No. ______

In the Supreme Court of the United States

UNITED STATES SOCCER FEDERATION, INC.,
Petitioner,

v.

RELEVENT SPORTS, LLC, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The "crucial question" in a claim under Section 1 of the Sherman Act is whether the challenged anticompetitive conduct "stem[s] . . . from an agreement" or conspiracy among different actors to restrain trade. *Theatre Enters., Inc. v. Paramount Film Distrib. Corp.*, 346 U.S. 537, 540 (1954). This case presents a recurring question concerning the requirements for pleading the element of conspiracy under Section 1, where a plaintiff challenges a rule promulgated by a membership association as violating the antitrust laws. The Court granted certiorari to resolve the circuit split on this question in *Visa Inc. v. Osborn*, 137 S. Ct. 289 (2016), but was unable to do so. The question presented is:

Whether allegations that members of an association agreed to adhere to the association's rules, without more, are sufficient to plead the element of conspiracy in violation of Section 1.

PARTIES TO THE PROCEEDINGS

Petitioner United States Soccer Federation, Inc., was a defendant-appellee in the U.S. Court of Appeals for the Second Circuit.

Respondent Relevent Sports, LLC, was a plaintiff-appellant in the U.S. Court of Appeals for the Second Circuit.

Respondent Fédération Internationale De Football Association was a defendant-appellee in the U.S. Court of Appeals for the Second Circuit.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner United States Soccer Federation, Inc., is a not-for-profit corporation and certifies that it has no corporate parent and no publicly held corporation owns 10 percent or more of its stock.

RELATED PROCEEDINGS

The proceedings directly related to this case are:

Relevent Sports, LLC v. United States Soccer Federation, Inc., et al., No. 21-2088, U.S. Court of Appeals for the Second Circuit. Judgment entered on March 7, 2023. Petition for panel rehearing and rehearing en banc denied on May 8, 2023.

Relevent Sports, LLC v. United States Soccer Federation, Inc., et al., No. 1:19-cv-8359, U.S. District Court for the Southern District of New York. Judgment entered July 28, 2021. Notice of appeal filed August 26, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner United States Soccer Federation, Inc., ("U.S. Soccer") asks this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The decision below is reported at 61 F.4th 299 (2d Cir. 2023). App. 1a-19a. The order denying rehearing en banc (App. 48a-49a) is not published. The district court's order dismissing the Amended Complaint is published at 551 F. Supp. 3d 120 (S.D.N.Y. 2021). App. 20a-47a.

JURISDICTION

On March 7, 2023, the Second Circuit reversed the judgment of the district court. App. 1a-19a. On May 8, 2023, the Second Circuit denied Petitioner's petition for panel rehearing and rehearing en banc. App. 48a-49a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are set out in the appendix hereto. App. 116a.

INTRODUCTION

This case presents the same important question of antitrust law that this Court previously granted certiorari to decide in *Visa Inc. v. Osborn*, 137 S. Ct. 289, 289-90 (2016): Whether allegations that members of an association agreed to adhere to the association's rules, without more, are sufficient to plead the element of conspiracy in violation of Section 1 of the Sherman Act. This Court was unable to resolve that question in *Osborn* because the Court dismissed certiorari as improvidently granted after petitioners changed their position at the merits stage of the case. *Id.* The Second Circuit's decision in this case deepens the acknowledged circuit conflict that prompted certiorari in *Osborn*—and goes further than any court before it by holding that an agreement to abide by an association's rules is sufficient to plead concerted action in the context of a challenge to an association rule not only as to the members of the association but also as to non-members who are indirectly bound by the association's rules.

As alleged, this case involves a policy promulgated in 2018 by an arm of the Fédération Internationale de Football Association (FIFA) limiting the play of official league games to a professional soccer league's home territory. Respondent Relevent Sports, LLC, is a soccer promoter that wished to stage an official Spanish league game in the United States, in contravention of this policy. When its request was denied, Respondent brought suit against Petitioner U.S. Soccer, the governing body for soccer in the United States, claiming that FIFA's policy restrains trade in violation of Section 1 of the Sherman Act. The district court dismissed Respondent's claim because the complaint contained no plausible

allegation that U.S. Soccer itself had assented to the policy, beyond its mere membership in FIFA, and thus Respondent failed to plead the essential threshold element of concerted action. App. 30a-47a.

The Second Circuit vacated that decision, finding that an allegation that members previously agreed to be bound by an association's rules is enough, standing alone, to plead concerted action in a suit challenging the legality of a rule promulgated by the association, regardless of whether the member defendant was involved with, assented to, or even agreed with the rule at issue. *Id.* at 12a, 15a. As the court explained, "the adoption of the policy [here], combined with the member leagues' prior agreement, by joining FIFA, to adhere to its policies, constitutes an agreement on the part of all." *Id.* at 12a. Under the Second Circuit's rule, U.S. Soccer's decision to *join* FIFA—made over a century ago—made it an automatic co-conspirator under the Sherman Act in any subsequent anticompetitive act that FIFA allegedly committed.

The Second Circuit then expanded that rule by holding that this conspiracy extended beyond FIFA's members to the thousands of *non-member* leagues and teams around the world, based on the allegation that the policy "bind[s] the various national associations," with those associations' rules "in turn" binding their leagues, and those leagues binding their constituent teams. *Id.* at 17a. The net result is that by challenging a single FIFA policy, Respondent was able to plead a global antitrust conspiracy warranting treble damages against thousands of entities ranging from U.S. Soccer to the English Premier League to FC Tokyo, without any plausible allegations that these discrete actors had any role whatsoever in the

challenged policy, much less all conspired together to adopt, approve, or effectuate the policy.

That radical decision exacerbates the circuit conflict that this Court granted certiorari to resolve in *Osborn*. The Third, Fourth, and Ninth Circuits have uniformly rejected Section 1 claims based on defendant-members' participation in associations that promulgate challenged rules or policies. In *Osborn*, the D.C. Circuit parted ways with those three circuits, creating a conflict that this Court granted certiorari to address. The Second Circuit not only has deepened the split, but gone much further than the D.C. Circuit by extending liability to association members who did not engage in *any* affirmative conduct, and to a vast array of downstream actors that are not even members of the association.

The Second Circuit's decision also starkly departs from this Court's precedent. Allegations that an entity agreed to abide by a membership association's rules cannot, by themselves, plausibly establish concerted action among the entity and others, because such allegations are consistent with "merely parallel conduct that could just as well be independent action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Moreover, a general agreement to abide by an association's rules—made *before* any alleged anticompetitive conduct even occurred—cannot plausibly establish a "conscious commitment to a common scheme designed to achieve an unlawful objective." *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984) (citation omitted).

The Second Circuit's contrary rule imperils thousands of entities that belong to membership associations providing procompetitive benefits across

a wide range of industries, and upends long-standing tenets of antitrust law. Certiorari is warranted.

STATEMENT OF THE CASE

A. Legal Background

Section 1 of the Sherman Act imposes liability on parties who (1) enter a "contract, combination . . . or conspiracy" that (2) unreasonably restrains "trade or commerce." 15 U.S.C. § 1. Section 1's first element thus requires "an arrangement [that] embod[ies] concerted action." *American Needle, Inc. v. National Football League*, 560 U.S. 183, 191 (2010). To establish concerted action, a plaintiff must show that the defendant "and others 'had a conscious commitment to a common scheme designed to achieve an unlawful objective.'" *Monsanto*, 465 U.S. at 764 (citation omitted).

Because it is a "legal element" of a Section 1 claim, a "plaintiff must plausibly allege" concerted action "at the outset of a lawsuit." *Comcast Corp v. National Ass'n of African Am.-Owned Media*, 140 S. Ct. 1009, 1014 (2020). In other words, a complaint's allegations must offer "plausible grounds to infer" that the defendant and others made a conscious commitment to a common scheme designed to achieve an unlawful objective. *Twombly*, 550 U.S. at 556; *Monsanto*, 465 U.S. at 764. A "naked assertion of conspiracy" does not cross "the line between possibility and plausibility." *Twombly*, 550 U.S. at 557.

B. Factual Background

1. The sport of soccer is governed across the globe by FIFA, a membership association comprising 211 national associations that oversee the game in their respective countries. App. 3a, 21a. FIFA sets the

rules of play, organizes international competitions such as the FIFA World Cup, and promotes soccer's development around the world. *See id.* at 58a, 69a (Amended Complaint ("AC") ¶¶ 26, 61, 63).

U.S. Soccer is a non-profit association that promotes and governs professional and amateur soccer in the United States. *Id.* at 3a-4a. In 1914, U.S. Soccer agreed to become one of FIFA's national association members. *Id.* at 59a (AC ¶ 31). U.S. Soccer is part of Concacaf, a regional confederation that oversees soccer in North America, Central America, and the Caribbean. *Id.* at 58a-59a (AC ¶ 28). As with other national associations, U.S. Soccer is a membership association of professional soccer leagues and teams (among other entities). *Id.* at 3a. But those professional soccer leagues and teams are not themselves members of FIFA. *See* Second Circuit Appendix ("CA2 App.") 72.

Each national association member receives one vote in the FIFA Congress, the sport's "supreme and legislative" body responsible for promulgating the FIFA Statutes. App. 59a-60a (AC ¶¶ 32-33) (citation omitted). A smaller subset of FIFA's members participates in the FIFA Council, a thirty-seven member body authorized to interpret the FIFA Statutes and adopt rules and policies on behalf of FIFA. *Id.* at 3a; *id.* at 60a-61a (AC ¶ 36).

Upon joining FIFA, as U.S. Soccer did more than a century ago, national association members "agree to 'comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time.'"

Id. at 3a (citation omitted).[1] National associations, in turn, require their constituent leagues and teams to comply with FIFA's rules and policies. *Id.* at 3a-4a. Failure to do so may result in sanctions, including exclusion from the FIFA World Cup. *Id.* at 4a.

2. Respondent promotes and stages soccer matches. *Id.* Before a promoter can stage an international soccer match, FIFA's rules require approval from the competing teams' national association(s), their regional confederation(s), the host country's national association, and the host country's regional confederation. *Id.* Since 2012, Respondent has obtained approval for and promoted over 100 "friendly" exhibition games in the United States. *Id.* at 56a, 82a (AC ¶¶ 17-18, 102).

