

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES SOCCER FEDERATION,
INC.,

Plaintiff,

v.

UNITED STATES WOMEN'S NATIONAL
SOCCER TEAM PLAYERS ASSOCIATION,

Defendant.

Case No. 1:16-cv-01923

Hon. Sharon Johnson Coleman

**UNITED STATES WOMEN'S NATIONAL SOCCER TEAM PLAYERS
ASSOCIATION'S ANSWER AND AFFIRMATIVE DEFENSES**

Defendant Women's National Soccer Team Players Association ("WNTPA"), by its undersigned counsel, hereby answers and asserts affirmative defenses in response to Plaintiff United States Soccer Federation, Inc.'s ("USSF") Complaint for Anticipatory Breach of Contract and For Declaration Relief as follows:

ANSWER

NATURE OF THE ACTION

1. US Soccer reluctantly brings this lawsuit against the Players Association because of the recent claim by Mr. Richard Nichols, the newly-appointed Executive Director of the Players Association, that the Players Association is entitled to repudiate the parties' current collective bargaining agreement 11 months prior to its expiration and to "engage in actions" in violation of a "no strike" clause in advance of the upcoming 2016 Summer Olympic Games and the 2016 National Women's Soccer League season.

ANSWER: WNTPA denies the allegations contained in Paragraph 1.

2. On March 19, 2013, after six months of negotiations, US Soccer's representatives and the Players Association's then-Executive Director/General Counsel of 14 years, John Langel, reached agreement on and memorialized a collective bargaining agreement retroactive to January 1, 2013. Consistent with past practice and every prior collective bargaining agreement, the parties agreed that the new collective bargaining agreement would expire at the end of the year following the next Summer Olympic Games – December 31, 2016. The parties expressly agreed that the new collective bargaining agreement would be comprised of two documents: (i) the prior collective bargaining agreement, to the extent not otherwise supplemented or modified, which included a “no strike” clause, and (ii) a new Memorandum of Understanding reflecting the parties' agreed-upon modifications to the prior collective bargaining agreement and containing, among other provisions, substantially improved economics and additional benefits for the Women's National Team members. Indeed, Mr. Langel, the Players Association's former Executive Director who actually negotiated the current collective bargaining agreement, confirmed both the terms of the agreement and its December 31, 2016 expiration in testimony under oath more than a year later -- well before the present dispute materialized. *See* paragraph 37 and Exhibit G, *infra*.

ANSWER: WNTPA admits that Mr. Langel provided confidential testimony, the substance of which speaks for itself. WNTPA denies USSF's purported summary of this testimony and the remaining allegations contained in Paragraph 2.

3. The Players Association appointed Mr. Nichols as Executive Director at the end of 2014 – nearly two years after the current collective bargaining agreement was executed.

ANSWER: WNTPA admits that Mr. Nichols was appointed Executive Director in 2014, but denies the remaining allegations of Paragraph 3.

4. Then, on Christmas Eve 2015,
 - contrary to the express agreement of the Players Association during the 2012-2013 negotiations as reflected in numerous written communications;
 - contrary to the terms of the Memorandum of Understanding executed on March 19, 2013;
 - contrary to the actions of both US Soccer and the Players Association throughout 2013 and 2014;
 - contrary to the testimony of the Players Association's prior Executive Director who actually negotiated and signed the Memorandum of Understanding; and
 - even though he played absolutely no role in the 2012-2013 collective bargaining negotiations,

Mr. Nichols unilaterally declared that the current collective bargaining agreement will terminate on February 24, 2016 (not on December 31, 2016 as agreed), and thereafter suggested that the Women's National Team members will no longer be bound by the "no strike" clause and, therefore, will be entitled to "engage in actions" unless the parties agree to a new collective bargaining agreement.

ANSWER: WNTPA denies the allegations contained in Paragraph 4, except that it admits that on December 24, 2015, Mr. Nichols on behalf of WNTPA provided USSF a statutorily-required written notice, the terms of which speak for themselves.

5. And, today, February 3, 2016, at a meeting between US Soccer and Mr. Nichols and the Players Association, US Soccer directly asked Mr. Nichols to agree that the Players Association would not strike or engage in any job actions prior to December 31, 2016. Mr. Nichols refused to provide the requested assurance at the meeting and other representatives said they would not agree to "disarm" the Players Association.

ANSWER: WNTPA admits that Mr. Nichols and other representatives informed USSF that WNTPA was reserving all rights available to it under relevant labor law. WNTPA denies the remaining allegations contained in Paragraph 5.

6. Mr. Nichols' actions have put US Soccer in an untenable position: either promptly agree to the Players Association's demand for a new collective bargaining agreement on dramatically different terms than those provided by the current agreement which does not even expire until the end of 2016, or face the risk of an illegal strike or other illegal job action that could jeopardize the existence of the National Women's Soccer League and the prospects, and potentially the participation, of the Women's National Team in the 2016 Summer Olympic Games – all to the substantial detriment of US Soccer, the National Women's Soccer League, the United States Olympic Committee and the growth of girls' and women's soccer in general.

ANSWER: WNTPA denies the allegations contained in Paragraph 6.

7. Rather than accede to this threat, US Soccer instead requests that this Court require Mr. Nichols and the Players Association to honor the terms of the collective bargaining agreement reached in March 2013.¹

ANSWER: WNTPA admits that USSF seeks the relief stated, but denies the allegations contained in Paragraph 7 and that USSF is entitled to any relief.

PARTIES

8. US Soccer is a New York non-profit corporation with its principal place of business and headquarters in Chicago, Illinois. It is recognized by the Fédération Internationale de Football Association ("FIFA"), the international governing body for the sport of soccer, as

¹ Of course, US Soccer will, in the meantime, bargain in good faith with the Players Association for a new collective bargaining agreement on mutually agreeable terms effective January 1, 2017. But, wholly independent of those negotiations, US Soccer is entitled to labor peace through the end of December 2016 -- an environment it bargained for and paid for, and to which the Players Association agreed on March 19, 2013.

the National Association member for the United States, and by the United States Olympic Committee as the National Governing Body for the sport of soccer in the United States pursuant to the Ted Stevens Olympic and Amateur Sports Act. US Soccer's mission is to make soccer a preeminent sport in the United States, and to grow and develop the sport at all recreational and competitive levels. To that end, US Soccer oversees the sport as it is played by each of its constituent organizations and fields numerous national teams, including the Women's National Team.

ANSWER: WNTPA admits that the USSF is recognized by Fédération Internationale de Football Association ("FIFA"), as the National Association member for the United States. WNTPA otherwise lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 8, and, therefore, demands strict proof thereof.

