

BEFORE THE UNITED STATES OLYMPIC COMMITTEE

Hope Solo,

Claimant

vs.

United States Soccer Federation, Inc.,

Respondent

COMPLAINT UNDER SECTION 220527 OF THE TED STEVENS ACT

I. INTRODUCTION

1. Pursuant to the Ted Stevens Olympic and Amateur Sports Act¹ (the “Stevens Act”), the United States Olympic Committee (“USOC”) has recognized the United States Soccer Federation (“USSF” or the “Federation”) as the National Governing Body (“NGB”) for the sport of soccer in the United States. This Complaint is being filed because the USSF has become blinded to its fundamental obligation as an NGB to “develop interest and participation throughout the United States and be responsible to the persons and amateur sports organizations it represents.”² Instead, because of the power, prestige, status and money flowing from the Federation’s alliance with Major League Soccer, a professional men’s league (the “MLS”), and its affiliate, Soccer United Marketing, LLC (“SUM”), the USSF’s paramount concern has become protecting and nurturing the MLS, even if at the expense of other stakeholders, including those involved in professional women’s and amateur soccer.

¹ 36 U.S.C. § 220501 *et seq.*

² *Id.* § 220524(1).

2. Because of its institutional bias in favor of MLS and commercial partnership with SUM, the Federation now appears to believe that its effectiveness should be judged not by how well amateur, youth, women's and non-MLS men's professional soccer are doing, but how well MLS is performing and how much money the Federation's partnership with SUM is generating. Some Federation officials believe they are doing a good job because the entry fee MLS charges new teams keeps increasing even though not a penny of that money goes to the Federation or its non-MLS stakeholders.

3. Despite the USSF's non-profit status, its responsibilities as an NGB under the Stevens Act, and its mission statement in its Bylaws and on its website, the USSF's President proudly proclaimed at its 2014 National Council Meeting that the Federation had "become less of a membership-driven organization and more of a consumer-driven organization" because of its financial partnership with MLS through SUM.

4. Consistent with its current focus on commercial success, the Federation crows about building a \$150 million surplus even as the U.S. men's national team fails to qualify for the past two Summer Olympics and the 2018 FIFA World Cup, women's soccer continues to be disadvantaged, the growth of youth soccer continues to be limited because it operates under a "pay to play" system, children with ambulatory cerebral palsy, stroke or traumatic brain injury are neglected and our country continues to fall short in developing world-class players in the men's game.

5. The USSF has turned a deaf ear to calls for reform. There could be no better evidence of its lack of responsiveness to legitimate criticism of the poisonous conflicts of interest created by the relationship with MLS than the fact that, in the USSF's upcoming election for President of the organization, the Federation's current President, Sunil Gulati, and the most powerful member of its Board of Directors (the "USFF Board"), MLS Commissioner Don Garber,

have thrown their support to Kathy Carter, who has been employed by MLS or SUM in various capacities since MLS's founding in 1995. Since 2010, she has served as SUM's President, and continues to hold that office even though she is running for the Federation's presidency.³ In Claimant's opinion, Ms. Carter is part of the problem and certainly not the solution.

6. In view of the Federation's unwillingness to recognize its failings and reform itself, Claimant has no choice but to file this Complaint.

II. THE PARTIES; SUMMARY OF COMPLAINT

7. Claimant is an individual who is a citizen and resident of the United States, with a business address at 137 N. Larchmont Blvd. Suite 477, Los Angeles, CA 90004. Claimant is a former goalkeeper for the United States Women's National Team, a two-time Olympic gold medalist (in 2008 and 2012) and World Cup winner (in 2015). Claimant has a prominent role in the fight for women's rights and gender equality in the game of soccer and more broadly. As part of that effort, she is currently standing as a candidate in the upcoming election for President of the USSF. Unlike other candidates who, on the eve of the election, have started speaking out about issues facing women who participate in the sport after years of silence or lip-service, Claimant has both first-hand experience with those issues and a record of fighting to make things better.⁴

8. The USSF is a New York not-for-profit corporation, with its principal place of business located at 1801 S. Prairie Avenue, Chicago, IL 60616.

³ She has taken a leave of absence from SUM while she campaigns and has promised to resign from SUM if elected.

⁴ For example, Kathy Carter, the candidate for USSF's presidency backed by the incumbent President, Sunil Gulati, and one of its most powerful and longest-tenured USSF directors who is also the MLS Commissioner, Don Garber, has claimed in her campaign materials that if elected, she will battle for "equality in women's sports around the world." Claimant, who has been engaged in that fight for years has yet to see Ms. Carter on the battle line. Indeed, if she is as concerned as she now claims about women's issues such as equal pay, then one wonders why, as President of SUM, she apparently did not make any effort to let the women's professional league enjoy, like MLS, the benefit of SUM's marketing of bundles of media rights centered on USSF's rights to national team games. Similarly, another candidate whose decision to run triggered a sudden passion for ensuring that women in the sport are treated fairly is Carlos Cordeiro, who has been a director of the Federation for the past decade, during which time the USSF has fought efforts by women to secure equal pay.

9. As noted above, pursuant to the Stevens Act, the USOC has recognized the USSF as the national governing body for the sport of soccer. In that capacity, the Federation has the responsibility under the Stevens Act to promote the development of all forms of soccer in the United States, including professional and amateur, women's and men's, adult and youth.⁵ The USSF's Bylaws explicitly acknowledge that duty and extend its scope, stating that the Federation's purpose is, among other things, "to promote, govern, coordinate, and administer the growth and development of soccer in all its recognized forms in the United States for all persons of all ages and abilities" and "to provide for the continuing development of soccer players, coaches, referees and administrators."⁶ The USSF website explains that "the Federation's mission statement has been clear and simple: to make soccer, in all its forms, a preeminent sport in the United States and to continue the development of soccer at all recreational and competitive levels."⁷

10. Unfortunately, the USSF has not lived up to the letter or spirit of the Stevens Act or the USSF's Bylaws and mission statement. Instead, the interests of MLS have consistently been advanced by the USSF at the expense of the competing interests of other stakeholders.

11. There are two primary reasons for the Federation's bias in favor of the MLS. First, the MLS was actually a creation of the USSF and the person serving as the USSF's President (the organization's most powerful executive officer) for the last twelve years was an employee of MLS or MLS team owners during the first seven years of that tenure, and he remains intensely loyal to the MLS. Second, the Federation has turned over its media rights for national men's and women's team games to SUM for marketing jointly with the rights to MLS games, meaning that the Federation has a financial interest in ensuring that the MLS prospers. But while the USSF has

⁵ The Stevens Act was enacted with the explicit purpose of developing amateur athletic activity in the United States. *See* Stevens Act § 220503.

⁶ USSF Bylaw 102.

⁷ *See US Soccer Reaching New Heights*, U.S. SOCCER, <http://www.ussoccer.com/about/about-us-soccer> (last accessed: Jan. 25, 2018).

benefitted men's professional soccer by allowing SUM to bundle the Federation's media rights with the MLS's, the USSF has not insisted that SUM include rights to NWSL games in the deal, thereby depriving the women's league of much needed money and marketing. Moreover, the USSF's favoritism toward MLS necessarily means that it is biased in favor of men's soccer, a bias that is confirmed by the second-class-citizen status to which women's soccer has been relegated.

12. The conflicts of interest arising from the USSF's institutional bias toward MLS and the intertwining of the financial interests of the USSF and SUM have resulted in the USSF failing to meet its obligations to develop and promote the sport of soccer in the United States for all persons at every level.⁸

13. The USSF's dereliction of duty has manifested itself acutely in numerous ways, including the failure of the United States men's team to qualify for the past two Summer Olympics and the 2018 FIFA World Cup. On October 10, 2017, the listless U.S. men's national team was eliminated from the tournament after losing 2-1 to Trinidad & Tobago. This is the first time the men's team has failed to qualify for the World Cup since 1986. Fundamentally, the elimination of the U.S. from soccer's most prestigious international tournament is a failure of player development and that failure, in turn, is directly attributable to the USSF's conflicted officers and directors and their misplaced priorities.

14. For these reasons, which are discussed in more detail below, the USSF is violating the duties and obligations imposed upon it as the NGB of soccer by the Stevens Act and the USOC Bylaws. Those violations include, but are not limited to the following:

- (a) USSF has failed to be responsible to the persons and amateur sports organizations it represents, as required by the Stevens Act, 36 U.S.C. § 220524(1);

⁸ Even one of the Federation's own top executives has acknowledged the existence of these conflicts of interest. Carlos Cordeiro, currently the USSF's Vice-President and one of the candidates in the upcoming election of the USSF's President, recently remarked that "[t]he unique ownership of SUM creates conflicts that need to be addressed." *Carlos Cordeiro*, U.S. SOCCER ATHLETE COUNCIL, <https://ussfathletecouncil.com/carlos-cordeiro>.