In 2018, Respondent began seeking to promote official league matches—games that "affect the standing of teams in their respective leagues or tournaments." *Id.* at 4a & n.2. Ordinarily, official league matches are played in a league's home country, not abroad. *See* CA2 App. 126. This practice reflects a well-established "sporting principle" in the global soccer community, which has long been organized around national leagues where each team plays "home" matches within their local community.

Respondent nevertheless proposed an official league match in Miami, Florida, between FC Barcelona and Girona FC, members of Spain's top-tier men's soccer league—La Liga. App. 56a, 85a (AC

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[1] Under the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. §§ 220501-220552, U.S. Soccer is actually *required* to comply with FIFA's rules in order to "demonstrate[] that it is a member of . . . [an] international sports federation that governs a sport," *id.* § 220522(6).

¶¶ 19, 111). Because playing a regular season La Liga game in America represented a departure from the norm, Spain's national association, U.S. Soccer, and its regional confederation, Concacaf, sought guidance from the FIFA Council regarding Respondent's proposal. *Id.* at 86a (AC ¶ 114).

On October 26, 2018, the FIFA Council issued a press release stating: "Consistent with the opinion expressed by the Football Stakeholders Committee, the [FIFA] Council emphasized the sporting principle that official league matches must be played within the territory of the respective member association." *Id.* at 5a. Shortly thereafter, FC Barcelona withdrew from the proposed match in the United States. *Id.* at 89a (AC ¶ 121). The match was instead held in Spain. Respondent has proposed other matches in the United States, but none has gone forward. *Id.* at 4a-5a.

C. Procedural Background

1. In 2019, Respondent sued U.S. Soccer in the Southern District of New York, alleging a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, based on FIFA's promulgation of the 2018 policy. The district court dismissed Respondent's complaint for failure to state a claim and failure to join FIFA as an indispensable party.[2] Respondent then filed the operative Amended Complaint against both U.S. Soccer and FIFA. App. 50a-115a.

To plead concerted action, Respondent asserted a broad-based conspiracy among FIFA, U.S. Soccer, the 210 other national associations that belong to FIFA, and countless leagues and teams around the world. *Id.* at 52a, 104a-05a (AC ¶¶ 4, 161-62); *see also id.* at

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[2] Second Circuit Special Appendix ("SPA") 15 n.12, 18-19.

85a (heading D). According to Respondent, the FIFA Council's 2018 policy reflected "an agreement among the FIFA-affiliated top-tier men's professional soccer leagues and their teams, who are actual and potential competitors with one another, to geographically allocate the markets in which they are permitted to stage official season games." *Id.* at 52a (AC ¶ 4). Respondent alleged that "[t]hese leagues and teams have agreed, along with their respective FIFA-affiliated 'National Associations,' to adhere to the FIFA rules and policies establishing and enforcing the horizontal market division agreement." *Id.* Respondent alleged that this global conspiracy was designed to "thwart" Respondent's efforts "to organize and promote . . . official season games in the U.S. in competition with" Major League Soccer ("MLS"), the top-tier professional soccer league in the United States. *Id.* at 105a (AC ¶ 164).

2. The district court dismissed the Amended Complaint. *Id.* at 20a-21a. Following briefing and argument, the court rejected Respondent's argument that it had pleaded the requisite concerted action simply by alleging the FIFA Council's adoption of the 2018 policy. *Id.* at 36a-41a. Rather, the court explained, Respondent was required to plead that "association members, *in their individual capacities*, consciously committed themselves to a common scheme designed to achieve an unlawful objective." *Id.* at 38a (citation omitted); *see also id.* at 41a. The district court held that Respondent's Amended Complaint failed to make that showing.[3] "In short,"

[3] The district court noted that Respondent had alleged that a representative from U.S. Soccer, Sunil Gulati,

the court concluded, Respondent failed to plead that U.S. Soccer "agreed with anyone, let alone with all 210 other National Associations and countless leagues and teams to do anything." *Id.* at 44a-45a. It thus dismissed the Amended Complaint.

3. The Second Circuit vacated the district court's decision and remanded. According to the court of appeals, the district court erred in requiring Respondent to identify assent to or participation in the promulgation of the policy. *Id.* at 2a. In the court's view, "the adoption of the policy [by FIFA], combined with the member leagues' prior agreement, by joining FIFA, to adhere to its policies, constitutes an agreement on the part of all [members]." *Id.* at 12a. Because "[Respondent] directly challenge[d] the 2018 [p]olicy as anticompetitive," "the very promulgation of the 2018 [p]olicy [constituted] direct evidence of an agreement for purposes of Section 1 of the Sherman Act." *Id.* at 19a; *see id.* at 2a, 15a. "No further allegation of an agreement is necessary." *Id.* at 2a. The court went even further in finding that not only were FIFA's members automatically deemed Sherman Act conspirators, but that the conspiracy also extended to "leagues and teams [that] are not members of FIFA." *Id.* at 17a. In the court's view, because "the FIFA Council's decisions bind the various national associations, which in turn bind their respective leagues and teams," those leagues

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"participated in the FIFA Council's consideration and adoption" of the policy. App. 61a-62a (AC ¶ 39); *see id.* at 40a. (Respondent did not allege that Gulati actually voted on the policy.) But the district court concluded that it could not "plausibly infer, merely from . . . Gulati's presence on the FIFA Council, that [U.S. Soccer] facilitated or participated in an unlawful agreement." *Id.* at 40a.

and teams are likewise members of the conspiracy. *Id.* In other words, the court found that the FIFA Council's promulgation of a policy was enough to plead a conspiracy between thousands of national associations, leagues, and teams all over the world. *Id.* at 15a ("Relevent alleges that the national associations, leagues, and teams have 'surrendered [their] freedom of action . . . and agreed to abide by the will of the association[].' That is enough." (alterations in original) (citation omitted)).

In so holding, the court stressed that a plaintiff is not required to allege any "prior 'agreement to agree'" to adopt the challenged policy, or that an association member actually "voted in favor of the policy." *Id.* at 12a. Rather, to establish the requisite concerted action in a challenge to one of the association's rules, a plaintiff need only allege that the members have previously agreed to abide by the association's rules. *Id.* at 15a. Thus, because FIFA members must abide by "'FIFA directives,'" the court held that "the very promulgation of the 2018 Policy" adequately established "an agreement for purposes of Section 1 of the Sherman Act." *Id.* at 18a-19a (citation omitted).[4]

4. The Second Circuit denied rehearing. *Id.* at 48a-49a.

REASONS FOR GRANTING THE WRIT

This petition presents the question on which this Court granted certiorari in *Visa Inc. v. Osborn*, 137 S. Ct. 289 (2016), but was unable to resolve. The Second Circuit's decision deepens the split on the question

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[4] FIFA also argued that it was not subject to personal jurisdiction in this action. The Second Circuit rejected that argument. App. 7a-9a.

whether a plaintiff challenging an association rule as a violation of the antitrust laws adequately pleads concerted action simply by alleging a member's agreement to be bound by the association's rules. This conflict has immensely important consequences for the ability and willingness of the tens of thousands of membership associations across the United States, and their hundreds of thousands of individual members, to collaborate in procompetitive ways. And the Second Circuit's decision holding that a plaintiff adequately alleges the critical element of concerted action based merely on a member's prior decision to join an association and be bound by its rules sharply conflicts with this Court's own precedents. As in *Osborn,* this Court's intervention is warranted.

I. The Circuits Remain Split On The Question That *Osborn* Did Not Resolve

The Second Circuit deepens the same circuit split that this Court granted certiorari to resolve in *Osborn*. The Third, Fourth, and Ninth Circuits have held that a plaintiff challenging an association rule fails to plead a Section 1 conspiracy simply by alleging a member's agreement to adhere to an association's rules. By contrast, the D.C. Circuit—and now the Second Circuit in the decision below—hold that this is sufficient to plead a Section 1 conspiracy. Just as in *Osborn,* that conflict warrants certiorari.

1. The decision below holds that a plaintiff claiming that a rule promulgated by a membership association violates Section 1 of the Sherman Act satisfies their burden to plausibly plead concerted action as to the member defendant by alleging simply that the member defendant previously agreed to abide by the association's rules—a prerequisite for

virtually any association to function. *See* App. 12a; *see id.* at 2a, 15a, 18a-19a. Under the Second Circuit's decision, these allegations show concerted action by an individual association member regardless of "whether they voted in favor of the policy." *Id.* at 12a.

2. The Second Circuit's holding cannot be reconciled with the decisions of three other circuits, all of which reject the promulgation of an association rule as a sufficient basis, by itself, to plausibly plead concerted action by an association member.

a. The decision below conflicts with Ninth Circuit precedent. In *Kendall v. Visa U.S.A., Inc.*, a group of merchants alleged that two consortiums consisting of credit card companies and various banks unlawfully conspired to fix fees for credit card sales. 518 F.3d 1042, 1045-46 (9th Cir. 2008). According to the plaintiffs, the defendants' membership in, and attendant role in managing, the consortium sufficed to show an agreement among them to charge the fees set by the consortium. *Id.* at 1048.