9. The Players Association is a labor organization representing employees in an industry affecting commerce as defined in Section 2, Subsection 5 of the National Labor Relations Act, 29 U.S.C. § 152(5), and Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. The Players Association is the exclusive collective bargaining representative of all players selected to play for the Women's National Team, who are, therefore, employees of US Soccer. The Players Association was headquartered in Philadelphia, Pennsylvania between 2000, when it was certified as the exclusive bargaining representative for the Women's National Team, and November 2014. US Soccer is informed and believes and thereon alleges that the Players Association is now headquartered in Keller, Texas, where Mr. Nichols, its new Executive Director, is located. The Players Association and its representatives regularly conduct business in the Northern District of Illinois.

ANSWER: WNTPA admits the allegations contained in Paragraph 9, except that it denies regularly conducting business in the Northern District of Illinois.

JURISDICTION AND VENUE

10. Section 301(a) of the LMRA, 29 U.S.C. § 185(a), gives federal courts jurisdiction to hear actions concerning violations of “contracts between an employer and a labor organization representing employees in an industry affecting commerce.” Because the instant matter involves the Players Association’s repudiation and anticipatory breach of a collective bargaining agreement, US Soccer brings this action under Section 301(a) of the LMRA. *See J. W. Peters, Inc. v. Bridge, Structural and Reinforcing Iron Workers Local Union 1*, 398 F.3d 976 (7th Cir. 2005).

ANSWER: WNTPA admits that USSF purports to bring this action pursuant to Section 301(a) of the LMRA. The terms of this statute speak for themselves and WNTPA denies any interpretation inconsistent therewith. WNTPA denies the remaining allegations of Paragraph 10.

11. US Soccer also brings this action under 28 U.S.C. § 2201, which authorizes federal courts having jurisdiction to declare the rights and legal relations of interested parties. Here, US Soccer seeks a declaration that a collective bargaining agreement negotiated and agreed to by both US Soccer and the Players Association in March 2013 does not expire until December 31, 2016.

ANSWER: WNTPA admits that USSF purports to bring this action under 28 U.S.C. § 2201. The terms of this statute speak for themselves and WNTPA denies any interpretation inconsistent therewith. WNTPA denies the remaining allegations of Paragraph 11.

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 in that this action arises under Section 301 of the LMRA. 29 U.S.C. § 185(a). This Court likewise has

subject matter jurisdiction pursuant to 28 U.S.C. § 1332 in that the action is between citizens of different states and the amount in controversy significantly exceeds \$75,000.

ANSWER: WNTPA admits the allegations contained in Paragraph 12, with respect to the Court's jurisdiction to determine whether a valid collective bargaining agreement exists. WNTPA denies the remaining allegations contained in Paragraph 12.

13. This Court has personal jurisdiction over the Players Association because its representatives engage in sufficient contacts with the State of Illinois such that the Players Association should reasonably anticipate being haled into court there. The Players Association is a labor union with national jurisdiction representing players who are employed by an organization headquartered in Chicago, Illinois. Some of these players live in Illinois or play for professional teams located in Illinois. As the exclusive collective bargaining representative of the Women's National Team players, the Players Association regularly and frequently communicates with personnel at US Soccer's headquarters in Chicago, Illinois. These contacts include, among other things, those giving rise to the instant action – namely, the negotiations over collective bargaining agreements. And, in conjunction with the collective bargaining agreement negotiations, the Players Association agreed that, to the extent not governed by federal law, the law of Illinois would control and therefore assumed the benefits and protections of Illinois law.

ANSWER: WNTPA admits that this Court has personal jurisdiction over it to determine whether a valid collective bargaining agreement exists. WNTPA further admits that it has players who live or play for professional teams located in Chicago and that it communicates with USSF personnel in Chicago, including negotiations relating to collective bargaining agreements.

WNTPA denies that it agreed that the law of Illinois would control or that it assumed the benefits and protections of Illinois law.

14. Venue is proper in this Court because, as demonstrated above, the Players Association's duly authorized representatives represent and act for its members in the Northern District of Illinois and a substantial portion of the events at issue occurred in this District, including but not limited to the negotiations of the collective bargaining agreement at issue as well as the performance of that agreement. *See* 28 U.S.C. § 1391(b); 29 U.S.C. § 185(c); *Reed v. UAW, Local Union No. 663*, 945 F.2d 198, 201, n.3 (7th Cir. 1991) (noting that 29 U.S.C. § 185(c) "deal[s] with venue and not jurisdiction" but that "the requirements under both [29 U.S.C. § 185(c)] and the due process 'minimum contacts' standard have been held to be so similar that analysis under either would yield the same result").

ANSWER: WNTPA admits that venue is proper in this Court, for purposes of determining whether a valid collective bargaining agreement exists. WNTPA denies the remaining allegations contained in Paragraph 14.

FACTUAL AND PROCEDURAL BACKGROUND

The First and Second Collective Bargaining Agreements

15. The Players Association was certified as the exclusive bargaining representative for the Women's National Team in 2000.

ANSWER: WNTPA admits the allegations contained in Paragraph 15.

16. At all times thereafter, through the end of November 2014, the Players Association was represented by its General Counsel and Acting Executive Director, John Langel of the Philadelphia-based law firm of Ballard Spahr LLP. Mr. Langel was and is a distinguished member of the legal profession, longtime head of Ballard Spahr's Labor and Employment Group

and consistently rated by various publications as a leader in the area of labor and employment law.

ANSWER: WNTPA admits the allegations of this paragraph, except that it states the legal career of Mr. Langel speaks for itself.

17. US Soccer is informed and believes, and thereon alleges, that pursuant to the Constitution and By-Laws of the Players Association filed with the United States Department of Labor, as General Counsel and Acting Executive Director of the Players Association, Mr. Langel was authorized, at all times relevant to this action, to negotiate collective bargaining agreements with US Soccer and to execute such agreements, binding the Players Association and its members to the agreed-upon terms. *See* Players Association Constitution and By-Laws, Article VIII (a)-(b), attached as Exhibit A.

ANSWER: WNTPA states that the allegations stated in Paragraph 17 call for a legal conclusion and, thus, no answer is required. The terms of the Constitution and By-Laws speak for themselves and WNTPA denies any characterization by USSF inconsistent therewith. The WNTPA further denies that Mr. Langel held any individual authority to bind WNTPA or its members to any collective bargaining agreement.

18. US Soccer focuses its planning efforts for the Women's National Team by quadrennium – four (4) year periods – leading to the ultimate goals of qualifying for and winning both the FIFA Women's World Cup and the Olympic Gold Medal. Each quadrennium consists generally of a two (2) year preparatory period, followed by the FIFA Women's World Cup in year three and the Summer Olympic Games in year four.