- (b) USSF has failed to conduct itself and make decisions independently from outside sources, in violation of the Stevens Act, 36 U.S.C. § 220522(a)(5);
- (c) USSF has failed to provide reasonable direct representation on its Board of Directors, as required by the Stevens Act, 36 U.S.C. § 220522(a)(11);
- (d) USSF has failed to be financially and operationally transparent and accountable to its members and to the corporation, as required by the USOC Bylaws Article 8.7(n);
- (e) USSF has failed to “provide equitable support and encouragement for participation by women where separate programs for male and female athletes are conducted on a national basis” as required by 36 U.S.C. § 220524(6); and
- (f) USSF has failed to encourage and support amateur athletic sports programs for individuals with ambulatory cerebral palsy, stroke or traumatic brain injury as required by 36 U.S.C. § 220524(7).

15. By filing this Complaint, Claimant requests that the USOC, pursuant to its authority under Stevens Act § 220527(d)(2), place the USSF on probation for up to 180 days and require the USSF, during that time, to take all necessary actions to correct the conditions that have led to these failures.⁹

III. JURISDICTION

16. The USOC has jurisdiction to hear this Complaint. Claimant brings this action pursuant to Section 10 of the USOC Bylaws, which states: “Any amateur sports organization or person that belongs to, or is eligible to belong to, an NGB or PSO [Paralympic Sport Organization]

⁹ Regardless of the outcome of the pending election for USSF’s President, the deep-rooted conflicts of interest described at length in this Complaint and the power wielded by MLS and SUM make it critical for the USOC to carry out its statutory role and ensure compliance with the Stevens Act. That is especially true if the winner is a candidate with close ties to MLS, such as Ms. Carter, or who has been a director and officer of the USSF while violations of the Stevens Act have continued, such as Mr. Cordeiro. Even if another candidate wins, it is by no means certain that he or she will be able to overcome institutional resistance to reform, especially if the Federation acts to minimize the role of the President if an insurgent is elected.

may seek to compel such NGB or PSO to comply with the requirements of Section 8 of these Bylaws and Sections 220522-220525 of the [Stevens] Act.”

17. Similarly, Stevens Act § 220527(a)(1) states that a “person that belongs to or is eligible to belong to a national governing body may seek to compel the national governing body to comply with sections 220522, 220524, and 220525 of this title by filing a complaint with the corporation [USOC].”

18. As a former women’s national team player, as well as current candidate for president, Claimant is a member or at the very least, is eligible to become a member, of the USSF, the NGB of soccer in the United States.

19. Claimant brings this action to compel the USSF to comply with its duties and obligations under Section 8 of the USOC Bylaws and the Stevens Act §§ 220522, 220524, and 220525.

IV. EXHAUSTION OF REMEDIES

20. Under Stevens Act § 220527(b)(1) and USOC Bylaws § 10.11, an organization or person can file a complaint with the USOC “only after exhausting all available remedies within the national governing body for correcting deficiencies, unless it can be shown by clear and convincing evidence that those remedies would have resulted in unnecessary delay.”

21. This requirement is inapplicable here for two separate reasons. First, there are in fact no available remedies “within” the USSF as required by Stevens Act § 220527(b)(1). The USSF has abdicated its responsibility to establish an internal mechanism for resolving grievances. Second, any requirement to exhaust the USSF’s remedial scheme would result in unnecessary delay.

A. There Are No Available Remedies “Within” the USSF

22. Claimant cannot be required to exhaust the remedies within the USSF because there are no available remedies “within” the USSF for Claimant to exhaust.¹⁰

23. USSF Bylaw 705 provides for arbitration to be the sole and exclusive remedy available to redress grievances related to USSF’s status as an NGB.¹¹ The process is set forth in USSF Bylaw 703. Under the Bylaws, “[a] grievance may be filed . . . by a person or Organization Member that alleges that . . . (b) the Federation has failed to comply with its membership requirements in the USOC.”¹² After a grievance is filed, the grievance is referred to the American Arbitration Association (“AAA”).¹³ When the USSF is a party to the grievance, as in this Complaint, the arbitrator will be selected by the AAA itself.¹⁴ The arbitrator “shall” review the grievance and, if necessary, schedule a hearing and issue a determination.¹⁵ The decision may be appealed only through the AAA’s Optional Appellate Arbitration Rules.¹⁶

24. This process does not occur “within the national governing body” under the plain language of Stevens Act § 220527(b)(1). The AAA is an independent organization that is not “within” the USSF. Every step of this remedial scheme—the hearing, decision, and appeal—occurs outside of the USSF.

25. The purpose of the exhaustion requirement is to give an agency the opportunity to correct its own mistakes with respect to the programs it administers and to allow the agency or body to apply its own special expertise. Neither purpose is served by the USSF delegating its

¹⁰ Even if remedies “within” the USSF existed, it would be futile for Claimant to pursue them. In federal court filings over the past several months, the USSF has made clear that it disagrees with the allegations central to this Complaint – i.e., that it has done no wrong in its role as NGB, that its conflicts of interest do not matter, and that it does not need to change. Claimant could not receive a fair and impartial adjudication within the USSF as currently constructed.

¹¹ USSF Bylaw 705(1).

¹² USSF Bylaw 703 § 1(a).

¹³ *Id.* §§ 3-4.

¹⁴ *Id.* § 3.

¹⁵ *Id.* §§ 3-6.

¹⁶ *Id.* § 8.

grievance process to the AAA, an outside body. As the USSF has no control and no oversight over the grievance process, it can neither apply its special expertise nor correct its own mistakes. Therefore, the purpose of exhausting remedies is directly undermined by the USSF Bylaws.

26. In addition, the Stevens Act requires that the national governing body be “autonomous in the governing of the sport, in that it (A) independently decides and controls all matters central to governance; (B) does not delegate decision-making and control of matters central to governance; and (C) is free from outside restraint.”¹⁷ The grievance process concerns matters that are “central to governance” because it is the only mechanism for members or individuals to enforce the USSF’s compliance with the Stevens Act. The USSF delegates the vital function of resolving such internal grievances to an outside body, in violation of Stevens Act § 220522(a)(5).

27. In sum, under § 220527(b)(1), the proper external body for handling grievances not disposed of through internal NGB processes is the USOC, not some other outside entity designated by the NGB. The Stevens Act clearly contemplates that only two bodies will have jurisdiction over complaints—the NGB itself and the USOC if the NGB’s internal procedures fail to produce a resolution. The USSF’s requirement that a grievance be submitted to the jurisdiction of any outside entity other than the USOC is contrary to the legislative scheme expressed in the Stevens Act.

B. AAA Arbitration Would Result in Unnecessary Delay

28. Claimant is also excused from exhausting any remedies set forth in the USSF’s Bylaws because the only potential remedy, AAA arbitration, would result in unnecessary delay. Claimant’s grievance would likely be ultimately decided in a AAA arbitration after USOC has ruled on the grievance. Forcing Claimant to also submit to AAA arbitration before USOC rules would therefore be an unnecessary duplication of Claimant’s efforts and a waste of time.

¹⁷ Stevens Act § 220522(a)(5).

29. A review of the procedures set forth in the USSF Bylaws and the USOC Bylaws reveals why. As explained *supra*, any grievance against USSF for non-compliance with USOC or the Stevens Act requirements is first submitted to arbitration through the AAA, pursuant to the USSF Bylaws.

30. If the Claimant was forced to submit this claim to arbitration under the USSF Bylaws, it would, after receiving the arbitral award, be able to submit its grievance to the USOC.

31. The USOC procedure for hearing grievances is set forth in USOC Bylaws § 10. But if the USOC process does not yield a satisfactory result, the aggrieved party may file a demand for arbitration with the AAA.¹⁸

32. In other words, if a claimant had to follow the procedures set forth by both the USSF *and* USOC Bylaws, the claimant would potentially have to submit to two separate AAA arbitrations to reach a satisfactory resolution. This structure renders the initial USSF-mandated AAA arbitration completely meaningless. Forcing Claimant to endure this duplicative process would unnecessarily delay the resolution of Claimant's grievances.

33. Because the only potential remedy set forth in USSF's Bylaws, AAA arbitration, would result in an unnecessary delay, the exhaustion requirement is excused and Claimant is eligible to file the instant Complaint with the USOC.

V. THE USSF HAS FAILED TO FULFILL ITS DUTIES

34. Under Stevens Act § 220524(1), "a national governing body shall develop interest and participation [in its sport] throughout the United States and be responsible to the persons and amateur sports organizations it represents." The USSF is failing its fundamental obligation to represent its constituency, namely, the soccer community in the United States in general and the youth and amateur ranks in particular. Instead of adhering to its central mission, the USSF has

¹⁸ USOC Bylaw § 10.21.

devoted its energy and resources to the development, promotion, and entrenchment of its preferred domestic men's professional league, MLS.

