard she fought to battle back from injury and overcome adversity, which also is the mark of a professional. (*See* Groeneveld Statement, Exhibit 5 at 1, “Anna’s effort to make it to the French Open alone should be recognized as a great achievement after having had surgery. We all know how hard these injuries and surgeries are to endure (if you ever played and experienced this element of our profession) and overcome.”) As outlined in more detail in her personal statement and the statement of her coach, Fernando Martinez, Anna’s journey back to professional tennis was hard-fought and at times bleak. Anna faced several corrective and reconstructive surgeries, along with extensive rehabilitation in the years following her injury. When her ankle reconstruction surgery was complete in January 2018, she could barely walk, let alone play tennis.

No one can dispute the determination and courage that Anna demonstrated to regain her form, strengthen her ankle, and train tirelessly for her return to tennis. Ringing true throughout the various statements by tennis players and professionals who know Anna is the fact that she has and always will be a fighter—both on and off the court. (*See, e.g.*, Evert Statement, Exhibit 8, at 1. “I have watched her career and many of her matches and can attest to her fighting spirit and

²⁶ WTA, “French Open Day 3 roundup: Sakkari continues colossal clay season with first-round win” *available at* <https://www.wtatennis.com/news/sakkari-slides-past-van-uytvanck-rabat-final>.

competitiveness on the court.”). This was reflected during her match at the French Open by the fact that the very last game of the match, on Ms. Sakkari’s serve, lasted 16 points. The national Coach for the Georgian Tennis Federation, who watched Anna’s entire match, notes that Anna “never mentally gave up, and kept fighting until the last point.” (Kvatsabaia Statement, Exhibit 6 at 2.) Anna saved four match points, battling until the very end and pushing Ms. Sakkari to play high quality tennis to close out the match.

Whatever “professional standard” Grand Slam officials may have applied in this case, the evidence unequivocally establishes that Anna played her match against Maria Sakkari at the level expected of all tennis professionals.

V. THE SANCTION IMPOSED SETS A DANGEROUS PRECEDENT THAT WILL DAMAGE THE SPORT OF TENNIS IF LEFT TO STAND

As discussed above, Anna was sanctioned because she had not played in a tournament since 2017 due to on-going injury she sustained while playing at Wimbledon and because she exercised her right to play in the Grand Slam with her Special Ranking. It is undisputed that these factors were known to the Grand Slam Board and the French Open before she arrived at Roland Garros, and yet Roland Garros still deemed her fit to play and allowed her to compete.

If left to stand, the sanction imposed here will serve as a huge deterrent to players who are returning to tennis from an injury or disability to play a Grand Slam tournament, especially because the First Round Rule gives no guidance as to what it means to perform to this undefined “professional standard.” Allowing a tournament referee—or in this case, a tournament referee plus various unnamed and unauthorized Grand Slam or tournament administrators—to sanction a player based on a post-hoc, subjective and unexplained decision that he or she somehow failed to meet an undefined “professional standard” or was not “sufficiently prepared” will have an

insidious effect on the sport. This chilling effect is especially salient where, as here, the rule itself provides no guidance as to what it means to play at a “professional standard.”

The arbitrary and subjective decision-making that we see in Anna’s case also invites precisely the sort of gender discrimination that occurred here. Anna’s sanction, coming on the heels of substantial controversy within professional tennis regarding gender-based application of the rules,²⁷ underscores the importance of holding men and women to the same standards. All sporting institutions, and in particular international federations, must abide by the general principles of law such as nondiscriminatory behavior and fundamental notions of fairness and due process, or risk irreparably undermining the integrity of the sport. It is not just players that must act professionally; the regulating bodies must as well.

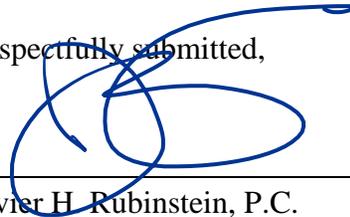
VI. CONCLUSION

For all of the reasons set out above, the Code Violation and sanction imposed on Anna Tatishvili must be overturned in their entirety, with all prize money earned by Anna at the French Open being paid to her immediately.

²⁷ See, e.g., The New York Times, “Serena Williams Spotlights Tennis Inequities, but in the Best Way?”, *available at* <https://www.nytimes.com/2018/09/09/sports/tennis/serena-williams-us-open-equality.html>; Forbes, “Serena Williams, Sexism And The Immense Power Of Speaking Up,” *available at* ; Global Citizen, “Serena Williams is Calling Out Sexism in her Sport - and She’s Not Alone,” *available at* <https://www.globalcitizen.org/en/content/serena-williams-us-open-osaka-sexism/>.

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Respectfully submitted,



Javier H. Rubinstein, P.C.
Lauren F. Biksacky
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
Phone: (312) 862-2000
Email: javier.rubinstein@kirkland.com
Email: lauren.biksacky@kirkland.com

Gabriella Bornstein
Brett Shandler
KIRKLAND & ELLIS INTERNATIONAL LLP
30 St Mary Axe
London EC3A 8AF
+44 20 7469 2000
Email: gabriella.bornstein@kirkland.com
Email: brett.shandler@kirkland.com

Attorneys for Anna Tatishvili

EXHIBITS

<u>Exhibit No.</u>	<u>Exhibit</u>
<u>1</u>	Statement of Anna Tatishvili
<u>2</u>	Statement of Fernando Martinez, Anna's Coach

Expert Statistical Analysis

<u>Exhibit No.</u>	<u>Exhibit</u>
<u>3</u>	Expert Report of Scott Carr and Michal Malkiewicz

Statements from Tennis Players and Professionals

<u>Exhibit No.</u>	<u>Exhibit</u>
<u>4</u>	Statement of Maria Sakkari
<u>5</u>	Statement of Sven Groeneveld, Tennis Professional and Coach
<u>6</u>	Statement of Sofia Kvatsabaia, National Coach for the Georgian Tennis Federation
<u>7</u>	Statement of Garry Cahill, Performance Director for Tennis Ireland
<u>8</u>	Statement of Chris Evert, Tennis Professional
<u>9</u>	Statement of Ean Meyer

Other Exhibits

<u>Exhibit No.</u>	<u>Exhibit</u>
<u>10</u>	March 11, 2019 WTA Email regarding “SR Freeze Provisional Approval: Tatishvili”
<u>11</u>	April 17, 2019 Medical Clearance from Dr. Giovanni
<u>12</u>	May 14, 2019 WTA Email regarding Roland Garros Playing Status
<u>13</u>	May 22, 2019 French Open Medical Examination Clearances
<u>14</u>	May 29, 2019 Text Message from K. Rinaldi
<u>15</u>	May 30, 2019 Email and Attached Code Violation from Andreas Egli Regarding First Round Match at 2019 Roland Garros
<u>16</u>	Roland Garros, Infosys Match Centre Statistics
<u>17</u>	Appendix of 2016-2018 Women’s Singles Matches (13 Games or Fewer) Under One Hour