ANSWER: WNTPA lacks sufficient information to admit or deny the allegations of this paragraph and, therefore, demands strict proof thereof.

19. Each collective bargaining agreement agreed to between US Soccer and the Players Association has consisted of two components that US Soccer, and players selected to the Women's National Team, are bound by: (i) a general agreement covering such topics as management rights, union rights, no strikes/no lockouts, and a grievance and arbitration mechanism; and (ii) a Uniform Player Agreement covering such topics as player fitness and rights to the player's image and likeness.² Each collective bargaining agreement includes an attached compensation schedule which details the amounts Women's National Team players are eligible to receive for their participation in designated events and competitions including the FIFA Women's World Cup and the Olympics, each held every four (4) years.

ANSWER: WNTPA states that the terms of any valid and relevant collective bargaining agreement speak for themselves and, therefore, WNTPA denies any summary or characterization by USSF inconsistent therewith.

20. The first collective bargaining agreement between US Soccer and the Players Association was entered into in March 2001, made retroactive to February 1, 2000, and covered the period through December 31, 2004 – after the 2004 Summer Olympic Games (the “2001 CBA/UPA”). The 2001 CBA/UPA was signed by Mr. Langel on behalf of the Players Association and is attached as Exhibit B.

ANSWER: WNTPA admits on information and belief the allegations contained in Paragraph 20.

21. In the Fall of 2004, prior to the expiration of the 2001 CBA/UPA, US Soccer and the Players Association commenced negotiations for a new collective bargaining agreement. The negotiations extended into 2005.

² Article IV of each collective bargaining agreement provides that the Uniform Player Agreement “was the product of collective bargaining between the parties, and its terms in its entirety are expressly made a part of this Agreement as if fully set forth herein.”

ANSWER: WNTPA admits on information and belief the allegations contained in Paragraph 21.

22. US Soccer and the Players Association eventually reached agreement on a new collective bargaining agreement covering an eight year period (two 4-year women's international soccer cycles), made retroactive to the beginning of 2005 and covering the period from January 1, 2005 through December 31, 2012 (the "2005 CBA/UPA"). The 2005 CBA/UPA was also executed by Mr. Langel on behalf of the Players Association and is attached as Exhibit C. The 2005 CBA/UPA provided two compensation packages for members of the Women's National Team, one covering the first quadrennium (2005-2008) including the 2007 FIFA Women's World Cup and the 2008 Summer Olympics, and a second, increased compensation package, for the second quadrennium (2009-2012) including the 2011 Women's World Cup and the 2012 Summer Olympics.

ANSWER: WNTPA admits that USSF and WNTPA agreed on a new collective bargaining agreement covering the period of January 1, 2005, through December 31, 2012. The terms of the agreement speak for themselves and WNTPA expressly denies any summary or characterization by USSF inconsistent therewith.

23. As did the 2001 CBA/UPA, the 2005 CBA/UPA contains, among other provisions, a comprehensive "No Strikes, No Lockouts" clause which provides as follows:

Neither the Players Association nor any player shall authorize, encourage, or engage in any strike, work stoppage, slowdown or other concerted interference with the activities of the Federation during the term of this Agreement. . . . The Players Association shall not support or condone, any action of any player which is not in accordance with this Section 6.1 and the Players Association shall exert reasonable efforts to induce compliance therewith.

2005 CBA/UPA, Article VI, Section 6.1. And, of course, US Soccer is similarly barred from “locking out” the Women’s National Team during the pendency of the collective bargaining agreement.

ANSWER: WNTPA admits that Paragraph 23 contains a partial quote of language from the 2001 and 2005 CBAs. The exact language of these agreements speak for themselves and WNTPA denies any interpretation by USSF inconsistent therewith.

The Current Collective Bargaining Agreement

24. With the 2005 CBA/UPA set to expire by its terms on December 31, 2012, US Soccer and the Players Association commenced negotiations for a new collective bargaining agreement in the Fall of 2012. These negotiations included in-person negotiating sessions in various cities around the United States as well as telephone conversations and email communications between the Players Association and US Soccer personnel located in Chicago and elsewhere.

ANSWER: WNTPA admits the allegations contained in Paragraph 24.

25. The principal negotiators for the Players Association were John Langel and his colleague Ruth Uselton, also of Ballard Spahr. The principal negotiators for US Soccer were its President, Sunil Gulati and its General Counsel, Lisa Levine.

ANSWER: WNTPA admits the allegations contained in Paragraph 25, except it denies that Mr. Langel or Ms. Uselton held any individual authority to bind WNTPA or its members in any negotiations regarding any collective bargaining agreement.

26. The negotiations for the new collective bargaining agreement extended beyond December 31, 2012 into March 2013. Among the reasons for the protracted negotiations was the formation of the National Women’s Soccer League (the “NWSL”), a new women’s professional soccer league.

ANSWER: WNTPA admits on information and belief that the negotiations extended beyond December 31, 2012 into March 2013. WNTPA lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 26 and, therefore, demands strict proof thereof.

27. Both the Players Association and US Soccer believed that the development of a sustainable women's professional league would be beneficial for the development of girls' and women's soccer in the United States. In addition, the establishment of the NWSL would provide the Women's National Team players with a competitive environment in which to play when not participating in national team activities and to earn compensation in addition to the earnings from participation on the Women's National Team.³

ANSWER: WNTPA denies the allegations contained in Paragraph 27, but admits that WNTPA members currently earn additional compensation for playing in the NWSL.

ANSWER:

28. Determining the role US Soccer would play with the new NWSL and melding the role of the Players Association and the Women's National Team players with the new league complicated the negotiations and took several additional months to resolve. In the interim, both US Soccer and the Players Association continued to abide by the terms of the 2005 CBA/UPA.

ANSWER: WNTPA denies the allegations contained in Paragraph 28.

29. On March 19, 2013, US Soccer and the Players Association reached agreement on the key issues relating to US Soccer's and the Women's National Team players' participation in the NWSL, as well as on an improved compensation and benefits package for the members of the Women's National Team. The agreement was memorialized in a Memorandum of

³ Two prior attempts to develop and maintain a women's professional soccer league in the United States without formal assistance of US Soccer and the Players Association had failed – the Women's United Soccer Association (2001-2003) and Women's Professional Soccer (2009-2012).

Understanding dated March 19, 2013 (the “MOU”), signed by Mr. Langel on behalf of the Players Association and attached as Exhibit D.