35. As explained above, the USSF's misplaced priorities are the result of its decision-makers being conflicted in several significant ways. First, there is an institutional bias in favor of MLS because the USSF was instrumental in creating the MLS and the USSF's President during the past twelve years, Sunil Gulati, was employed for many years by the MLS or one of its owners—indeed, he continued to work for a company controlled by an MLS owner for the first seven years of his term as USSF President. In addition, the close relationship between the Federation and MLS is the source of much of the prestige, power, and status that USSF's officers and directors enjoy as a result of their positions. Most importantly, the USSF favors MLS because of the Federation's business relationship with SUM, the for-profit marketing arm of the MLS and the USSF

36. USSF's conflict-ridden, MLS-centric governance has consequences for the participants in U.S. soccer other than MLS and its teams. The youth developmental system suffers from structural problems that the USSF repeatedly fails to address. These problems include the “pay-to-play” youth system which acts as a barrier to entry for youth players, and the costly coach-licensing system. The USSF, intently focused on the men's professional game at the MLS level, not only has failed to ameliorate the situation but actually made it worse by working against supplemental avenues for player development, such as the North American Soccer League (“NASL”), because they are perceived as potential competitive threats to the MLS. Finally, the USSF has also failed to provide equal support to the professional women's game. This is evidenced by the number of women's teams that have ceased operating over the years; most recently the Boston Breakers.¹⁹

¹⁹ Stephanie Y, *NWSL makes it official: Boston Breakers to cease operations*, SBINATION (Jan. 28, 2018), <https://www.thebentmusket.com/2018/1/28/16941666/boston-breakers-officially-fold-nwsl-statement>.

37. As a result, the U.S. does not develop a proportionate number of world-class players and suffers from a less-than-stellar record when it comes to the Olympics and other international competitions. Instead of addressing these and other problems head-on, the USSF stubbornly equates what is good for U.S. soccer as a whole with what is good for MLS and ignores or summarily dismisses the significant body of evidence to the contrary.

A. The USSF's Institutional Bias in Favor of MLS

38. The USSF suffers from a strong institutional bias in favor of MLS. From the very beginnings of the MLS (then known as Major League Professional Soccer or “MLPS”) in the mid-1990’s, the USSF has devoted itself to protecting MLS’s status as the sole top-tier men’s professional league and advancing its interests, even though doing so has been at the expense of other stakeholders in U.S soccer. Indeed, the growth of MLS has gained materially from the support of the USSF’s senior management and key Board members who have consistently catered to MLS’s needs and preferences.²⁰ At the same time, other stakeholders, including women’s professional soccer, have been neglected or, at best, under-supported.

²⁰ A major benefit conferred upon the MLS by the USSF has been the protection of the MLS’s status as the only Division I men’s professional league in the United States, among other things by thwarting the NASL’s efforts to compete at the Division I level. In addition, although a system of promotion and relegation is the norm for soccer in the rest of the world and is a major reason for soccer’s popularity overseas, and independent studies have concluded that the popularity of the sport in the U.S. would benefit from the system’s introduction here, the USSF simply refuses to consider the matter because of the MLS’s view that it would not be in the best interests of MLS owners. As Don Garber (MLS Commissioner and USSF Board member) conceded during USSF’s 2014 National Council Meeting, “[w]e, as an organization, have been *incredibly fortunate to have consistent leadership* of our organization for nearly ten years” and “[t]he vision behind all of this [growth in U.S. soccer] since 2006 has been that of Sunil Gulati . . . with the strong management that he has in Chicago” and “with *the very connected and aligned Board.*” See Transcript of Proceedings, U.S. Soccer Federation National Council Meeting 98th Annual General Meeting, at 28-29 (Mar. 1, 2014) (emphasis added).

In other instances, the USSF has caused U.S. National Team games played in the United States to be hosted in MLS stadiums—even when demonstrably better venues have been available that could seat more fans at lower ticket prices, helping to promote the sport in the United States. For instance, the recent World Cup qualifying game between the U.S. and Costa Rica was played before a quickly sold-out audience at the MLS-controlled Red Bulls Arena even though there was sufficient demand to justify hosting the event in larger facilities (such as the nearly four-times bigger Met Life Stadium), which would have given more fans an opportunity to attend the game and produced a larger overall gate thereby permitting fans to enjoy lower per-ticket costs.

39. There are a number of reasons for this favoritism. First, since the USSF played an instrumental role in MLS's launch in the mid-1990's, and since that time, the USSF has consistently given the MLS a level of support that it has not extended to women's or other men's professional leagues. The MLS's founder Alan Rothenberg, who at the time was the USSF's President, confirmed that the MLS occupied a special and protected position when he later testified in federal court that it was always the USSF's plan to sanction only one Division I professional men's league—the MLS.

40. In addition, during the past twelve years, the Federation's President has been Sunil Gulati, who served as Mr. Rothenberg's inaugural deputy commissioner of MLS from 1995 to 1999. During the first seven years of his tenure as USSF's President (2006-2013), Mr. Gulati held various executive positions within the Kraft Sports Group—an organization that owns and manages MLS-related holdings, including an MLS club, and has been a longstanding investor in MLS. Mr. Gulati's public statements and actions as the USSF's most powerful executive officer have demonstrated that, although no longer formally employed by them, he continues to work for his former employers.

41. If, with the support of Mr. Gulati and the MLS, Kathy Carter, SUM's President and a current MLS executive, is elected to replace Mr. Gulati in the February 10, 2018 election, this already lengthy period during which the USSF's presidency has been held by a former employee and loyal supporter of MLS will continue.

42. In addition to the connections between the USSF's President and the MLS, at least one-third of the voting members of the USSF's Board have an existing or prior employment or other business relationship with the MLS or its business partner, the United Soccer League, a second-tier men's professional soccer league (the "USL"). Those directors include Don Garber, who is both the Commissioner of MLS and the longest-tenured USSF Board member. He is also

a member of key Board and non-Board committees that play significant roles in decisions fundamentally affecting the Federation's governance, operations and future direction. He has been a strong ally of Mr. Gulati, lobbying passionately for each of Mr. Gulati's past re-elections as USSF President. And he now publicly supports Ms. Carter in the next election in February.

43. Also, the so-called "independent" directors are nominated by the Federation's President, who favors individuals with whom he has social, business or other ties and whom he judges to be highly likely to accept his position on questions coming before the Board.

44. Another factor leading to favoritism for MLS is the fact that the USSF's close connection with MLS is a major source of the perquisites, opportunities and status which Board members enjoy as a result of their positions.²¹

45. The relationships and connections described above predispose Board members to support the interests of MLS and to be susceptible to influence by the USSF's President and other senior executives who are allied with MLS.

B. Conflicts Arising from USSF's Commercial Relationship with MLS

46. By far the most important reason that the USSF has favored MLS is the Federation's commercial relationship with MLS through SUM, which, as noted, is a for-profit entity owned by MLS's owners. SUM's CEO is Don Garber, the MLS Commissioner and a member of the USSF Board of Directors.

²¹ For example, Mr. Gulati has parlayed his prominence in U.S. soccer into a spot on the FIFA Executive Council through 2021 that pays him around \$300,000 annually. Mr. Gulati also serves as the chair of the bid committee seeking to have the 2026 World Cup hosted in North America. In a similar situation almost 30 years ago, Alan Rothenberg, the USSF President and head of the Organizing Committee for the World Cup 1994, was voted a \$7 million bonus by the Committee after it successfully convinced FIFA to hold the 1994 World Cup in the United States. It has been speculated that if the 2026 World Cup bid committee succeeds, the Rothenberg precedent might result in Mr. Gulati receiving a bonus of between \$30 million and \$50 million. *See* Grant Wahl, *Mailbag: U.S. Soccer Election, MLS Cup Pick, Teams to Root for at World Cup and More*, SPORTS ILLUSTRATED (Oct. 25, 2017), <https://www.si.com/soccer/2017/10/25/mailbag-us-soccer-election-usmnt-2018-world-cup-uswnt-mls-playoffs>.

47. Since 2004, the USSF has given SUM the exclusive right to market the USSF's broadcast rights in the games played by U.S. national teams. SUM packages those rights with the media rights for MLS games and sells them as a bundle.