The Ninth Circuit upheld the dismissal of the merchants' complaint, explaining that allegations that the defendant banks merely "adopt[ed]" a rule governing fees were "insufficient as a matter of law" to plead a Section 1 conspiracy, even where defendants allegedly agreed to "follow" the rule. *Id.* As the court explained, "membership in an association does not render an association's members automatically liable for antitrust violations committed by the association." *Id.* Indeed, "[e]ven [defendants'] participation on the association's board of directors is not enough by itself." *Id.* Rather, a plaintiff must plead facts that plausibly allege the defendants—"in an individual capacity"—participated in the alleged anticompetitive

conspiracy. *Id.*; *see also Kline v. Coldwell, Banker & Co.*, 508 F.2d 226, 232 (9th Cir. 1974) (explaining that "[k]nowledge and participation are required" to establish concerted action by association member), *cert. denied*, 421 U.S. 963 (1975).[5]

The Ninth Circuit's holding in *Kendall* cannot be reconciled with the Second Circuit's test for concerted action. In *Kendall,* the Ninth Circuit held that the allegation that members of the consortiums agreed to follow the fees set by the consortiums was "insufficient as a matter of law" to plead a violation of Section 1. 518 F.3d at 1048. Yet, in the Second Circuit, an allegation that a member has "'agreed to abide'" by an association's rules prior to "[t]he promulgation of the [challenged] rule" is itself sufficient to plead the requisite concerted action. App. 15a (citation omitted); *see id.* at 12a. But agreeing to abide by an association's rules is almost always inherent in becoming a member. The Second Circuit's rule thus equates concerted action with mere membership in the association, regardless of how disconnected the decision to join the association is from the challenged policy. In other words, the decision below does exactly what *Kendall* forbids—"render an association's members automatically liable for antitrust violations committed by an association." 518 F.3d at 1048. The two cases are in direct conflict. The fact that the two circuits with the

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[5] *See also Kelsey K. v. NFL Enters., LLC*, 757 F. App'x 524, 526 (9th Cir. 2018) (rejecting Section 1 claim based on "anti-tampering provision that has been in the NFL's constitution and bylaws for decades" and was "re-ratified" because adherence to rule did not suggest "existence of an agreement among the defendants to restrain trade").

largest antitrust dockets are divided on the question presented underscores the need for certiorari.

b. The Second Circuit's decision also breaks with the Fourth Circuit's decision in *SD3, LLC v. Black & Decker (U.S.) Inc.* ("*SawStop*"), 801 F.3d 412 (4th Cir. 2015), *cert. denied*, 579 U.S. 917 (2016). There, a seller of power tool safety technology alleged that members of power tool manufacturing trade associations conspired in violation of Section 1 to adopt standards that (a) declined to incorporate the plaintiff's technology into safety standards and (b) imposed "needless costs" on the plaintiff. *Id.* at 419-21, 435. These standards were promulgated, the plaintiff alleged, "with the aim of keeping [the plaintiff's] technology off the market." *Id.* at 418.

The Fourth Circuit rejected the plaintiff's argument that the promulgation of these standards on its own established the requisite concerted action. *Id.* at 435-36. That was true even though the plaintiff's claim included allegations that "some of the defendants' representative[s] served on the relevant standard-setting panel." *Id.* at 436. The Fourth Circuit refused "to infer malfeasance" from those allegations. *Id.* at 436-37. As the court explained, simply asserting that "a collective decision was made" by parties with purportedly anticompetitive aims did not establish a conspiracy among all members of the association. *Id.* at 437 (citation omitted).[6]

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[6] District courts in other circuits have likewise rejected arguments that participation in allegedly anticompetitive standard-setting activity adequately pleads concerted action. *Plant Oil Powered Diesel Fuel Sys., Inc. v. ExxonMobil Corp.*, 801 F. Supp. 2d 1163, 1197-98 (D.N.M. 2011) (holding that plaintiffs

The Second Circuit reached the opposite conclusion. It emphatically ruled that Respondent's allegation that an arm of FIFA adopted an allegedly anticompetitive policy was "enough" to establish a Section 1 conspiracy among all of FIFA's national association members, as well as every non-member professional league and team. App. 15a. The court stressed that "[n]o further allegation of an agreement is necessary." *Id.* at 2a. In contrast to the Second Circuit's acceptance of these allegations' sufficiency, the Fourth Circuit rejected comparable allegations of rulemaking as "ordinary participation in lawful standard-setting processes" that could not support a Section 1 claim—even though the resulting association standard was allegedly anticompetitive. *SawStop*, 801 F.3d at 435. Again, the conflict is clear.

c. Finally, the Second Circuit's decision cannot be squared with *In re Insurance Brokerage Antitrust Litigation*, 618 F.3d 300 (3d Cir. 2010), either. There, the plaintiffs alleged that the defendant insurance brokers entered a "global conspiracy" to conceal their fellow brokers' receipt of commission payments in return for steering customers to certain insurers. *Id.* at 311-13. According to the plaintiffs, the broker defendants carried out this conspiracy by participating in a trade association, exercising "control" over the association's affairs, "adopt[ing]" an allegedly anticompetitive policy governing disclosure

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"must allege more than that the [defendants] participated in promulgating" a standard); *Advanced Tech. Corp. v. Instron, Inc.*, 925 F. Supp. 2d 170, 179 n.50 (D. Mass. 2013) (similar); *Lai v. USB-Implementers Forum, Inc.*, No. CV 14-05301, 2015 WL 12746705, at *5 (C.D. Cal. Mar. 11, 2015) (similar).

of commission payments, and adhering to that policy. *Id.* at 313, 349 (citations omitted).

The Third Circuit nonetheless upheld the dismissal of the complaint for failure to plead concerted action. The court explained that "neither defendants' membership in the [association], nor their common adoption of the trade group's suggestions, plausibly suggest conspiracy." *Id.* at 349. And the court held that an allegation that the defendants "collaborated in crafting" the association's rule was likewise "insufficient to show a horizontal agreement not to disclose one another's contingent commissions." *Id.* Thus, the Third Circuit requires more than a bare allegation of "collaborate effort" through an association to plead an individual member's conscious commitment to "a conspiracy among all industry participants." *Id.* at 350.

Under the Second Circuit's approach, by contrast, all that is required is an allegation that the defendant is a member of the association bound by its rules, as virtually all business associations require. That cannot be reconciled with the Third Circuit's requirement of *more* than mere "membership" or "common adoption" of a rule. *See id.* at 349-50; *see also* App. 38a-41a (rejecting sufficiency of allegations that U.S. Soccer controlled or collaborated with members of the FIFA Council to promulgate policy).

3. In contrast to these three circuits, the D.C. Circuit requires little more than allegations that members agreed to abide by association rules to plead concerted action in a case challenging the promulgation of such a rule. In *Osborn v. Visa Inc.*, users and operators of non-bank ATMs alleged that members of two bankcard associations (Visa and MasterCard) conspired through network rules to

preclude non-bank ATM operators from varying prices based on the network used to process a transaction. 797 F.3d 1057, 1060-61 (D.C. Cir. 2015). The plaintiffs alleged that the associations' member banks engaged in concerted action because they "agreed to" adhere to their network's access fee rules and "appointed representatives to the bankcard associations' Boards of Directors, which in turn established" the access fee rules. *Id.* at 1067. The D.C. Circuit held that these allegations were enough to plausibly plead concerted action. *Id.*

Osborn conflicts with the holdings of the Third, Fourth, and Ninth Circuits. Although the D.C. Circuit purported to rest its holding on members' "use[]" of an association where members have previously agreed to be bound by the association's rules, *id.* (emphasis omitted), the D.C. Circuit's test does not require meaningful individual participation by members in the challenged conduct. Rather, because it requires only an agreement to adhere to association rules and some role in the association's governance, *Osborn*'s standard of *de minimis* participation is likely to be satisfied in virtually every case involving the promulgation of an association rule.

The Second Circuit's approach goes even further than the D.C. Circuit's approach in finding concerted action by dropping any requirement to "use" an association, *id.*, and expressly finding that a general commitment to "adhere to [association] policies"—which is inherent in joining nearly any association—is enough to plead a conspiracy. App. 12a. While the D.C. Circuit appeared to recognize that at least *some* assent to or approval of the challenged rule was required, the Second Circuit eliminated even that

proviso—holding that a prior agreement to abide by an association's rules is enough to plead concerted action, regardless of "whether [the defendant members] voted in favor of the policy or not." *Id.* And unlike the D.C. Circuit's decision, the decision below extends beyond an association's membership to include those members' constituents. *Id.* at 17a.

* * *

This Court granted certiorari in *Osborn* to resolve the then-existing 3 to 1 circuit split. The Second Circuit's decision deepens that acknowledged conflict. Certiorari is warranted for that reason alone.

II. The Question Presented Is Still Exceptionally Important

The obvious importance of this question underscores the need for certiorari. Associations are a routine feature of American economic life. Participants in a wide variety of industries and professions ranging from actors, to banks, to cardiologists and countless others all regularly join associations. As long as this conflict continues, Section 1 claims against association members will face different threshold pleading standards depending on where a plaintiff brings suit. This case provides an ideal vehicle to resolve this circuit conflict and establish a uniform pleading standard for claims of concerted action by association members.

1. Membership associations are integral to this Nation's economy. About 60,000 business associations (or "[b]usiness leagues") operate in the United States.[7] Taken together, these associations

[7] Internal Revenue Service, *Data Book* 30 (2022), https://www.irs.gov/pub/irs-pdf/p55b.pdf.

count hundreds of thousands of businesses and individuals as members. As this Court and others have long recognized, participation in associations provides a wide range of procompetitive benefits. *See Maple Flooring Mfrs.' Ass'n v. United States*, 268 U.S. 563, 566 (1925) (observing that "many activities" undertaken by associations are "beneficial to . . . industry and to consumers"); *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U.S. 492, 501 (1988) (noting that collaboration by association members "can have significant procompetitive advantages"); *see also Northwest Wholesale Stationers, Inc. v. Pacific Stationery & Printing Co.*, 472 U.S. 284, 296 (1985) (recognizing that associations "must establish and enforce reasonable rules . . . to function effectively"). Antitrust regulators themselves have recognized that "[m]ost trade association activities are procompetitive or competitively neutral."[8]

Standard-setting organizations likewise "encourag[e] 'greater product interoperability,' generat[e] 'network effects,' and build[] 'incentives to innovate.'" *SawStop*, 801 F.3d at 435 (quoting *Princo Corp. v. International Trade Comm'n*, 616 F.3d 1318, 1335 (Fed. Cir. 2010), *cert. denied*, 563 U.S. 987 (2011)); *see also Lotes Co. v. Hon Hai Precision Indus. Co.*, 753 F.3d 395, 400 (2d Cir. 2014); *Broadcom Corp. v. Qualcomm Inc.*, 501 F.3d 297, 309 (3d Cir. 2007). But if an association's regulation of industry practices through a standard automatically constituted concerted action on the part of members, "fear of

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[8] *See* FTC, *Spotlight on Trade Associations*, https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/dealings-competitors/spotlight-trade-associations (last visited Aug. 3, 2023).

treble damages and judicial second-guessing would discourage the establishment of useful industry standards." *Golden Bridge Tech., Inc. v. Motorola, Inc.*, 547 F.3d 266, 273 (5th Cir. 2008) (quoting *Consolidated Metal Prods., Inc. v. American Petroleum Inst.*, 846 F.2d 284, 297 (5th Cir. 1988)).