ANSWER: WNTPA admits that it agreed on specific issues as memorialized in the MOU signed by Mr. Langel, the terms of which speak for themselves. WNTPA denies any characterization of the MOU by USSF inconsistent therewith.

30. US Soccer is informed and believes and thereon alleges, based on its communications with Mr. Langel, that the agreement memorialized in the MOU, including the four year term of the new collective bargaining agreement covering the period from January 1, 2013 through December 31, 2016, was ratified by the members of the Players Association.

ANSWER: WNTPA admits that its members ratified the MOU. WNTPA denies the remaining allegations contained in Paragraph 30, including that the MOU included the four year term of the new collective bargaining agreement covering the period of January 1, 2013 through December 31, 2016.

31. Although it was contemplated by the parties that the MOU and the terms of the 2005 CBA/UPA would be eventually be combined into a single document, US Soccer and the Players Association specifically agreed that until that was accomplished the new collective bargaining agreement (the “2013 CBA/UPA”) would consist of the terms contained in the 2005 CBA/UPA (including the no strike clause) as modified, altered or amended by the terms of the MOU. Indeed, the Players Association confirmed this agreement in multiple emails to US Soccer as the negotiations for the MOU were being finalized, including on March 19, 2013, the day the MOU was executed, stating as follows:

As we previously agreed, the general principle we are working under is that the items we have not specifically covered in the Memorandum of Understanding would remain the same as under

the prior CBA, but with appropriate increases/adjustments/
changes.

See e.g., Email from Ruth Uselton to US Soccer dated March 19, 2013 attached as Exhibit E.

ANSWER: WNTPA admits the language quoted above is a portion of an email dated March 19, 2013. WNTPA denies any characterization by USSF of this email inconsistent with the express language contained therein. WNTPA denies the remaining allegations contained in Paragraph 31.

32. Among other things, the 2013 CBA/UPA provided that (a) the new collective bargaining agreement would have a term of four years, expiring on December 31, 2016 (“Term of WNT Contract – 4 years.”);⁴ (b) in light of the agreed-upon improved compensation for the Women’s National Team, US Soccer would make payments to the Women’s National Team retroactive to January 1, 2013; and (c) US Soccer would pay the Players Association a \$425,000 “signing bonus.” Indeed, the financial term sheet specified in the 6th bullet point on page 3 of the MOU (“Other bonuses in US Soccer’s Compensation Proposal are itemized along with other financial items in the attached term sheet.”), attached to the MOU was entitled “USSF WNT CBA Financial Terms” and provided detailed financial terms for the period covering 2013 through 2016 – the four year term of the 2013 CBA/UPA.

ANSWER: WNTPA admits that the financial term sheet attached to the MOU contains the language “USSF WNT CBA Financial Terms.” WNTPA denies the remaining allegations contained in Paragraph 32.

33. In addition, and as it relates to the NWSL, the 2013 CBA/UPA provides, among other things, that Women’s National Team members would also play in the NWSL as employees

⁴ In virtually all of the substantive communications between US Soccer and the Players Association during the 2012-2013 negotiations, each of the parties made clear that they were negotiating for a collective bargaining agreement covering 2013 through the end of 2016.

of US Soccer and be paid an extra annual salary by US Soccer for their NWSL service. The reason for including NWSL service as part of the 2013 CBA/UPA was to help build a credible and sustainable women's professional league and to hopefully avoid the fate of its two failed predecessors. Pursuant to the 2013 CBA/UPA, Women's National Team members were given various options to "opt out" of participating in the NWSL for specific NWSL seasons by giving US Soccer notice by certain deadlines. The deadline for opting out of the 2016 NWSL season was October 5, 2015. Only one of the current Women's National Team members exercised her option, but even she ultimately decided to play in the NWSL this coming season.

ANSWER: WNTPA admits that the deadline for opting out of the 2016 NWSL season was October 5, 2015, and that only one current WNT member exercised that option, but eventually she decided to play in the NWSL this coming season. WNTPA denies the remaining allegations of Paragraph 33.

34. Consistent with its historical four-year planning cycle for the Women's National Team, US Soccer would never have agreed to the terms set forth in the 2013 CBA/UPA and complied with its terms going forward but for the parties' express agreement that the new collective bargaining agreement would have a four-year term expiring on December 31, 2016 – after the 2016 Summer Olympic Games.

ANSWER: WNTPA denies the allegations contained in Paragraph 34.

35. Accordingly, based on the terms of the new four-year agreement between US Soccer and the Players Association, US Soccer paid the Players Association the \$425,000 signing bonus and paid the players on the Women's National Team the improved compensation and benefits retroactive to January 1, 2013. In addition, US Soccer has paid several million dollars in additional payments and benefits to the players on the Women's National Team that it

would never have agreed to pay absent the Players Association's agreement to the four-year term of the 2013 CBA/UPA.

ANSWER: WNTPA denies the allegations contained in Paragraph 35, but admits that USSF paid WNTPA \$425,000 and certain other monies pursuant to the MOU.

36. The Players Association acknowledged the existence of the new collective bargaining agreement as well as its four-year term both by its words and actions. Among other things, on Schedule 14 of its Form LM-2 Annual Report of Labor Organization for 2013 filed with the United States Department of Labor Office of Labor Management Standards, attached hereto as Exhibit F, the Players Association acknowledged having received the \$425,000 signing bonus directly from US Soccer in 2013 and described this amount as "Payments Under CBA."

ANSWER: WNTPA denies the allegations contained in Paragraph 36, but admits that it received \$425,000 from USSF as described in Exhibit F.

37. In addition, Mr. Langel, the Players Association General Counsel and Acting Executive Director at the time of execution of the 2013 CBA/UPA, testified under oath in April 2014 that the Players Association and US Soccer were then parties to a collective bargaining agreement *expiring on December 31, 2016* which was comprised of the terms set forth in the 2005 CBA/UPA as modified and supplemented by the MOU. In connection with an arbitration proceeding between US Soccer and the United States Men's National Team Players Association (the "Men's Players Association"). Mr. Langel was called as a witness on April 29, 2014 and placed under oath. Indeed, Mr. Langel testified, in relevant part, as follows:

Q. So how many collective bargaining agreements have you had?

A. *We had 2000 to 2004, 2005 to 2012, and now 2013 till December 31st, 2016. We have tried to – first agreement was five years. Second agreement was – first agreement was five years. We've tried to cover both a World Cup and an Olympics. The*

second agreement we covered World Cup, Olympics, World Cup, Olympics. And this agreement we're covering World Cup, Olympics.

Q. So one is covering five years; one is covering eight years; one is covering four years?

A. Correct.

Q. The next collective bargaining agreement that the players association executed covered the period from 2005 through the end of 2012, correct?