48. Because of the USSF's desire to benefit MLS, it has not extracted full value for the rights it has turned over to SUM. As Mr. Garber recently acknowledged, before entering into its first agreement with SUM in 2004 or before renewing that agreement in 2007, 2010 and 2014, the USSF never conducted a competitive bidding process similar to that engaged in by other professional sports in the United States.²² There is no way of knowing, therefore, whether the Federation, for the benefit of U.S. soccer as a whole, receives the maximum possible return from the sale of valuable media rights that are associated with the United States' national teams and that USSF holds as steward for all stakeholders. In addition, there is nothing in the public record to indicate that the USSF pursued alternatives that might allow stakeholders other than the MLS to share in the money earned from selling national-team media rights that are the property of the Federation as a whole.²³ Similarly, to the Claimant's knowledge, the USSF has never even made

²² Grant Wahl, *Soccer United Marketing Fact/Fiction: Garber Opens Up on SUM's Role in U.S. Soccer, MLS*, SPORTS ILLUSTRATED (Jan. 25, 2018), <https://www.si.com/soccer/2018/01/25/sum-soccer-united-marketing-garber-gulati-carter>.

²³ There are indications that opportunities to do better for all levels of U.S. soccer are available. For example, Nike pays USSF approximately \$25 million annually for the right to market its brand. The primary marketing opportunities occur during televised national team games. Thus, Nike is willing to pay the USSF for a small fraction of the marketing opportunities represented by the USSF's media rights as much as SUM pays in return for the ability to sell all of those rights. This strongly indicates that SUM is getting a major bargain at the expense of the USSF's members.

As another example, Riccardo Silva, owner of the NASL's Miami FC and the media empire MP & Silva, approached Mr. Garber and MLS in July 2017 to offer a groundbreaking \$4 billion for the global media rights to MLS games for a ten-year period beginning in 2023 (after the conclusion of the current SUM-brokered deal with ESPN, Fox Sports, and Univision)—a package deal which would have quadrupled the media rights fees earned by MLS. Significantly, not only did Mr. Silva's offer vastly exceed the value of the SUM deal, but it also included substantial payments to Division II teams in return for the media rights to their games, which is something absent from the SUM agreement. In short, the Silva proposal would have benefitted U.S. soccer at many levels. For example, it would have increased the money available to invest in Division II soccer and to develop professional players.

Despite the tremendous potential value of this offer, Mr. Garber categorically refused to even enter into discussions concerning Silva's offer, stating that "we are not in a position, nor are we interested in engaging with Mr. Silva on his proposal." *Miami FC taking promotion-relegation fight to Court of Arbitration for Sport*, ESPN (Aug. 3, 2017), <http://www.espn.com/soccer/miami-fc/story/3171424/miami-fc-taking-promotion-relegation-fight-to-court-of-arbitration-for-sport>. While in his capacity as MLS Commissioner, Mr. Garber was within his rights to decline to

a half-hearted effort to explain why the women’s professional league or men’s leagues other than the MLS were never offered the opportunity of bundling their media and other rights with USSF’s rights like MLS. Once again, USSF, which is supposed to represent all stakeholders, gave MLS special treatment.

49. It is apparent that when it comes to the Federation’s media rights, the USSF has treated SUM like a member of the family—indeed, as its only-child. Members of the USSF’s Board have openly boasted of the extensive interdependence of the USSF and MLS and have remarked that the commercial intertwining of the two organizations through SUM is not something that exists elsewhere in the world. For example, Daniel Flynn, who has held various positions at the USSF for over two decades and is currently its Secretary General and CEO, proclaimed in 2015 that “we’re fully committed with Soccer United Marketing, our great partner.”²⁴

50. In short, since it first turned over its media rights to SUM in 2004, USSF’s finances and fate have been inextricably intertwined with the priorities and future of MLS and SUM. This creates major governance issues, especially when the interests of other federation members do not align with MLS or SUM. As current USSF executive VP and presidential candidate Carlos

discuss Silva’s offer, the story is much different when it comes to the management and members of the Board of USSF. Mr. Gulati and the members of the Board, which include Mr. Garber, were well aware of Mr. Silva’s offer and the fact that it had the potential for allowing stakeholders other than the MLS to share in a media-rights bonanza. As reporter Christopher Harris remarked, “an injection of \$4 billion in cash could transform the United States into a powerhouse of soccer.” Christopher Harris, *MLS will hurt growth of US soccer by rejecting \$4 billion TV offer and promotion/relegation*,” [WORLDSOCCERTALK.COM](http://worldsoccertalk.com/2017/07/24/mls-will-hurt-growth-of-us-soccer-by-rejecting-4-billion-tv-offer-and-promotion-relegation/) (Jul. 24, 2017), <http://worldsoccertalk.com/2017/07/24/mls-will-hurt-growth-of-us-soccer-by-rejecting-4-billion-tv-offer-and-promotion-relegation/>. Nonetheless, there is no evidence that they ever considered using the USSF’s authority and influence as the sport’s governing body to persuade MLS to at least consider the offer. Similarly, the Board apparently did not direct USSF executives to meet with Mr. Silva in an effort to explore the possibility, despite the MLS’s rejection, of securing at least some of the benefits of the proposal for stakeholders other than MLS – perhaps, for example, by combining media rights for NWSL, USL and NASL with those for the U.S. national teams. Instead, USSF did what it always does in cases involving potential conflicts between the interests of MLS and the interests of NASL, NWSL or other stakeholders – it simply parroted the position of the MLS.

²⁴ Transcript of Proceedings, U.S. Soccer Federation National Council Meeting 99th Annual General Meeting, at 36 (Feb. 14, 2015).

Cordeiro described it, “the unique ownership of SUM creates conflicts that need to be addressed.”²⁵

51. The SUM relationship is not only a cause of the pro-MLS bias at the USSF, but is also a prime illustration of how that bias works for the benefit of MLS at the expense of other stakeholders. The USSF’s media rights in games played by the U.S. National Teams have historically been of much greater interest and value to cable and broadcast television companies than low-rated MLS games. Instead of negotiating an arm’s length deal that reflected the fact that USSF was bringing far more to the table than MLS, the USSF struck a deal that was highly favorable to MLS, effectively subsidizing MLS by using assets that rightfully belong to all participants in U.S. soccer.

52. The USSF’s deal with SUM not only gives the Federation an inadequate share of the revenues generated by SUM’s sale of the pooled media rights, but also deprives USSF of any part of the potential increase in value of SUM over time. According to some sources, SUM’s value has grown to over \$2 billion, all of which belongs to MLS’s owners. But USSF will not share in SUM’s spectacular growth in value since 2004 or any future growth. Inexplicably, at the beginning of the SUM relationship when the USSF’s media rights clearly were worth more than MLS’s and USSF’s bargaining power with SUM’s owners was at its peak, the USSF failed to insist on an equity interest in SUM so that soccer in this country at all levels could benefit, through the Federation, from SUM’s future increase in value.²⁶ This was yet another form of subsidy granted by an institution, the USSF, which seems intent on giving MLS very expensive gifts, ultimately at the expense of other stakeholders.

²⁵ See *Carlos Cordeiro*, U.S. ATHLETE COUNCIL, <https://ussfathletecouncil.com/carlos-cordeiro>.

²⁶ In other sports, similar joint ventures in which an entity controlling broadcast rights to games turns them over to another entity to exploit on behalf of the venture, the rights-owner typically reserves an equity interest. For example, when it formed the Big 10 Network as a joint venture with FOX, the Big 10 football conference received a significant equity interest in the Network.

53. SUM, MLS and the USSF have, to a large degree, simply become different arms of a single economic entity, thereby compromising the independence of the USSF's senior management and its Board. Moreover, the direct economic link between the USSF and the MLS through SUM creates a powerful economic incentive for the management of USSF to focus on protecting MLS's interests over and above the interests of the rest of its stakeholders in cases where those interests conflict.

54. While the MLS and the USSF earn millions from the SUM relationship, the professional leagues other than MLS and the thousands of youth and adult amateur teams across the country have not received a single penny generated from the SUM relationship. Moreover, while the USSF has benefitted men's professional soccer by allowing SUM to bundle the Federation's media rights with the MLS's, the USSF has not insisted that SUM include rights to NWSL games in the deal, thereby depriving the women's league of much needed money and marketing.

55. The lack of equal support for the women's league causes unfortunate consequences. Recent reports indicate that the Boston Breakers, one of the original NWSL teams, will fold and not participate in the 2018 NWSL season. For the USSF to sit on a \$150 million surplus (as discussed in more detail below) while a founding member of the NWSL folds exemplifies the Federation's blinkered focus on MLS.

56. And while the USSF currently runs the U.S. Open Cup, the oldest ongoing national soccer competition in the United States, which brings together professional and amateur men's teams in a knockout tournament, no such tournament exists on the women's side, thereby depriving the women's game of an important marketing and branding opportunity and limiting organic growth of viable women's clubs.

