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AMERICAN ARBITRATION ASSOCIATION

AAA CASE NO. \_\_\_\_\_

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HOPE SOLO

*Claimant*

—v.—

UNITED STATES SOCCER FEDERATION

*Respondent*

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DEMAND FOR ARBITRATION

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BAKER BOTTS L.L.P.  
1299 Pennsylvania Ave., NW  
Washington, D.C. 20004-2400

BAKER BOTTS L.L.P.  
30 Rockefeller Plaza  
New York, NY 10112

*Counsel for Claimant*

August 23, 2018

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## **I. PRELIMINARY STATEMENT**

1. Claimant Hope Solo (“Claimant” or “Solo”) submits this Demand for Arbitration against Respondent United States Soccer Federation (“Respondent” or “USSF”) pursuant to 36 U.S.C. § 220529(b)(2), which authorizes this arbitration under the Commercial Rules of Arbitration of the American Arbitration Association (“AAA”).
2. This proceeding arises out of the Ted Stevens Olympic and Amateur Sports Act (codified at 36 U.S.C. § 220501 *et seq.*) (“Stevens Act”). The Stevens Act charters and grants monopoly status to the United States Olympic Committee (“USOC”) and sets forth requirements for its member national governing bodies (“NGB”) for individual sports.
3. Solo filed a complaint with the USOC on January 30, 2018, alleging that the USSF, the current NGB for soccer, failed to comply with numerous duties set forth in the Stevens Act and the USOC Bylaws.
4. Among other violations of the Stevens Act, Solo alleged that the USSF fails to be responsible to the persons and organizations it represents, fails to be independent, improperly delegates decision-making and governance matters, fails to be free from outside restraint, and fails to be transparent and accountable to its members. Many of these violations relate to the USSF’s relationships with Major League Soccer (the top tier professional men’s soccer league) and Soccer United Marketing (the marketing arm of Major League Soccer), both of which raise significant conflict of interest concerns.
5. Rather than adjudicating Solo’s complaint on the merits, as it should have done, the USOC hearing panel dismissed the complaint on the grounds that Solo had failed to exhaust her remedies through the USSF.
6. In accordance with Section 220529 of the Stevens Act, Solo now files this Demand for Arbitration, pursuant to Rule 4 of the AAA Rules.

## **II. PARTIES AND COUNSEL**

7. Solo is a former member of the United States Women’s National Soccer Team, a two-time gold medal Olympic athlete, and a FIFA World Cup champion. She remains active in the sport and has continuously worked to improve soccer in the United States, particularly by advocating for women’s rights, gender equality, and youth development.
8. Claimant’s address is: 137 N. Larchmont Blvd., Suite 477, Los Angeles, CA 90004.
9. Solo is represented by:

Michael Calhoon  
Baker Botts L.L.P.  
1299 Pennsylvania Ave., NW  
Washington, D.C. 20004-2400  
michael.calhoon@bakerbotts.com

Andrew Behrman  
Brian Kerr  
Baker Botts L.L.P.  
30 Rockefeller Plaza  
New York, NY 10112.  
andrew.behrman@bakerbotts.com  
brian.kerr@bakerbotts.com

10. Respondent USSF, in addition to running professional soccer in the United States, is the current NGB for soccer in the United States.
11. Respondent's address is: 1801 S. Prairie Ave., Chicago, IL 60616.
12. The USSF is represented by:

Russell Sauer  
Sarah Mitchell  
Latham & Watkins  
355 South Grand Avenue, Suite 100  
Los Angeles, CA 90071-1560  
russell.sauer@lw.com  
sarah.mitchell@lw.com