A. Yes.

Q. Okay. And then that agreement has expired, correct?

A. Yes.

Q. And you're now operating under a memorandum of understanding, correct?

A. Yes.

Q. *And as I understand it – correct me if I'm wrong – the memorandum of understanding has certain financial – made certain financial changes, but other than matters specifically identified in the memorandum of understanding, the terms of the expired CBA the parties have agreed will continue to control?*

A. Yes.

(Emphasis supplied.) The excerpts from Mr. Langel's arbitration testimony are attached as

Exhibit G.

ANSWER: WNTPA admits that Paragraph 37 contains partial quotes taken from Mr. Langel's confidential testimony, which speaks for itself. WNTPA denies any interpretation attributable to Mr. Langel by USSF inconsistent with his entire testimony. WNTPA denies the remaining allegations contained in Paragraph 37.

38. Consistent with the understanding and agreement of both US Soccer and the Players Association, the parties honored the terms of the 2013 CB A/UPA from and after March 19, 2013.

ANSWER: WNTPA denies the allegations contained in Paragraph 38.

The New Players Association Executive Director Unilaterally Claims, Without Basis, that the 2013 CBA/UPA Has Expired and Is No Longer Binding

39. On November 24, 2014, Mr. Langel notified US Soccer by email that he and his law firm had been replaced by Mr. Richard Nichols as the Players Association's representative. In his email, Mr. Langel listed a series of open issues to be addressed. In this email, Mr. Langel reaffirmed the existence of collective bargaining agreement between US Soccer and the Players Association consisting of the terms contained in the 2005 CBA/UPA as amended and modified by the MOU. Among other things, in his email Mr. Langel noted that, because the parties had not gotten around to combining the two documents comprising the 2013 CBA/UPA – the 2005 CBA/UPA and the MOU into a single document “the parties need to edit, where applicable, the Collective Bargaining Agreement and Uniform Player Agreement consistent with the March 2013 Memorandum of Understanding.” *See* Email from John Langel dated November 24, 2014, Item 9, attached hereto as Exhibit H.

ANSWER: WNTPA admits that on November 24, 2014, Mr. Langel notified USSF by email that he and his law firm had been replaced by Mr. Nichols. The email lists various open issues and WNTPA denies any characterization of these issues inconsistent with the express language of the email. WNTPA denies the remaining allegations of Paragraph 39.

40. US Soccer is informed and believes, and thereon alleges, that Mr. Nichols is the current Executive Director of the Players Association.

ANSWER: WNTPA admits the allegations contained in Paragraph 40.

41. Although he played absolutely no role in the negotiations of the 2013 CBA/UPA, and notwithstanding the documented agreement of the parties, several months after he assumed the role as the Players Association Executive Director, Mr. Nichols began suggesting that there was no collective bargaining agreement between the Players Association and US Soccer and/or that any such agreement could be terminated by the Players Association at any time.

ANSWER: WNTPA admits that Mr. Nichols has informed USSF that there is no valid collective bargaining agreement between the USSF and WNTPA and/or that the MOU in place could be terminated at any time. WNTPA denies the remaining allegations of Paragraph 41.

42. Notwithstanding these intimations, both Mr. Nichols and the Players Association continued to accept the benefits of the improved compensation, benefits and working conditions provided for exclusively by the terms of the 2013 CBA/UPA.

ANSWER: WNTPA admits that to date it has operated under the terms of the MOU. WNTPA otherwise denies the allegations contained in Paragraph 42, including the existence of a 2013 CBA/UPA.

43. Then, on December 24, 2015, Mr. Nichols, as Executive Director/General Counsel of the Players Association, sent a letter to US Soccer stating:

Pursuant to Sections 8(b)(3) and 8(d) of the National Labor Relations Act (“NLRA”) and the codified duty to bargain collectively, this writing shall serve as the Women’ National Team Players Association’s (“WNTPA”) requisite written notice (the “Notice”), of the WNTPA’s Intent to engage in action(s) that shall serve to terminate and or modify, if applicable, the;

(a) collective bargaining agreement, and or, in this instance,

(b) Memorandum of Understanding (“MOU”) entered into by and between the United States Soccer Federation (“USFF”), and the WNTPA (collectively referred to herein as the “Parties”) in March 2013, the terms of which have, in the alternative, served to guide and govern the operational relationship between the Parties in the absence of a collective bargaining agreement.

Further, the serving of this Notice notwithstanding, the WNTPA reserves its inherent right to challenge the USSF's claim of the existence of a collective bargaining agreement between the Parties.

See Letter from Richard M. Nichols dated December 23, 2015 and cover email dated December 24, 2015 attached hereto as Exhibit I (the "Purported CBA Termination Notice").

ANSWER: WNTPA admits that the above quoted language is part of a letter Mr. Nichols sent to USSF dated December 23, 2015, the content of which speaks for itself. WNTPA denies the remaining allegations of Paragraph 43.

44. Section 8(d) of the LMRA requires a party to a collective bargaining agreement to provide the other party to the agreement with a notice 60 days in advance of the agreement's "expiration date ... or in the event the contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification ..." In other words, Mr. Nichols notified US Soccer that it was the position of the Players Association that it is free to terminate the 2013 CBA/UPA effective February 24, 2016 and to "engage in actions" on and after that date.

ANSWER: WNTPA admits that Mr. Nichols informed USSF that WNTPA had the right to terminate the MOU at will, and, as of February 24, 2016, could exercise rights available to it under relevant labor law. WNTPA states further that the portion of this paragraph regarding the requirements of Section 8(d) of the LMRA calls for a legal conclusion to which no answer is required. WNTPA denies the remaining allegations of Paragraph 44.

45. US Soccer promptly responded to Mr. Nichols' Purported CBA Termination Notice on December 28, 2015, questioning its timing and contents given that "the current CBA/UPA which was extended by the MOU does not expire until December 31, 2016." US Soccer further requested that "[i]f, however, the [Players Association] disagrees with the expiration date and intends to claim that it has the right to declare an earlier termination date,

please let [US Soccer] know.” US Soccer’s December 28, 2015 response to the Purported CBA Termination Notice is attached as Exhibit J.

ANSWER: WNTPA admits that USSF sent an email dated December 28, 2015. The content of the email speak for itself and WNTPA denies any interpretation by USSF inconsistent therewith.

46. On January 4, 2016, Mr. Nichols emailed US Soccer what he termed a “WNTPA Collective Bargaining Agreement Proposal,” but he did not respond to US Soccer’s very specific inquiry in its December 28, 2015 email. Accordingly, on January 6, 2016, US Soccer sent an email to Mr. Nichols, attached as Exhibit K, thanking him for the proposal, and asking for a specific response from the Players Association addressing its position on the expiration of the 2013 CBA/UPA.