Moreover, association members need clarity on the consequences of joining an association and agreeing to adhere to its rules prospectively. This is especially so because the Second Circuit's rule does not permit association members to opt out of an allegedly anticompetitive rule and limit their own exposure. Under the Second Circuit's approach, so long as a member agreed to abide by an association's rules, it is automatically a co-conspirator as to any unlawful rules subsequently promulgated by the association. And uncertainty about whether garden-variety participation in an association will subject a member to antitrust liability based on the association's *subsequent* rules may affect whether members withdraw from associations or prospective members join associations in the first place. *See United States v. United States Gypsum Co.*, 438 U.S. 422, 441 (1978) ("[S]alutary and procompetitive conduct . . . might be shunned by businessmen who chose to be excessively cautious in the face of uncertainty . . . .").

2. The fact that the conflict involves threshold requirements for pleading a Section 1 claim only heightens the need for this Court's guidance. This Court has insisted that "a district court must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558-59 (2007) (quoting *Associated Gen. Contractors of Cal., Inc. v. California State Council of*

Carpenters, 459 U.S. 519, 528 n.17 (1983)), just as the district court held was required here, App. 35a-47a. This rule accounts for the fact that the dismissal hurdle is often crucial in managing antitrust cases. *See Twombly,* 550 U.S. at 558 ("[P]roceeding to antitrust discovery can be expensive."); *Kendall*, 518 F.3d at 1047 ("[D]iscovery in antitrust cases frequently causes substantial expenditures and gives the plaintiff the opportunity to extort large settlements even where he does not have much of a case.").

The concerted action requirement is a critical defense at the pleading stage. The "market definition" required to conduct rule of reason analysis is often considered "a deeply fact-intensive inquiry." *Todd v. Exxon Corp.*, 275 F.3d 191, 199-200 (2d Cir. 2001) (Sotomayor, J.); *cf. Concord Assocs., L.P. v. Entertainment Props. Tr.*, 817 F.3d 46, 53 (2d Cir. 2016). As a result, "motions to dismiss" for failure to plead concerted action often become "the flashpoint" in antitrust cases. *SawStop*, 801 F.3d at 444-45 (Wilkinson, J., concurring in part and dissenting in part). But under the Second Circuit's rule, plaintiffs can sail past the pleading stage simply by pointing to an association rule—making it virtually impossible for an association member to defend itself without incurring intolerable litigation costs.

3. This Court regularly grants certiorari when a petition provides an appropriate vehicle to address a question the Court attempted to resolve, but could not decide, in a prior case.[9] This case provides an ideal

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[9] *See Culley v. Marshall*, 143 S. Ct. 1746 (2023) (No. 22-585) (granting certiorari to decide question left open in *Alvarez*

vehicle to resolve the question this Court was unable to address in *Osborn*. The question presented was a focal point of this case at both the appellate and district court levels and, as the decisions of those courts show, is outcome determinative. This Court should finally settle the issue here.

III. The Second Circuit's Decision Is Wrong

Review is also needed because the Second Circuit's expansive standard for pleading concerted action by association members is deeply misguided.

1. As this Court has made clear, Section 1's concerted action element requires a showing that the defendant "and others 'had a conscious commitment to a common scheme designed to achieve an unlawful objective.'" *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764 (1984) (citation omitted). This threshold limitation is critical, because it determines which allegations are deemed "'inherently'" "'fraught with anticompetitive risk'" under Section 1 and which allegations are subject to the more stringent showing of "[m]onopoly power" under Section 2. *American Needle, Inc. v. National Football League*, 560 U.S.

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v. Smith, 558 U.S. 87, 93 (2009)); *ZF Automotive US, Inc. v. Luxshare, Ltd.*, 142 S. Ct. 2078, 2084 (2022) (granting certiorari to decide question not resolved in *Servotronics, Inc. v. Rolls-Royce, PLC*, 142 S. Ct. 54 (2021)); *California Pub. Emps.' Ret. Sys. v. ANZ Sec., Inc.*, 582 U.S. 497, 504 (2017) (granting certiorari to decide question not resolved in *Public Employees' Retirement System of Mississippi v. IndyMac MBS, Inc.*, 573 U.S. 988 (2014)); *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 156 (2016) (granting certiorari to address question left open in *Genesis Healthcare Corp. v. Symczyk*, 569 U.S. 66, 72-73 (2013)); *Dollar Gen. Corp. v. Mississippi Band of Choctaw Indians*, 579 U.S. 545, 546 (2016) (per curiam) (granting certiorari to decide question left open in *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 340 (2008)).

183, 190-91 (2010) (citation omitted). As this Court has recognized, "prohibit[ing] independent action that merely restrains trade" without threatening monopolization "could deter perfectly competitive conduct by firms that are fearful of litigation costs and judicial error." *Id.* at 190 n.2.

Accordingly, this Court has always rigorously enforced the concerted action requirement under Section 1. Whether a plaintiff relies on "by-laws of [an] [a]ssociation" or not, a plaintiff must show that individual defendants "were architects of the [alleged] . . . conspiracy or," at a minimum, "participants in it" to establish liability under Section 1. *United States v. National Ass'n of Real Estate Bds.*, 339 U.S. 485, 494-95 (1950) (holding that two defendants were not "laced into the conspiracy to fix [real estate] commissions" in Washington, D.C.).

It thus has long been settled that liability under Section 1 requires a defendant to make a commitment to engage in the challenged conduct "in an *individual* capacity." *See Kendall*, 518 F.3d at 1048 (emphasis added); *see also Moore v. Boating Indus. Ass'ns*, 819 F.2d 693, 712 (7th Cir.) (requiring "evidence of actual knowledge of, and participation in, an illegal scheme in order to establish a violation of the antitrust laws by a particular association member" (quoting Thomas V. Vakerics, *Antitrust Basics* § 6.13 at 6-37 to -38 (1985))), *cert. denied*, 484 U.S. 854 (1987). At the pleading stage, this means a plaintiff must allege facts that plausibly connect an individual association-member defendant's own actions to the allegedly anticompetitive association rule or policy. *See Twombly*, 550 U.S. at 556-57.

Although the Second Circuit paid lip service to this requirement, App. 10a, the Second Circuit's decision

vitiates it by simply requiring a plaintiff to allege that the defendant previously agreed to join an association and abide by its rules, *id.* at 2a, 15a, 18a-19a. As the court repeatedly stressed, nothing more is required. *Id.* at 2a, 15a. There is no requirement to plead even that individual defendants "voted in favor of the [rule]." *Id.* at 12a. All that is required to allege concerted action is "the adoption of the [rule], combined with the [members'] prior agreement, by joining [the association], to adhere to its policies." *Id.*

This stunningly expansive rule flouts *Monsanto*'s individualized, "conscious commitment" requirement for establishing that a defendant engaged in concerted action under Section 1. And it takes the Sherman Act far beyond its settled scope by imposing liability on independent actors without requiring proof of "knowing involvement of each defendant, considered individually, in the conspiracy charged." *U.S. Gypsum Co.*, 438 U.S. at 463 (requirements for imposing criminal antitrust liability).

This case underscores the breadth of the Second Circuit's rule. Here, the Second Circuit held that U.S. Soccer's commitment to join FIFA and abide by its rules in 1914 was sufficient to plead a conscious commitment on the part of U.S. Soccer, in its individual capacity, to achieve the allegedly unlawful objective of the 2018 policy. Moreover, U.S. Soccer's decision to join FIFA *more than a century ago* automatically rendered U.S. Soccer a co-conspirator with all 210 other national associations that are members of FIFA today, including the national association for Montenegro—a country that did not become independent until the 21st century.

The bottom-line result is that, in the Second Circuit, any association member is at constant and

inherent risk of becoming a Sherman Act violator the moment its association adopts an anticompetitive rule—regardless of whether they had a thing to do with its promulgation. Under that rule, a veterinarian who joined an association in 2013 could face individual treble damages liability for an allegedly anticompetitive rule promulgated in 2023 even if he was unaware of the rule or vociferously lobbied against it. No court has ever endorsed such an extreme and senseless view of the antitrust laws.

The only defense a member of a trade association has is that the policy itself does not violate the antitrust laws. *See* App. 11a-12a. But, as this Court has made clear, the concerted action requirement is an important limitation on Section 1 claims that "is different from and antecedent to" whether the alleged conduct is, in fact, anticompetitive. *American Needle*, 560 U.S. at 186. Indeed, a plaintiff will *always* allege that the challenged conduct is anticompetitive, which is why the conspiracy requirement plays such a vital role in "weed[ing] out" meritless claims, by carefully distinguishing unlawful agreements from lawful parallel conduct. *Twombly*, 550 U.S. at 559.

Thus, although the court stated that an "association is not by its nature a walking conspiracy," App. 12a (citation omitted), that is precisely the result of its rule: Each and every trade association—and all of its members—is a nascent conspiracy that can expose all of its members to treble damages at any moment. And association members have no realistic pleading defense against a charge that the rule is anticompetitive, and must defend the rule on the merits at summary judgment or trial—regardless of whether they agreed to it.

2. The Second Circuit purported to root its expansive standard in this Court's precedent. *Id.* at 11a. But this Court has never held that the promulgation of an association rule, coupled with the members' prior agreement to abide by an association's rules, automatically constitutes concerted action by every individual association member. Rather, this Court has applied a more contextual inquiry that has stressed facts—beyond the fact that a defendant joined a membership association at some previous point in time and agreed to abide by its rules—that arguably make it plausible to infer that the defendant "had a conscious commitment to a common scheme designed to achieve an unlawful objective." *Monsanto*, 465 U.S. at 764 (citation omitted).

First, the Court has held that an association rule may suffice to show concerted action by an association member when that member necessarily assented to the challenged rule itself *as a condition of joining the association*. In *Associated Press v. United States*, for example, "all AP members had assented" to "By-Laws" requiring newspaper members to agree not to sell news to nonmembers and to allow members to block nonmember competitors from joining the AP. 326 U.S. 1, 4, 8-12 (1945). An association member who—in joining an association—knowingly agrees to abide by a bylaw that later becomes the subject of a Section 1 challenge will have difficulty defeating an inference of concerted action at the pleading stage. *See* Phillip E. Areeda & Herbert Hovenkamp, *Antitrust Law* ¶ 1477 (5th ed., Supp. 2023) (noting that "the creation of AP was itself regarded as lawful and that the organization's admission rules were treated as a conspiratorial 'boycott' decision by the members"). That is totally different from treating a

member as a co-conspirator because they agreed to be bound by an organization's *future* rules—which is an inherent feature of all membership organizations—and one of those subsequently promulgated rules was challenged as anticompetitive.