### **III. PROCEDURAL HISTORY**

13. Solo filed her USOC petition against the USSF pursuant to the Stevens Act § 220527 on January 30, 2018.
14. On February 19, 2018, Larry Probst, the Chair of the USOC Board of Directors, appointed a hearing panel comprised of: (1) Jim Benson, Hearing Panel Chair and USOC Board Member; (2) Alex Natt, Chief Legal Officer of U.S. Ski and Snowboard; and (3) Nicholas LaCava, Rowing Athlete and member of the USOC Athletes' Advisory Council.
15. The USSF moved to dismiss Solo's complaint on March 1, 2018 on two grounds. First, the USSF argued that Solo's petition must be dismissed because she did not exhaust her remedies through the USSF's grievance procedures as required by the Stevens Act § 220527. Second, the USSF claimed that Solo did not state a claim.
16. On March 5, 2018, the USSF requested that its motion to dismiss be bifurcated, starting with the claim of failure to exhaust remedies. The Hearing Panel granted this request on March 12, 2018.
17. Solo filed her opposition to the motion to dismiss on April 2, 2018. The USSF filed its reply on April 23, 2018.
18. On or about April 23, 2018, Solo discovered a previously undisclosed conflict of interest on the part of Nicholas LaCava and requested that he recuse himself from the Hearing Panel. Mr. LaCava did so the next day.

19. Susanne Lyons, the USOC Acting CEO at the time, appointed Mark Ladwig to replace Mr. LaCava as the athlete representative on the Hearing Panel on May 4, 2018.
20. The USOC Hearing Panel held oral argument on July 9, 2018 via conference call.
21. On July 24, 2018, the Hearing Panel granted the motion to dismiss on the basis that Solo failed to exhaust her remedies. *See* Exhibit B.

#### **IV. JURISDICTION**

22. The Stevens Act § 220529(a) provides that: “A party aggrieved by a determination of the [USOC] under section 220527 or 220528 of this title may obtain review by any regional office of the American Arbitration Association.” Exhibit A, § 220529(a)
23. In its decision on the motion to dismiss, the USOC Hearing Panel determined that Solo had not exhausted her remedies available in the USSF grievance procedures. *See* Exhibit A, § 220527(b)(2) (“If the [USOC] determines that the remedies have not been exhausted, it may direct that the remedies be pursued before the [USOC] considers the complaint further.”).
24. Solo submits this Demand for Arbitration within the 30-day time limit set forth in § 220529(b) of the Stevens Act.

#### **V. SOLO IS NOT REQUIRED TO EXHAUST USSF REMEDIES**

25. The Stevens Act provides:

An organization or person may file a complaint under subsection (a) of this section 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. Exhibit A, § 220527(b)(1).

26. Although Solo does not dispute that she did not proceed with her complaint through the USSF grievance procedures, she is excused from doing so for three independent reasons:
  - a. The USSF hearing panels do not comply with the 20% athlete representation requirement in the Stevens Act and USOC Bylaws;
  - b. The USSF grievance procedures are not “within” the NGB as required by the Stevens Act; and
  - c. Requiring Solo to exhaust USSF remedies would result in unnecessary delay.
27. Solo comprehensively briefed and argued all three points to the USOC Hearing Panel. Yet other than briefly reciting a summary of Solo’s arguments, the USOC Hearing Panel failed

to address the first two of her arguments, both of which directly challenge the adequacy of the USSF grievance procedure.

28. Not content with ignoring two of Solo's arguments for excusing exhaustion, the USOC Hearing Panel based its determination on arguments that were not raised by either party and supported those arguments with incorrect facts.
29. For example, the Hearing Panel placed weight on the "important role that the arbitration process and arbitrators play in Olympic/Paralympic sport disputes in the United States," despite that not being relevant to the arguments it had to resolve. Exhibit B, at para. 43.
30. It then supported this statement with a footnote including the alleged fact that: "For example, participation cases brought by athletes, coaches, trainers, managers, administrators and officials under Section 9 of the USOC Bylaws are administered by the AAA and heard by AAA arbitrators."
31. The Hearing Panel got that wrong as well. The USOC Bylaws require that a person bringing a Section 9 complaint must file the complaint with the CEO of the USOC and "Complaints filed under this Section 9 shall be administered by the corporation's legal division." Exhibit C, §§ 9.2, 9.5. Accordingly, it is the USOC CEO, its legal division, and the Athlete Ombudsman that review and resolve Section 9 complaints, not the AAA (which only participates if the athlete is unhappy with USOC's decision or in an expediated procedure).
32. Only by proceeding in the way set forth above could the Hearing Panel have arrived at the decision it did, *i.e.*, requiring Solo to exhaust her USSF remedies.