ANSWER: WNTPA admits that Mr. Nichols sent USSF an email dated January 4, 2016. The content of the email speak for itself and WNTPA denies any interpretation by USSF inconsistent therewith. WNTPA further admits that USSF sent WNTPA an email dated January 6, 2016. The content of the email speak for itself and WNTPA denies any interpretation by USSF inconsistent therewith.

47. Mr. Nichols and the Players Association responded later that same day by email, stating unequivocally that:

... it is the position of the WNTPA that the CBA no longer exists, and further, that the MOU is terminable at will... Accordingly, it is simply not correct that “the current CBA does not expire until the end of this year,” or as you put it in your earlier email, “the MOU does not expire until December 31, 2016.” In fact, the MOU is absent any reference to the MOU having any expiration date or definite means by which the MOU can be terminated... Our goal is to determine before the start of March training camps whether the parties can reach an agreement, failing which the players will consider exercising their right to terminate the MOU.

See Email from Rich Nichols to US Soccer dated January 6, 2016, attached hereto as Exhibit L.

ANSWER: WNTPA admits that Mr. Nichols sent USSF an email dated January 6, 2016. The content of the email speak for itself and WNTPA denies any interpretation by USSF inconsistent therewith.

48. In response to Mr. Nichols' request for a meeting to discuss the Players Association January 4, 2016 proposal, US Soccer sent an email to Mr. Nichols on January 15, 2016 proposing some dates in February to meet. In addition, in an effort to avoid having to take action against the Players Association, US Soccer wrote as follows:

We continue to try to understand the factual basis for your letter dated December 23, 2015, and the statement in your January 6, 2016 email "that the CBA no longer exists, and further, that the MOU is terminable at will" - a position with which U.S. Soccer disagrees. We trust that you have received, and if you have not, that you will immediately request, the complete negotiating file from Mr. Langel and his firm in connection with the 2012-2013 negotiations as well as their subsequent communications with U.S. Soccer concerning the CBA and MOU. If you believe there are documents in those files which support the Players Association's position, please provide us with copies, as those may inform our negotiations going forward. We also assume that you have spoken with Mr. Langel and his colleague Ruth Uselton who negotiated the current agreement for the Players Association, and if not that you will speak with them promptly.

See US Soccer's January 15, 2016 email to Mr. Nichols attached hereto as Exhibit M.

ANSWER: WNTPA admits that USSF sent WNTPA an email dated January 15, 2016. The content of the email speak for itself and WNTPA denies any interpretation by USSF inconsistent therewith.

49. On January 18, 2016 Mr. Nichols responded to US Soccer's email. After identifying alternative dates for a meeting, he stated as follows:

With regard to your insistence that a CBA exists, and or that the MOU expires on December 31, 2016, I'd like to direct you to some

labor case law that provides in pertinent part that, as per the current status of the MOU, the MOU is terminable “at will”.

Specifically, labor law clearly provides that, “[l]abor contracts of indeterminate duration or ones that do not provide a manner of termination are terminable at will.” *See, Montgomery Mailers’ Union No. 127 v. Advertiser Co.*, 827 F.2d 709, 715 (11th Cir. 1987); see also *Int’l Union of Operating Engineers, Local Union No. 542 v. Allied Erecting & Dismantling Co.*, 556 F. App’x 109, 112-13 (3d Cir. 2014).

I’d also like to reiterate that unless significant progress is made in these negotiations by or before March 1st, the WNT Players will very seriously consider whether or not to exercise that right to terminate the MOU.

ANSWER: WNTPA admits that Mr. Nichols sent USSF an email dated January 18, 2016. The content of the email speaks for itself and WNTPA denies any interpretation by USSF inconsistent therewith.

50. Because the 2013 CBA/UPA has a definite term as set forth in the MOU – four years – making the case law cited inapplicable, and because Mr. Nichols and the Players Association did not even address US Soccer’s request that they review the Players Association negotiating file and speak with Mr. Langel and Ms. Uselton, US Soccer responded the next morning, January 19, 2016, as follows:

Rich:

Thank you for your note. Let’s plan on meeting on February 3. We are fully cognizant of the legal issues and the case law, but do not understand the factual basis for your suggestion that the MOU is “terminable at will.” In conjunction with the execution of the MOU, it was agreed by both US Soccer and the Players Association that the new CBA would consist of terms contained in the 2005-2012 CBA as modified and amended by the MOU and expiring on December 31, 2016. Indeed, the MOU makes clear on its face that it has a definite duration of four years.

In your response you make no mention of whether you have reviewed the negotiating history in the file maintained by your predecessor or whether you have spoken with John Langel and his

colleague who actually negotiated the agreement. Given your position, we can only assume that you have not yet done so and, therefore, once again request that you do so promptly.

Further, while US Soccer will participate in the meeting on February 3, understand that by doing so, US Soccer is reserving all of its rights and remedies should the Players Association pursue the path you are suggesting.

See Mr. Nichols' January 18, 2016 email and US Soccer's response on January 19, 2016, attached hereto as Exhibit N.

ANSWER: WNTPA admits that USSF sent WNTPA an email dated January 18, 2016. The content of the email speaks for itself and WNTPA denies any interpretation by USSF inconsistent therewith. WNTPA denies the remaining allegations of Paragraph 50.

51. Mr. Nichols responded to US Soccer's January 19, 2016 email later that same day stating as follows:

Lisa,

Thank you for your response.

I am pleased that you acknowledge and understand our position.

Further, we understand and hereby acknowledge that US Soccer and the WNTPA reserve their respective legal rights and remedies in these matters.

Accordingly, please let me know the time and location of our February 3rd meeting.

Thanks,
Rich

Surprisingly, Mr. Nichols provided no factual support for his and the Players Association's position, and he failed to respond to US Soccer's urging that he review the negotiating history and speak with his predecessor, Mr. Langel, and his colleague, Ms. Uselton. See Mr. Nichols' January 19, 2016 email attached hereto as Exhibit O.

ANSWER: WNTPA admits that Mr. Nichols sent USSF an email dated January 19, 2016. The content of the email speaks for itself and WNTPA denies any interpretation by USSF inconsistent therewith.

52. Finally, on February 3, 2016 representatives of US Soccer and the Players Association met in New York. At the outset of that meeting, in view the substantial investment US Soccer was making in the Women's National Team and the harm that would befall US Soccer, the NWSL and the sport of soccer if the players engaged in a strike or other job action, Mr. Nichols was directly asked whether the Players Association would agree that they would not engage in such a strike or job action through the end of December 2016. Mr. Nichols refused to provide US Soccer with the assurances it requested thereby necessitating the filing of this Complaint.