57. The USSF's business relationship with SUM reinforces the Federation's institutional bias in favor of MLS and men's soccer and serves as its own source of conflicts of interest. More importantly, the relationship has resulted in a redirection of the Federation's focus from furthering the interests of soccer at all levels to achieving commercial success. At the USSF's 2014 National Council Meeting, Mr. Gulati actually boasted of the degree to which the USSF has departed from its original mission because of its relationship with SUM and MLS, crowing that the USSF had "become less of a membership-driven organization and more of a consumer-driven organization" through its financial partnership with MLS and SUM.²⁷

58. Dan Flynn, the USSF's CEO, Secretary General, and longtime Board member, proclaimed at the 2015 National Council Meeting, "we're fully committed with Soccer United Marketing, our great partner,"²⁸ effectively repeating Garber's declaration at the 2012 National Council Meeting that "Soccer United Marketing is the engine that feeds a lot of this machine" of commercial growth in Division I soccer.²⁹

59. Mr. Gulati repeated this theme at the 2017 National Council Meeting, expounding yet again about the extent to which the USSF had "become a mature organization, and not only a mature organization, but a business" driven by the USSF's institutional interest in the advancement of MLS through marketing partner SUM, because "what we get from our commercial partnerships is roughly 50 percent of our budget."³⁰

60. As a "consumer-driven," but nominally "not-for-profit" corporation which is supposed to be devoted to the interests of all stakeholders and the game of soccer in the U.S. as a

²⁷ See Transcript of Proceedings, U.S. Soccer Federation National Council Meeting 98th Annual General Meeting, at 41 (Mar. 1, 2014).

²⁸ Transcript of Proceedings, U.S. Soccer Federation National Council Meeting 99th Annual General Meeting, at 36 (Feb. 14, 2015).

²⁹ Transcript of Proceedings, U.S. Soccer Federation National Council Meeting 96th Annual General Meeting, at 60 (Mar. 3, 2012).

³⁰ Transcript of Proceedings, U.S. Soccer Federation National Council Meeting 101st Annual General Meeting, at 35 (Mar. 4, 2017).

whole, the USSF and its Board have openly embraced a practice of working “hand in hand” with MLS to secure MLS in the position of sole men’s Division I professional league in U.S. soccer. Thus, Gulati explained in a 2013 interview that “[t]he growth of the game goes hand in hand with what [MLS] has done over the last 16 years, and the growth of so much of what’s going on in U.S. Soccer . . . The working relationship between the two is extraordinary and my guess is there aren’t many in the world like that.”³¹

61. Mr. Garber followed Mr. Gulati’s description of the relationship between MLS and USSF, telling reporters from Sports Illustrated that Mr. Gulati, Dan Flynn, Mr. Garber, MLS, and SUM are “joined at the hip” with the USSF “mak[ing] commitments on the commercial side,” that benefit MLS and saying that the relationship is “not something that exists in other parts of the world.”³² MLS executives understand that MLS gains significantly from the close economic partnership between MLS and the USSF through SUM. Gary Stevenson, President and Managing Director of MLS Business Ventures, explained MLS’s sales pitch: “We went out with a very simple deck to tell everyone, ‘Here’s what we’re building.’ I don’t think there’s a closer relationship between a league and its national team than we have with U.S. Soccer.”³³

62. The USSF-MLS-SUM marriage infects the decision-making process at USSF, a fact that is recognized by neutral outsiders and begrudgingly admitted by a few insiders. The clear conflict of interest between the USSF and MLS was recently acknowledged by a federal court judge in the Eastern District of New York in an antitrust lawsuit filed by the NASL against the USSF. Although denying the NASL’s motion for a preliminary injunction, considering the high legal threshold the NASL was required to meet at that stage of the proceedings, the court expressly

³¹ Charles Boehm, *Sunil Gulati’s Steady Rise, with the Biggest Challenge Still to Come*, MLSSOCCER.COM (June 7, 2013), <http://www.mlssoccer.com/post/2013/06/07/sunil-gulatis-steady-rise-biggest-challenge-still-come-word>.

³² Grant Wahl, *15 Years of The Don: Under Garber, MLS stayed afloat, has taken strides*, SPORTS ILLUSTRATED (Dec. 3, 2014), <https://www.si.com/soccer/planet-futbol/2014/12/03/don-garber-mls-commissioner-major-league-soccer>.

³³ John Ourand et al., *MLS’s Big Play*, SPORTS BUSINESS J. (May 12, 2014), <http://www.sportsbusinessdaily.com/Journal/Issues/2014/05/12/Media/MLS-TV.aspx>.

recognized that there is “ample evidence of a conflict of interest between [the USSF] and MLS”³⁴

63. In their statements as candidates for election as the Federation’s President, Kathy Carter, the President of SUM, and Carlos Cordeiro, the USSF’s Executive Vice President, have both acknowledged the lack of transparency by USSF about its relationship with SUM. Mr. Cordeiro has explicitly stated that “the unique ownership of SUM creates conflicts that need to be addressed.”³⁵

64. The lack of transparency was also highlighted in recent requests made by two United States Senators who introduced a resolution supporting equal pay for the men’s and women’s national teams. Senators Patty Murray and Dianne Feinstein asked Mr. Garber for a breakdown of SUM’s revenue between the men’s and women’s national teams. “We are interested in learning more about the amount of revenue generated by the Women’s Team and how the relative value of the Women’s Team and Men’s Team are assessed by SUM,” they wrote. Neither Mr. Garber nor SUM has apparently answered that request.

65. In short, USSF’s management has become blinded to their responsibility to U.S. amateur soccer and the broader soccer community because of their emphasis on commercial success, their past and current relationships with the MLS and the power, prestige and status that the money generated by SUM and close association with the billionaire owners of MLS teams confers.

C. The USSF’s Failure to Police Itself

66. As detailed above, the conflicts of interest permeating the USSF and tainting its governance of U.S. soccer are numerous and glaring. Nevertheless, the Board has obstinately

³⁴ North American Soccer League, LLC v. United States Soccer Federation, Inc., 17-cv-05495 (MKB) (Mem. & Order, dated November 4, 2017), at 25.

³⁵ See *Carlos Codeiro*, U.S. ATHLETES COUNCIL, <https://ussfathletecouncil.com/carlos-cordeiro>.

refused to take customary and prudent steps to eliminate longstanding conflicts of interest which poison the Board's decision-making processes.

67. The USSF's approach to conflicts of interest on its Board has been harshly criticized by third-party scholars and commentators. For example, Professor Roger Pielke, Jr., the founder and chair of the Sports Governance Center in the Department of Athletics at the University of Colorado, Boulder, singled out the USSF as a governing body whose conflict policies require significant changes. Among other critiques, Professor Pielke wrote that the USSF "should transition the role played by its CEO and board in evaluating possible conflicts to an independent Ethics Committee" (in other words, it doesn't pass muster for the Board to "monitor" itself for its own conflicts), "there needs to be a comprehensive independent evaluation of the mixing of non-profit and for-profit activities that occur under the umbrella of US Soccer" and there should be "greater transparency in U.S. soccer conflict of interest policies."³⁶

68. Professor Pielke has further explained that the USSF's approach to conflicts of interest "departs from best practices in three important respects" because (i) only the CEO and the Board need to evaluate conflicts, (ii) relationships and transactions with affiliated member entities like MLS and SUM are completely exempted from the conflicts policy, and (iii) the USSF is not transparent about publicly disclosing potential conflicts of interest within its leadership. Contrary to best practices, Professor Pielke also observed that the USSF suffers from "a longstanding culture that has eschewed independent oversight," that the "actual inter-related workings of SUM, MLS and US Soccer are opaque, to put it mildly" and that the USSF Board's "mixing of business interests and non-profit sports governance is a recipe for disaster."³⁷

³⁶ Professor Roger Pielke, Jr., *US Soccer and Conflicts of Interests*, SOCCERNOMICS (May 12, 2016), <http://www.soccernomics-agency.com/?p=973>.

³⁷ *Id.*

69. The issues identified by Professor Pielke are compounded because of the USSF's lack of transparency. Virtually all of USSF's most important decisions are made in non-public "executive sessions." The matters considered, the details of the decisions made and how each of the directors voted are shrouded in secrecy. As just one of many possible examples, the USSF Board appears to have renewed its agreement with SUM in an executive session held in 2014. Federation members received no advance notice that the renewal was to be considered and no information about what occurred in the meeting room. Neither USSF members nor the public know the material terms of the renewal, whether the Board considered any alternatives, whether conflicted directors participated in the deliberations or the decision itself, whether any directors opposed or even questioned the decision to renew or any other relevant information whatsoever about a deal that produces a quarter of the Federation's annual revenues. Some of the current USSF presidential candidates describe the Board's lack of transparency and hidden deal-making as an "indictment against the current leadership from the President, Vice President, down through the rest of the Board."³⁸

70. This opaque and conflicted decision-making may be a breach of the Board's fiduciary obligations to USSF membership. This system may also run afoul of New York's Not-for-Profit Corporation Law and the USOC Bylaws governing NGBs. New York Not-for-Profit Corporation Law § 715-a requires that the Board of a non-profit implement and oversee compliance of a conflict of interest policy with a set of minimum provisions including procedures for disclosing conflicts prior to initial election and annually thereafter. It is not clear that the USSF has implemented or enforces such provisions. Additionally, the USOC Bylaws clearly require that NGBs must "be financially and operationally transparent and accountable to its members and to the corporation." USOC Bylaws § 8.7(n). These repeated executive sessions

³⁸ *Eric Wynalda*, U.S. SOCCER ATHLETE COUNCIL, <https://ussfathletecouncil.com/eric-wynalda>.

where the most important decisions of the USSF are decided in secret directly violates this USOC membership requirement of transparency and accountability.