**A. SOLO DOES NOT HAVE TO EXHAUST USSF REMEDIES BECAUSE USSF HEARING PANELS DO NOT COMPLY WITH THE 20% ATHLETE REPRESENTATION REQUIREMENT**

33. The Stevens Act requires every NGB to maintain a minimum level of athlete representation on its board of directors and other governing boards. Exhibit A, § 220522(a)(10).
34. USOC Bylaw § 8.8.1 similarly requires that athlete representatives must equal at least 20% of all "panels empowered to resolve grievances."
35. The USSF does not comply with this requirement.
36. Pursuant to the USSF Bylaws, the USSF President annually appoints a panel of arbitrators consisting of persons certified by the AAA or approved by the Court of Arbitration for Sport to hear grievances under section 703 of the USSF Bylaws. *See* Exhibit D, § 703.
37. Because the USSF does not make public its panel of arbitrators, it is impossible to know how many, if any, of its arbitrators are "athlete representatives" under the applicable rules.

38. However, in every reported section 703 award, the sole arbitrator has never been an “athlete representative,” leading to the conclusion that the USSF does not, and cannot, comply with the athlete representation requirement in section 703 grievances.
39. Under well-established law, a claimant does not need to exhaust administrative remedies that do not comply with the procedural requirements of the relevant statute.
40. Therefore, because the USSF Bylaws and grievance procedures do not comply with the Stevens Act and USOC Bylaws, Solo cannot be required to exhaust those remedies.

**B. SOLO DOES NOT HAVE TO EXHAUST USSF REMEDIES BECAUSE THOSE REMEDIES ARE NOT “WITHIN” THE USSF**

41. The Stevens Act § 220527(b)(1) requires that a claimant “may file a complaint . . . only after exhausting all available remedies *within* the national governing body for correcting deficiencies.” Exhibit A, § 220527(b)(1) (emphasis added).
42. This requirement is consistent with federal administrative law policies for requiring exhaustion. These include: (1) giving the NGB an opportunity to develop factual findings, (2) applying its expertise to new issues, and (3) exercising its discretionary powers.
43. USSF Bylaw 703 outlines the procedure for a person or USSF member to bring a grievance against the USSF for failure to comply with USOC requirements. Here, if Solo submitted her grievance to the USSF, the USSF would immediately turn every facet of the administration and adjudication of her complaint to the AAA. For example, the AAA would select the arbitrator and would administer and oversee the entire grievance process.
44. No part of the USSF’s grievance process thus takes place “within” the USSF, nor does it satisfy any of the policies underpinning the exhaustion requirement.
45. Because there are no available remedies “within” the USSF (pursuant to the Stevens Act), there are no remedies for Solo to exhaust.

**C. SOLO DOES NOT HAVE TO EXHAUST USSF REMEDIES BECAUSE DOING SO WOULD RESULT IN “UNNECESSARY DELAY”**

46. Finally, Solo is excused from exhausting whatever grievance procedures may exist at the USSF because requiring her to do so would result in “unnecessary delay.” Exhibit B, § 220527(b)(1).
47. Respondent has taken the position that there must be some emergency or urgency to excuse exhaustion under this statutory exception. But that is not what the Stevens Act says. Solo need only demonstrate that requiring her to exhaust these remedies would cause her to suffer a delay that is “not necessary.”
48. As described above, Solo’s complaint would first be heard by a single arbitrator under the auspices of the AAA. Then, if either Solo or the USSF is dissatisfied with the arbitrator’s

award, which is likely, that party could appeal to the AAA under the AAA Optional Appellate Arbitration Rules.

49. Once this appellate process is complete, the petition may be resubmitted to the USOC. Finally, either party may appeal the USOC determination to the AAA once again.
50. Requiring Solo to follow these USSF procedures would result in three (or more) AAA arbitrations.
51. Solo does not suggest that there is anything inherently problematic about resolving disputes through arbitration.
52. She also recognizes that many other NGBs incorporate some type of AAA arbitral review into their grievance procedures. But none of those NGBs envisage three separate arbitrations to reach a final decision.
53. Any argument by the USSF that if Solo had followed the USSF's grievance process from the beginning, her complaint would have already been heard is misguided (even setting aside Solo's argument that she should not have to pursue non-compliant remedies).
54. Whether the USSF's statement is accurate - and it is impossible to know how quickly the AAA would have resolved Solo's grievance - the award would not have necessarily ended the dispute. Solo would then potentially have had to go through three additional proceedings to reach finality, the very definition of "unnecessary delay."