Second, this Court has held that a defendant's knowing and active participation in the promulgation of an allegedly anticompetitive rule may suffice to plead concerted action when the allegations plausibly show that the defendants colluded to subvert an association process to establish the anticompetitive policy. *See, e.g.*, *Allied Tube & Conduit Corp.*, 486 U.S. at 495-98 (conceding concerted action where defendant steel producer manipulated association vote to exclude competing product).

And, *third*, the Court has held that, when association members horizontally compete, it may, in certain circumstances, be plausible to infer that there was a conscious commitment to a resulting anticompetitive rule. *See, e.g.*, *Anderson v. Shipowners' Ass'n of Pac. Coast*, 272 U.S. 359, 362 (1926) (explaining that "each of the shipowners and operators" had agreed to abide by rules "in respect of the employment of seamen"); *National Soc'y of Pro. Eng'rs v. United States*, 435 U.S. 679, 682-84 (1978) (finding concerted action based on association rule forbidding competitive bidding by professional engineers); *NCAA v. Alston*, 141 S. Ct. 2141, 2154 (2021) (noting that NCAA did not dispute that its members were horizontal competitors or that its rules had anticompetitive effects). When an association is not entirely comprised of competitors, however, an assertion that every member has a motive to conspire together in violation of the antitrust laws loses logical force and thus undermines any plausible inference of

concerted action. In fact, agreements between noncompetitors typically give rise to an inference of "nonconspiracy," absent "an unambiguously express promise on the point of the challenged action." Areeda & Hovenkamp, *supra*, ¶ 14012b.

But under the Second Circuit's rule, none of these features is necessary. Instead, the mere allegation that the defendant agreed to join the association is sufficient to plead concerted action as to any rule subsequently promulgated by the association. The Second Circuit's rule did not require allegations of U.S. Soccer's assent to the challenged rule when it joined FIFA. And, in fact, U.S. Soccer joined FIFA *over a century* before the challenged policy was adopted. That "prior agreement" to "join[] FIFA" obviously is completely unconnected to the 2018 Policy at issue. App. 12a. Rather, U.S. Soccer's decision to become a FIFA member is fully consistent with lawful, "parallel conduct that could just as well be independent action." *Twombly,* 550 U.S. at 557; *Maple Flooring Mfrs.' Ass'n*, 268 U.S. at 566 (recognizing that association's activities were "beneficial to the industry and to consumers"). Bare allegations that a member previously agreed to join an association—and abide by its rules—therefore cannot be sufficient to plausibly plead concerted action under this Court's precedent.

The decision below also did not require Respondent to plead U.S. Soccer's active and knowing participation in the promulgation of the 2018 policy. The district court recognized that Respondent did not allege that U.S. Soccer voted in favor of the challenged rule, or substantially participate in its creation. App. 40a-41a; *see Kendall*, 518 F.3d at 1048 (recognizing that "[e]ven participation on the association's board of

directors is not enough by itself" to deem an association member a Section 1 co-conspirator). But under the Second Circuit's rule, that was irrelevant to alleging concerted action. App. 12a. As the court stressed, the agreement to abide by FIFA's rules, coupled with Respondent's allegation that the 2018 policy violates Section 1, was enough. *Id.* at 12a, 15a.

Nor did the Second Circuit grapple with the implausible scope of Respondents' alleged conspiracy among national associations that *do not compete horizontally*. As Respondent pleaded and the district court recognized, the non-member leagues and teams were horizontal competitors, but no such competition existed among the member national associations. *Id.* at 105a-06a (AC ¶¶ 164, 166-67); *id.* at 38a n.14. The absence of such competition strongly undercuts Respondent's conspiracy allegations. *See* Areeda & Hovenkamp, *supra*, ¶ 1402b. Yet none of this mattered under the Second Circuit's expansive rule.

In short, the Second Circuit's theory pushes the limits of association member liability far beyond *any* of this Court's cases. It is a stark and unprecedented outlier that demands plenary review.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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August 4, 2023

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

RELEVENT SPORTS, LLC, Plaintiff-Appellant,

v.

UNITED STATES SOCCER FEDERATION, INC., Fédération Internationale De Football Association, Defendants-Appellees.

Docket No. 21-2088-cv

August Term, 2021

Argued: April 7, 2022

Decided: March 7, 2023

Before: LIVINGSTON, Chief Judge, LYNCH, and LOHIER, Circuit Judges.

LOHIER, Circuit Judge.

Soccer, also known as "the beautiful game," unites the world in shared competition. This case, by contrast, concerns an allegedly anticompetitive policy that restricts access to the game by prohibiting soccer leagues and teams from playing official season games outside of their home territory. Relevent Sports, LLC ("Relevent"), a U.S.-based soccer promoter, alleges that the Fédération Internationale de Football Association ("FIFA") and the United States Soccer Federation, Inc. ("USSF") adopted and enforced this geographic market division policy ("2018 Policy") in violation of Section 1 of the Sherman Antitrust Act and Sections 4 and 16 of the Clayton Antitrust Act.

The United States District Court for the Southern District of New York (Caproni, J.) determined that Section 1 required Relevent to present either direct or circumstantial evidence of an "antecedent 'agreement [among horizontal competitors] to agree to vote a particular way' to adopt such a policy." Special App'x 33 (alteration in original). After concluding that Relevent failed to allege that the 2018 Policy itself stemmed from or constituted direct evidence of such a prior agreement among the Defendants, the District Court dismissed Relevent's complaint for failure to state a claim.

We disagree with the District Court's conclusion. Relevent plausibly alleges that the 2018 Policy reflects a contractual commitment of head-to-head competitors to restrict competition. Because Relevent's complaint challenges the 2018 Policy itself "as violative of the antitrust laws," the "promulgation of [the policy] . . . constitute[s] direct evidence of § 1 concerted action." N. Am. Soccer League v. U.S. Soccer Fed'n, 883 F.3d 32, 41 (2d Cir. 2018) ("NASL"); see Associated Press v. United States, 326 U.S. 1, 12, 65 S.Ct. 1416, 89 L.Ed. 2013 (1945). No further allegation of an agreement is necessary. In holding that no inference of concerted activity can be drawn from the "promulgation" of the 2018 Policy, the District Court's decision conflicts directly with this core principle. The judgment of the District Court is thus **VACATED** and the matter is **REMANDED** for further proceedings consistent with this opinion.

BACKGROUND[1]

We start with an overview of the governance structure of international soccer. FIFA, a private membership-based association comprised of over 200 national associations, is the well-known international governing body for soccer. Each national association is itself membership-based and comprised of professional soccer leagues and teams. FIFA's legislative body, the FIFA Congress, includes representatives from every national association in the world and adopts and amends the FIFA Statutes, which contain many of FIFA's rules and policies. A smaller entity within FIFA, the FIFA Council, "has authority to interpret the FIFA Statutes and to adopt rules and policies not specifically addressed in the FIFA Statutes." App'x 502.

National associations represent their members in FIFA decision-making and agree to "comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time." App'x 500–01. In turn, the national associations require their members to agree to comply with these same rules and policies. USSF is the FIFA-authorized national association for the United States. "[USSF] and its members are, to the extent permitted by governing law, obliged to respect the statutes, regulations, directives and decisions of FIFA . . . and to ensure that these are likewise respected by their members." App'x 502 n.12 (alterations in original) (quoting BYLAWS OF THE

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1 These facts are drawn from the amended complaint and assumed to be true for purposes of our de novo review of the District Court's judgment dismissing the complaint for failure to state a claim upon which relief can be granted. See Schlosser v. Kwak, 16 F.4th 1078, 1080 (2d Cir. 2021).

UNITED STATES SOCCER FEDERATION, INC., Bylaw 103 § 1). Leagues and players that fail to comply with FIFA rules and policies are subject to discipline and sanction, including exclusion from the FIFA World Cup.

Relevent organizes, promotes, and hosts soccer matches in the United States and globally. Because it is a violation of the FIFA Statutes for a soccer club affiliated with a FIFA-sanctioned league to play in the United States without USSF's approval, Relevent had to obtain approval from USSF to organize a match in the United States between teams from other countries. And third-party promoters such as Relevent must also obtain approval from each team's national association, each team's regional confederation, and, of course, FIFA.

In the past, Relevent has tried to host official season games for international professional soccer leagues in the United States—including for La Liga (Spain), Liga MX (Mexico) and LigaPro Serie A (Ecuador)—without success. Its efforts to host have been foiled by the FIFA Council each time.[2] In 2018, for example, Relevent and La Liga, the Spanish professional soccer league, agreed to host an official season game in Miami. Given La Liga's worldwide popularity, the game would undoubtedly have drawn a large audience. In response, the FIFA Council "issued a policy prohibiting FIFA's National Association members, including USSF, from

[2] As fans know, there is a difference between "friendly" (or exhibition) games, which Relevent has organized, promoted, and hosted in the United States, and official season games. Official season games affect the standing of teams in their respective leagues or tournaments.

sanctioning any official season games held outside of the participants' home territory." App'x 523. A FIFA press release memorializing this policy stated:

> Following a request for guidance . . . the FIFA Council discussed La Liga's proposal to host an official 2018/19 regular season league match outside Spain (in Miami).
>
> Consistent with the opinion expressed by the Football Stakeholders Committee, the Council emphasized the sporting principle that official league matches must be played within the territory of the respective member association.

App'x 601 (2018 Policy). "[B]ecause this was a formal policy announced by a FIFA decision-making body, any leagues and teams who did not comply with it would run the risk of FIFA penalties and all such leagues and teams were required to agree to adhere to this policy." App'x 523. As a result, the game in Miami never took place.