71. The USSF's management and Board have rejected or simply ignored calls for reform. While, the election of the USSF's President scheduled for February 10, 2018 may appear to hold the potential for beneficial change, there are formidable obstacles to achieving meaningful changes.

72. First, there has already been talk of support within the USSF for possibly reducing the power of the Federation's President after the election. No such proposal has surfaced during the many years when the presidency has been held by individuals coming from and intensely loyal to the MLS, and skeptics doubt that the proposal would actually be advanced unless the winner of the election is someone other than a candidate that the MLS supports.

73. Second, although Mr. Gulati is not seeking re-election, he and the MLS have thrown their support behind Kathy Carter, who is SUM's President.³⁹ If elected, Ms. Carter would be the second USSF President in a row who assumes the office after a long career with MLS or its affiliates.

74. Moreover, her personal financial interest in SUM and/or MLS is unknown. Ms. Carter has failed to provide such disclosures either publicly or on her sparse campaign website. For example, even if Ms. Carter were to leave SUM if elected President of USSF, there is no public information about whether she will still have financial ties to SUM through pensions, severance agreements, equity interests or other arrangements.

75. In announcing her candidacy, Carter boasted that she's "got 25 years of walking the hallways with soccer as my business."⁴⁰ In addition to her role as SUM president, Ms. Carter

³⁹ Although Mr. Gulati is not seeking re-election, Mr. Gulati remains on the board, he can still participate in board deliberations, and he can influence the direction of the board.

⁴⁰ Andrew Das, *Kathy Carter Joins a Crowded Race for U.S. Soccer President*, N.Y. TIMES (Dec. 5, 2017), <https://www.nytimes.com/2017/12/05/sports/soccer/kathy-carter-us-soccer-election.html>.

served as MLS's Vice President of Corporate Marketing from the League's inception until late 1999. Before that, she served as VP of Sales and Marketing for Anschutz Entertainment Group, the company controlled by MLS co-founder Philip Anschutz and that owns the MLS's LA Galaxy. In backing her candidacy, Mr. Garber has emphasized her business acumen, saying that she "knows the business [of soccer] backwards and forwards."⁴¹ Mr. Gulati also supports her candidacy.

76. Ms. Carter's skill as a business executive are not at issue here. But the USSF is not supposed to be run like a commercial enterprise. Instead, the USSF is a non-profit organization which, under the Stevens Act and its own charter documents, is supposed to operate for the benefit of its members and those who play, watch and otherwise participate in the sport of soccer rather than focus on the bottom line.

77. Prominent soccer reporter Grant Wahl summarized the widely held sentiment regarding Carter's candidacy: "At a time when most people (including me) think U.S. Soccer needs to put more attention on the soccer side and less focus on the business side, Carter and [Carlos] Cordeiro are very much business-side types"⁴²

78. In any event, even if Ms. Carter is not the right person for the job, Messrs. Garber and Gulati's support stacks the deck in her favor.

79. First, the Federation's officers and staff may interpret their endorsements as tacit instructions to cause the USSF to put its institutional muscle behind her candidacy. The election will occur at the USSF annual general meeting in February 2018, where the voters will consist primarily of delegates appointed by the member organizations of the Federation's Youth, Adult,

⁴¹ Jeff Carlisle, *Don Garber denies lobbying Kathy Carter to run for USSF presidency*, ESPN (Dec. 8, 2017), <http://www.espn.com/soccer/major-league-soccer/story/3302170/don-garber-denies-lobbying-kathy-carter-to-run-for-ussf-presidency>.

⁴² Grant Wahl, *Kathy Carter Denies Being Gulati, Garber's Strategic Pick for U.S. Soccer President*, SPORTS ILLUSTRATED (Dec. 5, 2017), <https://www.si.com/soccer/2017/12/05/kathy-carter-us-soccer-president-election-sunil-gulati-don-garber-sum>.

Athletes and Professional Councils. Organizations and delegates who are in some fashion dependent upon the goodwill of the USSF's management or the MLS may conclude that unless they vote for Ms. Carter, they risk losing the goodwill of the two most powerful figures in U.S. soccer, Messrs. Gulati and Garber.

80. In addition, the actual voting process is highly complex and opaque but gives a clear and significant advantage to any candidate backed by USSF management and the MLS. Each of the Professional Council, Youth Council, and Adult Council holds approximately 25% of the voting power, the Athletes Council holds 20% of the voting power; and the remaining voting power is divided among past presidents, the Board of Directors (including Messrs. Gulati and Garber), and some other miscellaneous voters.

81. Due to the Board's recent approval of an MLS-backed proposal, the MLS will control approximately 56% of the Professional Council's vote at the election, which equates to approximately 14% of the total votes to be cast. With MLS's support, Ms. Carter has therefore already locked up a substantial portion of the 50% plus one vote she needs to win the election. Presumably, Mr. Gulati and Ms. Carter's other supporters within the USSF will be able to deliver many more votes. These are indeed dismal numbers for any of the independent candidates committed to reforming the Federation.

82. Another insider seeking election as the Federation's next President is Carlos Cordeiro, who, like Ms. Carter, has a business background that suggests that he may continue the Federation's shift in emphasis to the pursuit of commercial success rather than serving stakeholders in the sport of soccer. Although he is trying to run as an outsider and a reformer, the reality is that he has been a director of the USSF since 2007, became USSF's treasurer the following year, served as vice chairman on the committee making a bid to have the U. S. host the 2022 World Cup (Mr. Gulati was Chairman), served as the Chairman of the Federation's budget

committee and in 2016 was elected the USSF's executive vice president. Cordeiro also is a member of the CONCACAF Council. He is, in other words, the consummate insider.

83. To our knowledge and belief, during all of those years he has been a director and officer of the Federation, he has never publicly voiced any of the criticisms of the USSF, its management or its focus on supporting the MLS that he has suddenly started pushing since he became a presidential candidate.

84. Indeed, until he decided to run for President, Mr. Cordeiro was, as a recent *Sports Illustrated* article points out, most often described as “Gulati’s ‘deputy,’ his ‘confidante’ and his ‘protégé.’”⁴³ Now that he is a candidate, he suddenly has had an epiphany and is saying such things as “the unique ownership of SUM creates conflicts that need to be addressed;”⁴⁴ “[i]t can’t be about one person making every single decision,” apparently referring to his former “confidante’s”⁴⁵ management style; and “[i]t can’t be an organization that focuses on only some members,”⁴⁶ seemingly criticizing the attitude within the USSF that MLS matters far more than other stakeholders.

85. One wonders why Mr. Cordeiro, who is by all accounts an intelligent man, did not recognize and raise these issues in all the years he has been closely involved with the Federation and Mr. Gulati since 2007.⁴⁷ While Messrs. Gulati and Garber apparently prefer Ms. Carter, if

⁴³ Brian Straus, *Carlos Cordeiro, Gulati's Right-Hand Man and VP, Runs for U.S. Soccer President*, SPORTS ILLUSTRATED (Nov. 2, 2017), <https://www.si.com/soccer/2017/11/02/carlos-cordeiro-us-soccer-president-sunil-gulati-election>.

⁴⁴ See *Carlos Cordeiro*, U.S. ATHLETE COUNCIL, <https://ussfathletecouncil.com/carlos-cordeiro>.

⁴⁵ Brian Straus, *Despite Ties to Gulati, Cordeiro's U.S. Soccer Platform Differs From Outgoing President*, SPORTS ILLUSTRATED (Dec. 20, 2017), <https://www.si.com/soccer/2017/12/20/carlos-cordeiro-us-soccer-president-election-platform>.

⁴⁶ *Id.*

⁴⁷ This is not to say that his points don't have merit. For example, his observation that the USSF's relationship with SUM creates serious conflicts of interest is a valid one. However, during his tenure on the Federation's Board, the SUM deal has been renewed at least twice and there is no evidence that Mr. Cordeiro voted against renewal or raised his concerns about the inherent conflict of interest during Board deliberations. Actually, some of Mr. Cordeiro's promises as a presidential candidate are similar to those he made just before his election as the USSF's Vice President in 2016. See Transcript of Proceedings, U.S. Soccer Federation National Council Meeting 100th Annual General Meeting, at 55-62 (Feb. 27, 2016) The fact that he is making them once again almost two years later suggests that he either did not try to carry them out or was ineffective in doing so.