#### **VI. RELIEF REQUESTED**

55. Solo respectfully requests that the AAA arbitral panel:
  - a. Determine that Solo is not required to exhaust USSF remedies before proceeding to the merits hearing before a USOC Hearing Panel; and
  - b. Award her any other relief deemed equitable and just by the AAA panel.

#### **VII. AAA LOCALE REQUESTED**

56. The Stevens Act provides that a claimant may seek review at any regional office of the AAA.
57. Claimant has filed this Demand for Arbitration with, and requests that it be administered by, the New York Regional Office of the AAA.
58. Claimant also requests that the location of the arbitration be New York.

#### **VIII. COMPOSITION OF THE ARBITRATION PANEL**

59. The Stevens Act § 220529(b)(2)(A) provides that the arbitration will proceed "according to the commercial rules of the [AAA] in effect at the time the demand is filed, except that



- (A) the arbitration panel shall consist of at least 3 arbitrators, unless the parties to the proceeding agree to a lesser number.”

60. Solo requests that the panel in this case be comprised of three arbitrators. Because the Stevens Act does not provide for a procedure for appointing the arbitrators, they should be appointed pursuant to Rule 12.
61. As discussed above, however, the USSF has a pre-selected panel of arbitrators to hear its section 703 grievances. Any arbitrator on that panel would therefore have a conflict in determining whether the USSF grievance procedures are established in such a way so as to require Solo to exhaust them.
62. Solo therefore respectfully requests that none of the arbitrators to be appointed by the AAA in this proceeding currently are, or previously have been, a member of the USSF panel pursuant to USSF Bylaw 703 § 3 or have any other relationship with the USSF or the USOC.

**IX. FURTHER PROCEDURES AND EVIDENCE**

63. Claimant reserves the right to produce such factual and legal arguments and evidence (including witness testimony, expert testimony, and documents) as may be necessary to present its case or rebut any submissions that may be put forward by Respondent.

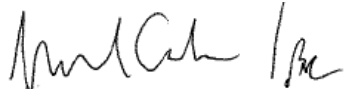
**X. RESERVATION OF RIGHTS**


64. Claimant reserves the right to amend and/or supplement this Demand for Arbitration, including but not limited to amending or supplementing the claims and relief sought herein.

Dated: August 23, 2018

Respectfully submitted,

**BAKER BOTTS L.L.P.**

By:   
Michael Calhoon  
**BAKER BOTTS L.L.P.**  
1299 Pennsylvania Ave., NW  
Washington, D.C. 20004-2400  
Telephone: 202.639.7954  
Email: michael.calhoon@bakerbotts.com

By:   
Andrew Behrman  
Brian Kerr  
**BAKER BOTTS L.L.P.**  
30 Rockefeller Plaza  
New York, New York 10112  
Telephone: 212.408.2570  
Email: andrew.behrman@bakerbotts.com  
brian.kerr@bakerbotts.com

*Counsel for Claimant*

**CERTIFICATE OF SERVICE**

I, Andrew Behrman, hereby certify that this Demand for Arbitration was served upon the Respondent on August 23, 2018, as follows:

<p><b><i>Counsel for Respondent</i></b></p> <p>Russell Sauer Sarah Mitchell Latham &amp; Watkins 355 South Grand Avenue, Suite 100 Los Angeles, CA 90071-1560</p>	<p>One Copy</p>	<p><input type="checkbox"/> Via First Class Mail <input type="checkbox"/> Via Hand Delivery <input type="checkbox"/> Via Overnight Courier <input checked="" type="checkbox"/> Via Electronic Mail <input type="checkbox"/> Via Electronic Filing (EDIS)</p> <p>russell.sauer@lw.com sarah.mitchell@lw.com</p>
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Signature