Relevent filed this action against USSF in 2019. The District Court dismissed Relevent's first complaint without prejudice for failing to allege an unlawful vertical agreement between USSF and FIFA or an unlawful horizontal agreement between USSF and other national associations, leagues, and teams sufficient to support an antitrust violation. The court added that even if Relevent "had adequately alleged an agreement between USSF and FIFA," its "claim for injunctive relief would be dismissed for failure to join" FIFA as "an indispensable party." Special App'x 15 n.12. Relevent then filed an amended complaint adding FIFA as a defendant. In the amended complaint, Relevent claimed that the Defendants violated Section 1 of the Sherman Act and Sections 4

and 16 of the Clayton Act, and were liable under New York law for tortious interference with business relationships.[3] Relevent principally alleged that "FIFA and USSF, in combination with numerous FIFA-affiliated men's top-tier professional soccer leagues and teams, including Major League Soccer ("MLS")[4] and its teams, have entered into an agreement to divide geographic markets, including the United States market, which stifles competition in the U.S." App'x 493.

The District Court granted the Defendants' motion to dismiss Relevent's amended complaint for failure to state a claim. It again held that Relevent failed to allege that USSF and other national associations in FIFA entered into an unlawful vertical agreement with FIFA to apply the 2018 Policy against their member leagues and teams. The District Court likewise again held that Relevent failed to allege a horizontal conspiracy between USSF and FIFA's other top-tier men's professional soccer leagues and their teams outside the United States. The 2018 Policy, the District Court explained, did not constitute direct evidence of a horizontal conspiracy because there was neither an antecedent "agreement to agree" among the Defendants to adopt the policy, Special App'x 32 n.12, nor any circumstantial evidence of an agreement among the members of the FIFA Council to adopt the 2018 Policy. Finally, the District Court determined that universal adherence to the 2018 Policy was insufficient to support a claim that the Defendants engaged in a horizontal conspiracy.

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[3] On appeal, Relevent pursues only its antitrust claims

[4] MLS is the top-tier FIFA-affiliated professional soccer league in the United States.

This appeal followed.

DISCUSSION

I. **Personal Jurisdiction**

To start, the Defendants argue that FIFA is not subject to personal jurisdiction in New York. They contend that this action must therefore be dismissed because, in their view, FIFA is a necessary and indispensable party to the action. We conclude that FIFA is subject to personal jurisdiction in this case.

"A plaintiff must have a state-law statutory basis for jurisdiction and demonstrate that the exercise of personal jurisdiction comports with due process." Charles Schwab Corp. v. Bank of Am. Corp., 883 F.3d 68, 82 (2d Cir. 2018). "New York's long-arm statute provides in relevant part that 'a court may exercise personal jurisdiction over any non-domiciliary . . . who in person or through an agent . . . transacts any business within the state or contracts anywhere to supply goods or services in the state,' " as to any cause of action arising from such a transaction or contract. Licci ex rel. Licci v. Lebanese Canadian Bank, SAL, 732 F.3d 161, 168 (2d Cir. 2013) (alterations in original) (quoting N.Y. C.P.L.R 302(a)(1)).

On the record before us, FIFA is subject to personal jurisdiction in New York under New York's long-arm statute. According to Relevent's amended complaint, FIFA "authorizes USSF . . . to act on its behalf to sanction professional soccer leagues in the U.S. and this District." App'x 513. USSF, which is incorporated as a New York not-for-profit, is FIFA's agent and transacts substantial business on behalf of FIFA in New York. For example, FIFA authorized USSF's "refusal to sanction the official season games sought to be promoted by Relevent from its

headquarters in [New York]." App'x 513–14; see also App'x 506–07 ("As FIFA's National Association in the U.S., USSF is vested with the exclusive authority to sanction, on behalf of FIFA, all men's professional soccer leagues and games played in this country."). These allegations establish, at the pleading stage, that USSF "acted in New York for the benefit of, with the knowledge and consent of, and under some control by" FIFA. Charles Schwab, 883 F.3d at 85. No party disputes that USSF's actions subject it to personal jurisdiction in New York on Relevent's claims. That USSF undertook those actions as FIFA's agent is thus sufficient to subject FIFA to personal jurisdiction in New York as well. See id. at 85–86 ("[A]n agency relationship between a parent corporation and a subsidiary that sells securities on the parent's behalf could establish personal jurisdiction over the parent in a state in which the parent 'indirectly' sells the securities.").

FIFA also has the minimum contacts with New York necessary to satisfy constitutional due process principles.

> Although the long-arm statute and the Due Process Clause are not technically coextensive, the New York requirements (benefit, knowledge, some control) are consonant with the due process principle that a defendant must have purposefully availed itself of the privilege of doing business in the forum. And where we have found personal jurisdiction based on an agent's contacts, we have never suggested that due process requires something more than New York law.

Id. at 85 (cleaned up). Here, the same alleged contacts that subject FIFA to New York's long-arm statute—

including vesting USSF with the exclusive authority to sanction all men's professional soccer leagues and games played in the United States—satisfy the Constitution's due process requirement of minimum contacts with New York such that the suit "does not offend traditional notions of fair play and substantial justice." Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct., —— U.S. ——, 141 S. Ct. 1017, 1024, 209 L.Ed.2d 225 (2021) (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945)).

II. **Antitrust Liability**

A. **Legal Standard**

Section 1 of the Sherman Act prohibits "[e]very contract, combination . . . or conspiracy[] in restraint of trade or commerce." 15 U.S.C. § 1. The first question is "whether the challenged conduct stems from independent decision or from an agreement, tacit or express." United States v. Apple, Inc., 791 F.3d 290, 314–15 (2d Cir. 2015) (cleaned up). Distinguishing between concerted action and independent individual behavior is important because "concerted activity inherently is fraught with anticompetitive risk insofar as it deprives the marketplace of independent centers of decisionmaking that competition assumes and demands." Am. Needle, Inc. v. NFL, 560 U.S. 183, 190, 130 S.Ct. 2201, 176 L.Ed.2d 947 (2010) (cleaned up). If the challenged conduct reflects concerted action, then we consider whether that action unreasonably restrains trade. Id. at 186, 130 S.Ct. 2201.[5]

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[5] The antecedent question of whether the inference of concerted action could be drawn from the 2018 Policy itself is

At the pleading stage, a plaintiff need only allege "enough factual matter (taken as true) to suggest that an agreement was made." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). In other words, a plaintiff must allege facts that "reasonably tend[] to prove that the defendant and others had a conscious commitment to a common scheme designed to achieve an unlawful objective." Apple, 791 F.3d at 315 (cleaned up). Those facts can constitute either "direct evidence that the defendants entered into an agreement" or "circumstantial facts supporting the inference that a conspiracy existed." Id. (quotation marks omitted).

Competitors do not avoid antitrust liability by hiding behind or acting through third-party intermediaries. See Amici Br. of Antitrust, Sports Law, and Economics Professors at 3–4. Business, professional, trade, and sports organizations and associations, for instance, are all subject to federal antitrust laws if their members demonstrate "a conscious commitment to a common scheme designed to achieve an unlawful objective." Apple, 791 F.3d at 315 (quotation marks omitted); see also Am. Needle, 560 U.S. at 190, 130 S.Ct. 2201. When an association

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distinct from the subsequent question of whether any concerted action was "unlawful." Cf. Special App'x 34 (Dist. Ct. Op.) ("Plaintiff's Amended Complaint lacks any non-conclusory factual allegations [that] . . . the FIFA Council unlawfully agreed to adopt the Policy." (emphasis added)). We express no view on the latter question. See Am. Needle, 560 U.S. at 202–03, 130 S.Ct. 2201 ("The fact that NFL teams share an interest in making the entire league successful and profitable . . . provides a perfectly sensible justification for making a host of collective decisions" that qualify as "concerted activity under the Sherman Act that is subject to § 1 analysis.").

member "surrender[s] himself completely to the control of the association" in a "contractual restraint of interstate trade, designed in the interest of preventing competition," then a rule that imposes "duties and restrictions in the conduct of [the members'] separate businesses" demonstrates an agreement for purposes of Section 1 of the Sherman Act. Associated Press, 326 U.S. at 8, 19, 65 S.Ct. 1416 (quotation marks omitted).

It follows from this precedent that the adoption of a binding association rule designed to prevent competition is direct evidence of concerted action. No further proof is necessary. See, e.g., Nat'l Collegiate Athletic Ass'n v. Bd. of Regents of Univ. of Oklahoma, 468 U.S. 85, 99, 104 S.Ct. 2948, 82 L.Ed.2d 70 (1984) ("[T]he policies of the NCAA with respect to television rights" give rise to "a horizontal restraint—an agreement among competitors on the way in which they will compete with one another."); Nat'l Collegiate Athletic Ass'n v. Alston, —— U.S. ——, 141 S.Ct. 2141, 2154, 210 L.Ed.2d 314 (2021) ("[T]he NCAA [does not] dispute that its member schools . . . remain subject to NCAA-issued-and-enforced limits on what compensation they can offer. . . . [Accordingly,] this suit involves admitted horizontal price fixing in a market where the defendants exercise monopoly control."); Nat'l Soc'y of Pro. Eng'rs v. United States, 435 U.S. 679, 683, 98 S.Ct. 1355, 55 L.Ed.2d 637 (1978) (finding "[e]vidence of" an unlawful "agreement" in an engineering society's "Code of Ethics"); Allied Tube & Conduit Corp. v. Indian Head, Inc., 486 U.S. 492, 500, 108 S.Ct. 1931, 100 L.Ed.2d 497 (1988) ("Agreement on a product standard is, after all, implicitly an agreement not to manufacture, distribute, or purchase certain types of products.").

Contrary to the District Court's conclusion, there is no need for Relevent to allege a prior "agreement to agree" or conspiracy to adopt the policy; the adoption of the policy, combined with the member leagues' prior agreement, by joining FIFA, to adhere to its policies, constitutes an agreement on the part of all—whether they voted in favor of the policy or not—to adhere to the announced restriction on competition.

Of course, not every decision by an association violates federal antitrust laws. As we have said, although a "trade association by its nature involves collective action by competitors, a trade association is not by its nature a walking conspiracy." NASL, 883 F.3d at 40 (cleaned up). Take sports associations, for example. "Without some agreement among rivals—on things like how many players may be on the field or the time allotted for play—the very competitions that consumers value would not be possible." Alston, 141 S. Ct. at 2156. For this reason, "we focus on those improprieties reducing competition among the members or with their competitors," not the "day-to-day operations of the organization" including "buying, selling, hiring, renting, or investing decisions." AD/SAT, Div. of Skylight, Inc. v. Associated Press, 181 F.3d 216, 234 (2d Cir. 1999) (quoting 7 Phillip E. Areeda et al., Antitrust Law ¶ 1477, at 347 (1999)).