Mr. Cordeiro is nonetheless elected, then Claimant believes that it is unlikely he will prove to be an agent for fundamental change given his role with the Federation and his support for Mr. Gulati's agenda for over a decade.

86. In short, the exercise of leadership within the USSF is desperately needed in order to untangle the mess created by the conflicts of interest deriving from the organization's alliance with SUM and favoritism for MLS. It is also needed to force the Federation to rededicate itself to its foundational purpose of serving *all* of its constituencies, including the amateurs whose interests it is duty-bound to further as soccer's NGB. Existing management has shown no inclination to undertake this task and the odds against the election of a reform-minded successor to Mr. Gulati are formidable. Accordingly, unless USOC acts affirmatively on this Complaint, the USSF's conflict-ridden decision-making process will continue to plague U.S. soccer.

D. The Consequences of USSF's Conflicted Management

87. The USSF's conflicted management has directly and adversely impacted Claimant and other USSF members.⁴⁸ The USSF's misplaced priorities are exemplified by its failure to maximize the economic returns from the marketing of its valuable media and other intellectual property rights, to ensure that all of its constituents, including the women's professional league

⁴⁸ The harm the USSF causes its own sport is unique among major team Olympic sports in the United States (i.e., basketball, baseball, and hockey). This is because neither the NBA, MLB, nor NHL (which govern the professional leagues) are also the NGBs for their respective sports. Accordingly, the opportunity for conflicts of interest like those that permeate the USSF is simply not present. As former U.S. soccer star and current USSF presidential candidate Eric Wynalda explains in his candidacy questionnaire:

"The lack of transparency of US Soccer stands in stark contrast to other US sports organizations. To improve its governance, US Soccer should undergo a high-level, independent evaluation of the relationship of US Soccer, MLS and SUM. Such evaluation will no doubt be strongly resisted because in many respects US Soccer, MLS and SUM are one and the same. However, the mixing of business interests and non-profit sports governance is a recipe for disaster, as we have seen repeatedly in the soccer world in recent years. MLS has used SUM to have a de facto monopoly on US Soccer policy and power. This includes their ability to limit player movement, salaries, and access. How much? Without the ability to review the deal, it is hard to pinpoint the severity of the negative effects of the relationship."

Eric Wynalda, U.S. SOCCER ATHLETE COUNCIL, <https://ussfathletecouncil.com/eric-wynalda>.

benefit from the sale of those rights and to spend those revenues in ways that benefit and further the development of youth and amateur soccer.

88. A strong indication of those misplaced priorities can be found in the fact that the Federation has accumulated a \$150 million surplus. From the perspective of the USSF's incumbent management, that surplus is a positive development. They undoubtedly agree with Kathy Carter's remark in her presidential-candidate questionnaire: "The success of the SUM relationship can be seen in the \$150 million surplus and exponential increase in financial returns to the Federation based on my team's work to market the sponsorship, consumer products and media rights."⁴⁹

89. Given the Federation's status as a not-for-profit entity, its duties as soccer's NGB and its own definition of its mission, the truth about the significance of the USSF's surplus can be found in the succinct statement of Michael Winograd, a lawyer and USSF presidential candidate, that "[t]here is no reason for a non-profit like US Soccer to have such a significant surplus."⁵⁰

90. That surplus exists in large part because of the decision by management and the Board not to spend that money on development of youth or amateur soccer and to underfund women's professional soccer. Indeed, review of the USSF's published financial information suggests that youth and amateur soccer organizations actually send more money up to the Federation than they receive in the form of grants and other contributions made by the USSF.⁵¹

91. Youth soccer could put the Federation's surplus to good use. The cost of participation in the game for young people and coaches has proven a barrier to creating a broad-scale, effective and sustainable means for developing players. A study by TD Ameritrade in 2016 found that it costs between \$3,000 and \$11,000 per year to be a member of a private youth soccer

⁴⁹ *Kathy Carter*, U.S. SOCCER ATHLETE COUNCIL, <https://ussfathletecouncil.com/kathy-carter>.

⁵⁰ *Michael Winograd*, S. SOCCER ATHLETE COUNCIL, <https://ussfathletecouncil.com/michael-winograd>.

⁵¹ For example, in 2016 the USSF collected \$4,220,598 in youth registration fees because of the "pay to play" system that greatly reduces the number of young people able to participate in the sport.

club, depending on the level and extent of travel.⁵² Participants must pay to cover membership fees, registration fees, travel expenses, and other necessary costs such as coaches, referees, insurance, field rentals, and equipment.

92. This extraordinary expense limits the accessibility of youth soccer programs. A study conducted in 2013 by a University of Chicago economics professor found that players on the U.S. men's national team "came from communities that had higher incomes, education and employment rankings, and were whiter than the US average, while the basketball and football players came from places that ranked lower than average on those same indicators."⁵³ Youth soccer in less-affluent areas is neglected and talent is falling through the cracks. As a member of the USSF Athletes Council has acknowledged: "We're [USSF] are [sic] keeping talented players OFF the field – we're excluding millions of US-based players and we're not maximizing our player development efforts."⁵⁴ A recent story about Kyle Martino, a former U.S. men's national team player and another candidate in the upcoming presidential election, shows that Mr. Martino shares that view:

The USSF, as a whole, has detached itself from its membership, according to Martino. He feels that US Soccer has become too focused on success at the top of the pyramid, those at the senior levels for both men and women, when in reality, the USSF has been neglecting what matters most in all sports — youth development.⁵⁵

According to Mr. Martino: "[W]e're not growing a soccer culture because we're not focusing on the right things" because "[w]e're trying to build a soccer culture from the top-down and everyone

⁵² Jason Smith, *Paying to Play: How Much Do Club Sports Cost?*, USA TODAY (Aug. 1, 2017), <http://usatodayhss.com/2017/paying-to-play-how-much-do-club-sports-cost>.

⁵³ Les Carpenter, *'It's only working for the white kids': American soccer's diversity problem*, GUARDIAN (June 1, 2016), <https://www.theguardian.com/football/blog/2016/jun/01/us-soccer-diversity-problem-world-football>.

⁵⁴ Paul Caligiuri, U.S. SOCCER ATHLETE COUNCIL, <https://ussfathletecouncil.com/paul-caligiuri>.

⁵⁵ Kyle Schnitzer, *Kyle Martino: How I'd Fix US Soccer, who's forgotten its youth*, NY POST (Dec. 15, 2017), <https://nypost.com/2017/12/15/kyle-martino-how-id-fix-us-soccer-whos-forgotten-its-youth>.

knows you have to do it the opposite. You have to flip the pyramid and begin to grow the experience.”⁵⁶

93. As another example of how youth soccer has been harmed by the USSF’s favoritism toward MLS concerns FIFA’s creation in 2001 of a monetary compensation and incentive system to reward youth clubs around the world that create professional soccer players. Under the system, 5% of any transfer fee paid for a soccer player is set aside and allocated to the youth clubs that trained the player from ages 12 to 23. Also, “training compensation” is paid to the youth clubs the first time a player signs a professional contract, and the compensation is paid at a set rate for each year that player was at the youth club.

94. The FIFA system applies to the international transfer and signing of soccer players, and the FIFA rules encourage domestic soccer associations to implement solidarity systems for their domestic transfers and signings. Mexico and Canada both have domestic solidarity fee systems. Since the creation of the FIFA solidarity system, MLS has refused to pay training compensation either domestically or internationally and USSF has refused to sanction MLS for this conduct, refused to implement a domestic system, and blocked all U.S. youth clubs from receiving international solidarity fees even though no US court has ever held that solidarity fees are illegal.

95. The refusal of USSF to create a domestic solidarity system, its allowance of MLS to refuse to pay foreign training compensation, and its blocking access of the U.S. youth clubs to the international system has saved MLS tens of millions of dollars and cost the U.S. youth clubs the same millions in the form of missed solidarity payments.

96. The lack of funding for youth development is far from the only concern. The cost of obtaining a license to coach soccer in the United States (a critical building block in the

⁵⁶ *Id.*

development of the sport) is also prohibitively expensive. The National B license costs around \$3,000, and the A license course costs around \$4,000. This has resulted in producing one B licensed coach for every 3,000 players, and one A licensed coach for every 6,000 players. Even the F license, a two-hour course showing the basics of soccer, only produces 1 coach per 350 players. Other countries provide licenses at a much lower cost and, although having much smaller populations than the United States, have higher numbers of coaches with A licenses: Germany has 6,934, Italy has 2,281, France has 3,308, and Spain has 15,423. USSF's failure to address the coaching shortage and the increased cost of obtaining a coaching license further compounds the problems impeding the progress of youth and amateur soccer in this country.