ANSWER: WNTPA admits that representatives for the parties met in New York on February 3, 2016. WNTPA further admits that Mr. Nichols informed USSF that WNTPA was keeping all legally available options open to it under relevant labor law. WNTPA denies the remaining allegations contained in Paragraph 52.

53. Both US Soccer and the Players Association agreed in March 2013 that the 2013 CBA/UPA consisted of the terms contained in the 2005 CBA/UPA as modified and supplemented by the MOU, and that the 2013 CBA/UPA had a four-year term expiring on December 31, 2016. Both US Soccer and the Players Association acted in accordance and in compliance with the four-year term of the agreement, and the Players Association and its members willingly accepted the benefits of the 2013 CBA/UPA for more than two and one-half years without even a suggestion that there was no agreement or that it could be terminated at the will of the Players Association. Notwithstanding the clear import of these facts, the new

Executive Director, Mr. Nichols, now claims the right to terminate the 2013 CBA/UPA and to authorize the members of the Players Association to “engage in actions” in direct violation of the “no strike” provisions of the current agreement unless US Soccer promptly agrees to a new collective bargaining agreement on terms dramatically different than those set forth in the 2013 CBA/UPA – even though the current agreement does not expire for eleven months.

ANSWER: WNTPA denies the allegations contained in Paragraph 53.

Need for Prompt Determination of This Dispute

54. There is a compelling need for a prompt determination that the 2013 CBA/UPA consists of the terms set forth in the 2005 CBA/UPA as supplemented by the MOU, is binding on the Players Association, has an expiration date of December 31, 2016 and includes the “no strike” prohibition.

ANSWER: WNTPA denies the allegations contained in Paragraph 54.

55. As the No. 1 ranked women’s soccer team in the world, the recently crowned 2015 FIFA Women’s World Cup champion, and the three-time defending Olympic Gold Medal-winning women’s soccer team, it is expected that the Women’s National Team will qualify in February (prior to the end of the 60-day notice period provided in the Purported CBA Termination Notice) to represent the United States in the 2016 Summer Olympic Games scheduled to begin on August 5.

ANSWER: WNTPA admits the allegations contained in Paragraph 55, and states that the Women’s National Team in fact qualified for the 2016 Olympic Games.

56. In order to properly prepare the team for the 2016 Summer Olympic Games in which they will represent the United States, US Soccer has scheduled the “She Believes” tournament for early March, which will include Women’s National Team matches against the national teams of Germany, England and France, and will conduct training camps and schedule

additional preparation matches in the late spring and early summer against the women's national teams of other countries. Arranging all of these events will cost US Soccer, a non-profit corporation, a substantial sum of money.

ANSWER: WNTPA denies the allegations contained in Paragraph 56, but admits that the referenced events have been scheduled by USSF.

57. In addition, if the Women's National Team is not properly prepared for the 2016 Summer Olympic Games as a consequence of a strike or other refusal to participate in training and/or preparation matches, erroneously believing they are not bound by the no-strike clause, the performance of the Women's National Team in the Olympics will likely be significantly hampered, to the detriment of US Soccer, the United States Olympic Committee ("USOC") and the United States.

ANSWER: WNTPA denies the allegations contained in Paragraph 57.

58. Further, pursuant to the rules of the International Olympic Committee for the 2016 Summer Olympic Games, US Soccer and the USOC will be required to submit the roster for the Women's National Team in advance of the tournament. Absent a determination concerning the expiration date of the 2013 CBA/UPA and the applicability of the no-strike clause prior to that date, the members of the Players Association could refuse to participate in the 2016 Summer Olympic Games, erroneously believing that they are not bound by the no-strike clause. Were they to do so after the time has passed for US Soccer and the USOC to submit an alternate roster of players, US Soccer and the USOC may be unable to name a replacement team for the 2016 Summer Olympic Games, and, as a consequence, would be faced with the prospect of having to withdraw the Women's National Team from the Olympic Games, to the substantial embarrassment, and financial detriment, of US Soccer, the USOC and the United States. US

Soccer would also face the possibility of a substantial fine from FIFA along with the possibility of a suspension by FIFA of US Soccer and all of its national teams (girls, boys, men and women) from participating in subsequent FIFA competitions.⁵

ANSWER: WNTPA states that the rules of the International Olympic Committee and FIFA speak for themselves, and WNTPA denies any interpretation by USSF inconsistent therewith. WNTPA denies the remaining allegations contained in Paragraph 58.

59. Finally, the NWSL was formed against the backdrop of two prior domestic women's professional soccer leagues having failed. In order to give the NWSL a chance to succeed for the benefit of all of women's soccer, US Soccer has provided substantial support to NWSL in a variety of ways including, among others, substantial front-office support and allocating Women's National Team members to the NWSL teams and paying their salaries. Should the Players Association engage in a strike or other job action directed at the NWSL, such action would have a dramatic negative impact on the league.

ANSWER: WNTPA admits that USSF pays for the salaries of WNT members as to their performance of services for NWSL teams. WNTPA lacks sufficient information to admit or deny the remaining allegations contained in Paragraph 59 and, therefore, demands strict proof thereof.

60. Given such extreme consequences, the only alternative for US Soccer would be to accede to unreasonable negotiating demands from the Players Association to avoid such detriments.

ANSWER: WNTPA denies the allegations contained in Paragraph 60.

⁵ See FIFA Regulations for the Olympia Football Tournaments for the Games of the XXXI Olympiad, Rio de Janeiro, 2016, Art. 7, §§ 6-9.

FIRST CLAIM FOR RELIEF
(For Anticipatory Breach of the 2013 CBA/UPA)

61. US Soccer incorporates paragraphs 1 through 60, above, as though fully set forth herein.

ANSWER: WNTPA incorporates its answers to paragraphs 1 through 60 above, as though fully set forth herein.

62. On March 19, 2013, US Soccer and the Players Association entered into the 2013 CBA/UPA consisting of the terms set forth in the 2005 CBA/UPA as supplemented and modified by the MOU, retroactive to January 1, 2013. The 2013 CBA/UPA expires on December 31, 2016, and includes, among other things, a no-strike clause which prohibits the Players Association and its members from engaging in any “strike, work stoppage, slowdown or other concerted interference with the activities of US Soccer during the term of the agreement.

ANSWER: WNTPA denies the allegations contained in Paragraph 62.