We recently applied these principles in NASL, where the NASL (a second-tier soccer league in the United States)[6] brought an antitrust challenge to

[6] As we observed in NASL, "[t]he three most prominent men's professional soccer leagues have historically occupied their respective divisions in isolation. [MLS] has been the only Division I men's soccer league since MLS's start in 1995. NASL has existed since 2009 and has operated as a Division II league

USSF's application of its Professional League Standards, which establish requirements for sanctioning professional soccer leagues in the United States. See NASL, 883 F.3d at 35–36. We recognized that "[i]f NASL were challenging the [Professional League] Standards themselves—in totality—as violative of the antitrust laws, then the USSF Board's promulgation of them would constitute direct evidence of § 1 concerted action in that undertaking." Id. at 41. But the NASL, we explained, had opted to allege an "overarching conspiracy to restrain competition in markets for top- and second-tier men's professional soccer leagues in North America," so that "the promulgation of the Standards" constituted only "circumstantial evidence of that conspiracy," not direct evidence. Id. So how the plaintiff frames a challenge affects how we analyze the adequacy of its pleadings. If the plaintiff alleges that a policy or rule is in service of a plan to restrain competition, then it must allege enough additional facts to show that agreement to such a plan exists. If, on the other hand, the plaintiff adequately alleges that the policy or rule is the agreement itself, then it need not allege any further agreement.

In dismissing Relevent's complaint, the District Court misapplied the lesson of NASL.

B. **Application**

Relevent attacks the 2018 Policy directly as anticompetitive. It alleges that "this anticompetitive agreement was expressly formulated in 2018," App'x 494, and more specifically that "[o]n October 26, 2018,

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since 2011. The United Soccer Leagues, LLC . . . ordinarily has filled the Division III slot." NASL, 883 F.3d at 35.

the FIFA Council adopted a policy embodying the anticompetitive market division agreement at issue in this case," App'x 502, and "issued a policy prohibiting FIFA's National Association members, including USSF, from sanctioning any official season games held outside of the participants' home territory," App'x 523. "The FIFA geographic market division policy was, and is," Relevent alleges, "a horizontal division of geographic markets agreement." App'x 523; <u>see</u> App'x 503 (alleging that the USSF president "participated in the FIFA Council's consideration and adoption of the geographic market division agreement in October 2018").

These allegations provide "enough factual matter (taken as true) to suggest that an agreement was made," <u>Twombly</u>, 550 U.S. at 556, 127 S.Ct. 1955, and the District Court erred in concluding that the 2018 Policy was not itself direct evidence of an agreement under Section 1. The District Court held that "[i]n order for an organizational decision or policy to constitute concerted action and, therefore, to serve as direct evidence of an unlawful agreement, Plaintiff must plausibly allege an antecedent 'agreement [among horizontal competitors] to agree to vote a particular way' to adopt such a policy." Special App'x 33 (alteration in original); <u>see</u> <u>also</u> <u>id.</u> at 34 n.15 ("Plaintiff also fails to . . . include allegations that those unidentified [remaining members of the FIFA Council] agreed with USSF (or with anyone else) to vote in favor of the Policy."). Applying this mistaken premise, the District Court concluded that Relevent "fails entirely to allege any facts suggesting that there was an 'agreement to agree.' " Special App'x 34.

A plaintiff challenging an association rule that governs the conduct of members' separate businesses need not allege an antecedent agreement to agree. The promulgation of the rule, in conjunction with the members' "surrender[] . . . to the control of the association," sufficiently demonstrates concerted action. Associated Press, 326 U.S. at 19, 65 S.Ct. 1416; see also Anderson v. Shipowners' Ass'n of Pac. Coast, 272 U.S. 359, 363, 47 S.Ct. 125, 71 L.Ed. 298 (1926) ("The absence of an allegation that such was the specific intent is not important, since that is the necessary and direct consequence of the combination and the acts of the associations under it . . . ."). Here, Relevent alleges that the national associations, leagues, and teams have "surrendered [their] freedom of action . . . and agreed to abide by the will of the association[]." Anderson, 272 U.S. at 364–65, 47 S.Ct. 125. That is enough. See Board of Regents, 468 U.S. at 99, 104 S.Ct. 2948 ("By participating in an association which prevents member institutions from competing against each other . . . the NCAA member institutions have created a horizontal restraint . . . ."); Amicus Br. of the United States at 11–12 ("Because the member has already agreed to abide by all association rules, there would be no need for the member to agree to any particular rule to be bound by it.").

This conclusion comports with our decisions in NASL and AD/SAT. In NASL, plaintiffs alleged an "overarching conspiracy" instead of challenging "the Standards themselves." 883 F.3d at 41. And in AD/SAT, plaintiffs challenged an inferred policy as opposed to any specific written or promulgated policy. See 181 F.3d at 233. Here, by contrast, Relevent challenges a specific policy—the "policy embodying

the anticompetitive market division agreement" adopted by "the FIFA Council" on "October 26, 2018." App'x 502. In this circumstance, the "promulgation of [the policy] constitute[s] direct evidence of § 1 concerted action." NASL, 883 F.3d at 41.[7]

FIFA and USSF defend the District Court's decision against Relevent's attacks by urging that the 2018 Policy is not direct evidence of concerted action. First, they contend that Relevent forfeited or waived its direct evidence theory by raising it for the first time on appeal. Not so. The amended complaint alleges that "[t]he FIFA geographic market division policy was, and is, a horizontal division of geographic markets agreement." App'x 523. Relevent also advanced this argument in response to the Defendants' motion to dismiss. See Relevent Sports, LLC's Mem. of Law in Opp'n to Mots. to Dismiss 34 n.9, Dist. Ct. ECF No. 77 ("Relevent . . . alleges, among numerous other specific allegations, that the market division policy itself is direct evidence of such an unlawful conspiracy."); Tr. of Oral Arg. on Mots. to Dismiss 35, Dist. Ct. ECF No. 94 ("[The] main factual allegation" "is that FIFA has a rule that says you can't play out of your own geographic territory."). And the District Court also specifically considered and rejected this argument. See Special App'x 32

[7] The District Court also observed that "Plaintiff in this case is not challenging FIFA's standards as a whole, but merely the impact of a single FIFA Policy." Special App'x 32 n.12. That distinction, presumably based on the words "in totality" in NASL, is immaterial. Neither NASL nor any other precedent of which we are aware requires a plaintiff to challenge an association's entire set of by-laws. Cf., e.g., Associated Press, 326 U.S. at 9, 65 S.Ct. 1416 (determining whether particular by-laws of the AP violated antitrust laws).

("Plaintiff argues that the FIFA Policy itself constitutes direct evidence of . . . [a] common scheme. The Court disagrees." (alteration in original) (quotation marks omitted)); Jacques v. DiMarzio, Inc., 386 F.3d 192, 201 (2d Cir. 2004) (holding that where "the district court was made fully aware of [a] position . . . and the trial judge discussed and explicitly rejected [the] position in its written opinion on the motion," "the issue is not waived on appeal").

Next, the Defendants argue that leagues and teams are not members of FIFA, and that the national associations that are members of FIFA are not competitors. But this argument runs headlong into Relevent's allegations, which we must accept as true, that the FIFA Council's decisions bind the various national associations, which in turn bind their respective leagues and teams; that those leagues and teams would otherwise compete with each other for fans and sponsors but dodge competition because FIFA and the national associations enforce the 2018 Policy;[8] and that, as a result, "[t]he FIFA geographic market division policy has created a barrier to entry which has prevented leagues and teams that do not want to adhere to this policy from competing in the relevant market," App'x 516. Taken together, these allegations clearly depict a rule governing how an association's separate members' separate businesses compete. As Relevent puts it, "[e]ffectively, the National Associations and their respective leagues

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[8] See App'x 498 (Alleging that "an official season game between La Liga teams in the U.S. would directly compete for fans and sponsors with the official season games of USSF-member MLS, which currently benefits from a monopoly position in the U.S. market").

agreed to stay home, so that each league will be free from competition within its own territory." Relevent Br. 2.

Finally, the Defendants argue that the 2018 Policy was merely a non-binding "sporting principle." Once again, we consider the allegations in the amended complaint. According to Relevent, "the FIFA Council—one of FIFA's decision-making bodies with authority to issue policies that each National Association and their member leagues and teams have agreed to follow—adopted a geographic market division policy." App'x 523; see also App'x 502 ("On October 26, 2018, the FIFA Council adopted a policy embodying the anticompetitive market division agreement at issue in this case . . . ."). And "because this was a formal policy announced by a FIFA decision-making body, any leagues and teams who did not comply with it would run the risk of FIFA penalties and all such leagues and teams were required to agree to adhere to this policy." App'x 523. These allegations, corroborated by the fact that the 2018 Policy does not on its face relate to "things like how many players may be on the field or the time allotted for play," *Alston*, 141 S. Ct. at 2156, but rather relates to a geographic limitation on where various leagues can compete for ticket sales, plausibly allege that in adopting the 2018 Policy, FIFA and its member associations adopted an anticompetitive geographic market division.

* * *

The District Court correctly observed that "the FIFA Council announced a 'policy' that prohibits staging Official Games outside the participants' home territory," and that "all National Associations, leagues, clubs, and players must comply with FIFA

directives." Special App'x 23. Relevent directly challenges the 2018 Policy as anticompetitive. Under these circumstances, the very promulgation of the 2018 Policy is direct evidence of an agreement for purposes of Section 1 of the Sherman Act.

CONCLUSION

For the foregoing reasons, we **VACATE** the judgment of the District Court and **REMAND** for further proceedings consistent with this opinion.

[551 F. Supp. 3d 120]

UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

RELEVENT SPORTS, LLC, Plaintiff,

v.

FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION and United States Soccer Federation, Inc., Defendants.