97. The USSF has also neglected children with ambulatory cerebral palsy, stroke or traumatic brain injury. According to CP Soccer, which is trying to raise donations to remedy that neglect, while “there is a clear path in the US for able-bodied kids to play soccer throughout their youth and up to the highest levels, culminating in the Olympics,” there is no comparable route for U.S. kids with a brain injury or disease to reach the Paralympics. The U.S. simply does not measure up to the “[m]any other countries [which] have a national network of CP Soccer teams that function as a league, and enable people with CP to participate in soccer from a young age through to adulthood.”⁵⁷ The USSF has inexplicably failed to use any of its surplus or other resources to bring the U.S. in line with these other countries, despite the clear duty to do so under the Stevens Act.

98. The women's professional league is another stakeholder that could benefit if the Federation even half as much time, energy and resources on supporting the NWSL as it has focused on helping the MLS. For example, if the Federation were genuinely motivated to assist the NWSL while it works its way to financial sustainability, then it might explore creative ways of using its

⁵⁷ *Meet CP Soccer*, CP SOCCER, <https://www.cpsoccer.us/meet-cp-soccer/#background>.

surplus for that purpose, such as providing low-cost loans or other forms of financial support to teams like the Boston Breakers. That would seem especially just given that a large part of the surplus is attributable to the sale of the Federation's media and marketing rights, and it may well be that the Breakers would not have found themselves in such dire straits if the USSF had given the NWSL the same opportunity it afforded to MLS for benefitting from the sale of those rights.

99. Along the same lines, the USSF's neglect of Latino and Hispanic players is symbolized by the recent decision of star American Jonathan Gonzalez to play for Team Mexico instead of the U.S. in international competitions. According to Brad Rothenberg, co-founder of Alianza de Futbol, this was the result of the USSF's systematic neglect of the Latino community:

If anybody at U.S. Soccer thinks they did enough to keep Jonathan, then they should resign before the new Federation president fires them. Our Federation lost Jonathan either by its own arrogance, apathy or incompetence. You pick it. We screwed up and I'm angry about it. I've grown tired of watching our Federation neglect this community. We didn't do enough, not nearly enough, to keep him. And the worst part is that it will continue if wholesale changes aren't made in the approach to finding talent in this community.⁵⁸

100. The United States only sporadically develops male players of international caliber; losing a rare homegrown talent such as Mr. Gonzalez – to arch-rival Mexico, no less – perfectly encapsulates the myriad ways the USSF falls short of its obligation to develop a competitive international powerhouse. International competition was, of course, the founding premise of the Stevens Act. The USSF keeps failing to live up to its Stevens Act obligations in new, creative ways.

101. Another way the USSF fails its youth and amateur constituencies is by deliberately choking off alternative avenues for aspiring amateurs. In particular, the USSF has made a concerted effort to marginalize the NASL. The NASL recently filed an antitrust complaint against

⁵⁸ Mike Woitala, *Brad Rothenberg: 'Our Federation lost Jonathan Gonzalez either by its own arrogance, apathy or incompetence'*, SOCCERAMERICA (Jan. 10, 2018), <https://www.socceramerica.com/publications/article/76356/brad-rothenberg-our-federation-lost-jonathan-gon.html>.

the USSF alleging the many ways in which the USSF has conspired to protect MLS's monopoly over the professional ranks by stifling the NASL, which had aspirations to become a viable competitor with the MLS. Although the district court judge denied the NASL's motion for a preliminary injunction, the court found that because of the USSF's actions, the NASL faced "likely total loss of its business" and, therefore, had "established irreparable harm."

102. Eliminating the NASL serves no purpose other than to protect MLS. For youth and amateur players, the NASL teams offered the prospect of an alternative to the MLS as a means of playing professional soccer. They also offered an opportunity to serve existing fans who otherwise would not be able to watch live men's professional soccer and to attract new fans to the game. As Steve Gans, a current USSF presidential candidate, has explained: "It is important that we have a thriving pro system that is not limited to just MLS. The NASL and USL need to be successful and supported, as not all players mature at the same rate, and players need a place to develop, and fans across the country need a place to watch the beautiful game in person."⁵⁹ By stifling the NASL, the USSF is limiting the exposure of this "beautiful game" and squandering the chance to develop a vibrant youth-to-professional pipeline and broaden the fan base.

103. And as set forth above, the USSF is neglecting women's clubs. They are currently standing idly by as the Boston Breakers, a founder member of the NWSL, ceases operations. The USSF also inexplicably declines to expand the U.S. Open cup to the women's side.

104. Instead of taking a "more-the-merrier" approach, the USSF is fiercely protective of its golden goose, MLS, to the detriment of other stakeholders and in violation of its duties as soccer's NGB.

105. The results of the Federation's focus on men's professional soccer as played by MLS teams to the detriment of women's, youth and amateur soccer can clearly be seen by looking

⁵⁹ *Steve Gans*, U.S. SOCCER ATHLETE COUNCIL, <https://ussfathletecouncil.com/steve-gans>.

at this country's performance on the international stage. The U.S. Men's National Team consistently disappoints. For a nation of 300 million to fail to field a team that can participate in the past two Summer Olympics or to qualify for the 2018 World Cup despite playing in the least competitive region in the entire world is *prima facie* evidence of the USSF's inadequacy as U.S. soccer's national governing body.⁶⁰

VI. THE USSF'S IS VIOLATING ITS DUTIES UNDER THE USOC BYLAWS AND THE STEVENS ACT

106. As the foregoing demonstrates, the USSF is unwaveringly devoted to MLS and that bias has been detrimental to the United States soccer community as a whole. The USSF is failing to meet its fundamental duty as an NGB to "develop interest and participation throughout the United States and be responsible to the persons and amateur sports organizations it represents." Stevens Act § 220524(1).

107. The USSF is also in violation of Stevens Act § 220522(a)(5). Its interconnection with MLS and SUM means that it is not "free from outside restraint" and does not, and cannot, "independently decide[] and control[] all matters central to governance."

108. The USSF is in violation of Stevens Act § 220522(a)(11) by failing to provide reasonable direct representation on its Board for all of the major stakeholder groups and organizations but, instead, configuring its governance structure so that the Federation is controlled by its President and the MLS's representative on the Board.

109. Further, because of its penchant for making its most important decisions behind closed doors and to operate in secrecy, the USSF is failing in its obligation to be "financially and

⁶⁰ As even one of the USSF's directors and officers, Mr. Cordeiro, has remarked: "We're the richest, most developed country in the world. Why can't we have a top-five competitive soccer program for men? Why aren't we competing at the highest levels?" Brian Straus, *Carlos Cordeiro, Gulati's Right-Hand Man and VP, Runs for U.S. Soccer President*, SPORTS ILLUSTRATED (Nov. 2, 2017), <https://www.si.com/soccer/2017/11/02/carlos-cordeiro-us-soccer-president-sunil-gulati-election>.

operationally transparent and accountable to its members and to the corporation” as required by USOC Bylaws § 8.7(n).

110. The USSF is also in violation of Stevens Act § 220524(6) because it has failed to “provide equitable support and encouragement for participation by women where separate programs for male and female athletes are conducted on a national basis.”

111. Finally, the USSF also in violation of Stevens Act § 220524(7) because it has failed to encourage and support amateur athletic sports programs for individuals with ambulatory cerebral palsy, stroke or traumatic brain injury as required by 36 U.S.C. § 220524(7).

REQUEST FOR RELIEF

112. Based on the foregoing, Claimant seeks the following:

- A. A finding and declaration by the USOC that the USSF is in violation of USOC Bylaws, including but not limited to, § 8.7(n), and in violation of the Stevens Act, including but not limited to, §§ 220522(a)(5), 220522(a)(11), 220524(1), 220524(6), and 220524(7), and
- B. An order by the USOC placing the USSF on probation for 180 days with the requirement that, during such period, the USSF take effective action to correct the conditions that have caused or contributed to these violations;
- C. An order by the USOC directing the USSF to pay all costs incurred by Claimant in bringing this action; and
- D. Such other relief as the USOC deems just and equitable.

Respectfully submitted,
BAKER BOTTS L.L.P.



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PROOF OF SERVICE

I hereby certify, pursuant to Section 10.1 of the USOC Bylaws, that I have caused a copy of the foregoing to be served by Federal Express Overnight Delivery on this 29th day of January, 2018, to the following:

U.S. Soccer Federation
Attn: Dan Flynn - CEO and Secretary General
1801 S. Prairie Ave.
Chicago, IL 60616

A courtesy copy has also been sent to:

U.S. Olympic Committee
Attn: Christopher McCleary - General Counsel
92 S. Tejon St
Colorado Springs, CO 80903



Lee D. Charles