63. Notwithstanding the existence of the 2013 CBA/UPA and in express violation of its terms, the Players Association has issued the Purported CBA Termination Notice, illegally declaring the 2013 CBA/UPA terminated and threatening to violate the no-strike clause on or after February 24, 2016.

ANSWER: WNTPA admits that it has issued the termination notice, but denies the remaining allegations contained in Paragraph 63.

64. Accordingly, US Soccer hereby requests a determination from this Court that a collective bargaining agreement currently exists between the Players Association and US Soccer consisting of the terms contained in the 2005 CBA/UPA as supplemented and modified by the MOU, with an expiration date of December 31, 2016, and including, among other things, a no-strike clause – such that the Players Association’s claim that it is terminating and repudiating the

2013 CBA/UPA is a violation of that agreement. US Soccer further requests an award of monetary damages, in an amount to be proven, suffered as a direct and proximate cause of the Players Association's anticipatory breach as well as damages for any actual breach of the 2013 CBA/UPA.

ANSWER: WNTPA admits that USSF is seeking the relief set forth in Paragraph 64, but expressly denies that USSF is entitled to such relief, and otherwise denies the allegations contained in Paragraph 64.

**SECOND CLAIM FOR RELIEF
(For Declaratory Relief)**

65. US Soccer incorporates paragraphs 1 through 64, above, as though fully set forth herein.

ANSWER: WNTPA incorporates its answers to paragraphs 1 through 64, above, as though fully set forth herein.

66. A real and present controversy now exists between US Soccer, on the one hand, and the Players Association, on the other hand, with respect to the terms of the 2013 CBA/UPA and the ability of the Players Association to declare that the 2013 CBA/UPA is terminated and that neither the Players Association nor its members are bound by a no-strike clause.

ANSWER: WNTPA admits that a real and present controversy exists between USSF and WNTPA over the terms of the MOU and whether a valid collective bargaining agreement exists. WNTPA denies the remaining allegations contained in Paragraph 66.

67. US Soccer believes that it entered into a 2013 CBA/UPA with the Players Association in March 2013 that (i) consists of the terms contained in the 2005 CBA/UPA as supplemented and modified by the MOU, (ii) is effective and binding for the duration of its term from January 1, 2013 through December 31, 2016, and (iii) includes, among other things, a no-

strike clause. The Players Association, however, contends that (a) the collective bargaining agreement is separate from the MOU and is terminable on 60 days' notice; (b) the collective bargaining agreement will terminate 60 days after the Purported CBA Termination Notice; (c) at that time neither it nor its members will be bound by any no-strike clause and, therefore, are entitled to "engage in actions" on or after February 24, 2016; and (d) the MOU is "terminable at will."

ANSWER: WNTPA denies the allegations contained in Paragraph 67, except it admits that it is the position of WNTPA that it now has the right to terminate the MOU at will.

68. Accordingly, US Soccer hereby requests a determination of this dispute and a declaration from this Court that a collective bargaining agreement currently exists between the Players Association and US Soccer (the 2013 CBA/UPA), consisting of the terms contained in the 2005 CBA/UPA as supplemented and modified by the MOU, with an expiration date of December 31, 2016, and including, among other things, a no-strike clause.

ANSWER: WNTPA admits that USSF is seeking the requests set forth in Paragraph 68, but expressly denies that USSF is entitled to such relief.

69. US Soccer further requests a "speedy hearing" on its claim for declaratory relief to which it is entitled pursuant to Rule 57 of the Federal Rules of Civil Procedure, particularly given the significant monetary and potentially irreparable harm that may befall US Soccer, the USOC, the NWSL and the United States should the Players Association violate the no-strike clause in the 2013 CBA/UPA resulting in the consequences described in paragraphs 54 through 60 above.

ANSWER: WNTPA states that the parties have reached an agreed schedule which was submitted to the Court on February 25, 2016, regarding any motions for summary judgment. WNTPA denies the remaining allegations contained in Paragraph 69.

AFFIRMATIVE DEFENSES

First Affirmative Defense

USSF fails to state a claim for which relief can be granted because there is no valid collective bargaining agreement in place and/or the MOU was terminable at will.

Second Affirmative Defense

Even if a valid collective bargaining agreement were in effect, USSF is not entitled to any relief from this Court regarding whether any no strike/no lockout provision is in place. Specifically, if the terms of the prior collective bargaining agreement containing the no strike/no lockout provision were in effect to the extent not modified by the MOU, USSF's claims would be subject to the Grievance and Arbitration Procedure (Article V) of the agreement, which provides that any dispute "involving the interpretation or application of, or compliance with, any provision of this Agreement . . . will be resolved exclusively in accordance with the procedure set forth in this Article." Accordingly, USSF's Complaint must be dismissed insofar as it seeks any determination regarding any alleged applicability of the no strike/no lockout provision, or any award of damages for any breach thereof, since, if such CBA terms were in place, any such claims were subject to resolution exclusively by arbitration under the grievance procedures of the prior collective bargaining agreement, and not by this Court.

Third Affirmative Defense

If this Court were to consider USSF's claim that a no strike/no lockout provision is in place, any such claim would, in any event, be time barred. Specifically, if the terms of the prior collective bargaining agreement containing the no strike/no lockout provision were in effect to

the extent not modified by the MOU, USSF's claims would be barred under Article V (Grievance and Arbitration Procedure) of the agreement, which provides in relevant part: "a grievance must be initiated within sixty (60) days from the date of the occurrence or non-occurrence of the event upon which the grievance is based, or within 30 days from the date on which the facts of the matter became known or reasonably should have been known to the party(ies) initiating the grievance, or within thirty (30) days from the date on which the parties(ies) initiating the grievance has standing to file such a grievance under this Agreement, whichever is later." Art. V, Sect. 5.2 "Initiation." Thus, under the collective bargaining agreement that USSF alleges has continued in effect, except to the extent modified by the MOU, USSF was required to file a grievance by February 22, 2016. USSF failed to do so.

WHEREFORE, WNTPA respectfully requests that this Court dismiss the Complaint with prejudice, enter judgment in WNTPA's favor and against USSF, and award WNTPA such other and further relief this Court may deem just and proper.

JURY DEMAND

Defendant WNTPA hereby demands a jury trial on any damages or other claims that are not dismissed and are properly triable before a jury.

Dated: March 1, 2016

Respectfully submitted,

UNITED STATES WOMEN'S NATIONAL
SOCCER TEAM PLAYERS ASSOCIATION

By: /s/ Samuel Mendenhall
One of Its Attorneys

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National Soccer Team Players Association*

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to counsel of record for all parties via the court's electronic filing system.

/s/Samuel Mendenhall