19-CV-8359 (VEC)

Signed: 07/20/2021

OPINION AND ORDER

VALERIE CAPRONI, United States District Judge:

This action stems from Plaintiff's desire to host official international soccer games ("Official Games") in the United States. Plaintiff alleges that its attempts to do so have been thwarted by Defendants' refusal to sanction the games. Specifically, Plaintiff alleges that the United States Soccer Federation ("USSF") violated Section 1 of the Sherman Act by conspiring with the Fédération Internationale de Football Association ("FIFA") and all other FIFA-affiliated regional confederations, National Associations, leagues, and teams to adopt and enforce a policy that prohibits sanctioning Official Games in the United States and to boycott leagues, clubs, and players that participate in unsanctioned Official Games. *See* Am. Compl., Dkt. 57. Defendants moved to dismiss the Amended Complaint. Dkts. 65, 68. For

the following reasons, Defendants' motions are GRANTED.

BACKGROUND[1]

FIFA is the international federation and world governing body of soccer. Am. Compl. ¶¶ 24-25. It administers soccer worldwide through its statutes, regulations, and directives. *Id.* ¶¶ 26, 34. Beneath FIFA organizationally are six regional confederations that oversee soccer at the continental level and assist FIFA in carrying out its regulations. *Id.* ¶ 28. The Confederation of North, Central and Caribbean Association Football ("CONCACAF") is the regional confederation governing soccer in North America. *Id.* Beneath the six regional confederations are 211 National Associations ("National Associations"), each of which is authorized to represent FIFA as the governing body for soccer at the national level. *Id.* ¶¶ 25-28; Silvero Decl., Dkt. 70 ¶ 4. To compete in any FIFA-affiliated event, a soccer league and its team must be sanctioned by their corresponding National Association and by FIFA. Am. Compl. ¶ 29.

USSF is the FIFA-recognized National Association for administering and overseeing soccer in the United States. *Id.* ¶ 31. USSF is a member of CONCACAF. *Id.* ¶ 28. Pursuant to the authority granted to the United States Olympic Committee by the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220501 *et seq.* (1998), USSF is also the recognized national governing body for soccer in the United States. *Id.* ¶ 68.

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[1] For purposes of this opinion, Plaintiff's well-pled factual allegations are taken as true. Conclusory allegations unsupported by facts are not accepted as true.

As FIFA's recognized National Association for soccer in the United States, USSF has the authority to sanction, on behalf of FIFA, Official Games and so-called "friendly games" that are played in the United States. *Id.* ¶¶ 29, 54, 70. Official Games are soccer matches that count towards the competing clubs' official league or tournament records. Am. Compl. ¶ 96; Pl. Opp., Dkt. 77 at 3. By contrast, so-called friendly games are not part of a regular season league schedule or an official tournament; friendly games can be between foreign countries' men's national teams, foreign professional men's soccer clubs, or foreign professional men's soccer clubs and U.S. professional men's soccer clubs. Am. Compl. ¶¶ 17-18, 96. Friendly games do not count towards a club's official record. *Id.* ¶ 96. Plaintiff has promoted numerous friendly games in the United States.[2] *Id.* ¶¶ 17-18, 102-103.

It is a violation of FIFA statutes for a soccer club to play in the United States without USSF's sanction. *Id.* ¶ 98. In addition to obtaining a sanction from USSF, third-party promoters, such as Plaintiff, seeking to organize an international match must also obtain approval from (i) each team's National Association(s); (ii) each team's regional confederation(s); (iii) the host's National Association; and (iv) FIFA. Boehning Decl., Dkt. 71, Ex. A, Arts. 71-73; Ex. B, Arts. 6-8. Any player who competes in an unsanctioned game risks being deemed ineligible

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[2] For example, Plaintiff promotes the annual International Champions Cup, a series of friendly international soccer game events. Am. Compl. ¶ 17. Plaintiff also organized and promoted a friendly game between Real Madrid and Manchester United in the United States in 2014. *Id.* ¶ 18.

to participate in FIFA-sanctioned competitions, including the FIFA World Cup. Am. Compl. ¶ 100.

The FIFA Policy

In August 2018, Plaintiff announced that it intended to host an Official Game in Miami between two La Liga teams, FC Barcelona and Girona FC. Am. Compl. ¶ 111. In response, FIFA's President, Gianni Infantino, expressed doubt whether FIFA would permit an Official Game to occur outside the teams' home territory and stated that he "would prefer to see a great MLS game in the U.S. rather than La Liga being in the U.S." *Id.* ¶ 113. The Spanish National Association ("RFEF"), CONCACAF, and USSF "referred the issue to the FIFA Council" to address whether the game could occur in the United States, rather than in Spain. *Id.* ¶ 114. The FIFA Council, which is comprised of 37 individuals from various National Associations, has the authority to interpret the FIFA statutes adopted by the FIFA Congress and to adopt other rules and policies.[3] *Id.* ¶ 36. In October 2018, the FIFA Council announced a "policy" that prohibits staging Official Games outside the participants' home territory (the "FIFA

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[3] The FIFA Council is elected by the members of each of the six regional confederations. Am. Compl. ¶ 36. Each National Association is entitled to suggest one person to its Confederation for possible election to the Council. *Id.* CONCACAF has five members on the FIFA Council. *Id.*

The FIFA Congress is FIFA's self-described "supreme and legislative body;" it is responsible for adopting and amending the FIFA Statutes. Am. Compl. ¶¶ 32-33. Each National Association, including USSF, is provided one vote in the FIFA Congress. *Id.* ¶ 32.

Policy" or "Policy").[4] *Id.* ¶¶ 37, 116-17. The FIFA Policy appeared in a press release and does not appear in FIFA's official statutes. *Id.* ¶ 117. Nevertheless, the Policy is consistent with several existing statutes and regulations, which provide that international matches may only take place with the "prior permission of FIFA, the confederations and/or the member associations," and that official matches may only be played in another association's territory "under exceptional circumstances." Boehning Decl. Dkt. 71, Ex. 1, Arts. 71, 73. Moreover, several FIFA statutes confirm that "FIFA may take the final decision on the authorisation [sic] of any international match or competition." *Id.* at Art. 71. In order to maintain their status in FIFA, all National Associations, leagues, clubs, and players must comply with FIFA directives; failure to do so may result in expulsion or discipline. Am. Compl. ¶¶ 34, 98. Following the announcement of the FIFA Policy, FC Barcelona withdrew its commitment to participate in the match in Miami that Plaintiff wanted to host. *Id.* ¶ 121.

In March 2019, Plaintiff submitted another sanctioning application to USSF, this time seeking approval to host an Official Game in Miami between two Ecuadorian clubs. *Id.* ¶¶ 123-25. Prior to submitting the application to USSF, Plaintiff obtained approval from Ecuador's regional confederation, the Ecuadorian National Association,

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[4] The FIFA Policy reads: "Consistent with the opinion expressed by the Football Stakeholders Committee, the [FIFA] Council emphasised [sic] the sporting principle that official league matches must be played within the territory of the respective member association." Am. Compl. ¶ 117.

and the participating teams' league. *Id.* ¶ 125. In April 2019, USSF denied Plaintiff's application, explaining that sanctioning the match would violate the FIFA Policy that prohibits staging Official Games outside the league's home territory. *Id.* ¶¶ 128-30. USSF has similarly declined to sanction Official Games proposed by other promoters when doing so would violate the FIFA Policy. *Id.* ¶¶ 131-34.

Plaintiff alleges that USSF's denial of its sanctioning applications reflects an anticompetitive market division agreement with FIFA to limit the output of Official Games in the United States. *See id.* ¶¶ 160-78. Specifically, Plaintiff alleges an unlawful vertical agreement between FIFA and all of the National Associations, including USSF, to facilitate and enforce the market division agreement against all leagues and teams. *Id.* ¶¶ 6, 168. Plaintiff also alleges an unlawful horizontal agreement "between and among MLS and the other top-tier men's professional soccer leagues and teams," as well as their "respective FIFA-affiliated 'National Associations,' " to adhere to the FIFA Policy and to boycott leagues, clubs, and players that participate in unsanctioned games in the United States. *Id.* ¶¶ 4, 6, 167-68.

On July 20, 2020, this Court granted USSF's motion to dismiss Plaintiff's antitrust claim without prejudice and granted USSF's motion to compel to arbitration Plaintiff's tortious interference with business relationships claim against USSF. Dkt. 47. On September 14, 2020, Plaintiff filed an Amended Complaint, adding FIFA as a defendant and reasserting its antitrust claim against both USSF and FIFA. Dkt. 57. The Amended Complaint also

reasserts the tort claim that was included in the original complaint.[5] Am. Compl. ¶¶ 179-92.

USSF moves to dismiss Plaintiff's Amended Complaint for failure to state a claim and failure to join an indispensable party pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(7). Dkt. 65. USSF also renews its prior argument that Plaintiff's claim is barred by the parties' prior covenant not to sue. *Id.* FIFA moves to dismiss the Amended Complaint for lack of personal jurisdiction and failure to state a claim pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6). Dkt. 68. On June 15, 2021, the Court held oral argument on the motions to dismiss. *See* Tr., Dkt. 94.

DISCUSSION[6]

To survive a motion to dismiss for failure to state a claim upon which relief can be granted, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). On a motion to dismiss, the Court may consider any "written instrument attached to [the Complaint] as an exhibit or any statements or documents incorporated in it by reference" as well as materials "integral" to plaintiff's claims. *Int'l*

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[5] Plaintiff has not yet commenced arbitration proceedings. Dkt. 83. No later than July 30, 2021, Plaintiff must submit a letter indicating whether it intends to pursue its tort claim in arbitration.

[6] Because the Court finds that Plaintiff has failed to state an antitrust claim, the Court will not consider Defendants' other grounds for dismissal.

Audiotext Network, Inc. v. Am. Tel. & Tel. Co., 62 F.3d 69, 72 (2d Cir. 1995).

A. Legal Framework

Section 1 of the Sherman Act prohibits any "contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce." 15 U.S.C. § 1; *United States v. Apple, Inc.,* 791 F.3d 290, 314 (2d Cir. 2015). In order to plead a violation of Section 1, a plaintiff must allege "direct or circumstantial evidence that reasonably tends to prove that the [defendant] and others had a conscious commitment to a common scheme designed to achieve an unlawful objective." *Anderson News, L.L.C. v. Am. Media, Inc.,* 680 F.3d 162, 184 (2d Cir. 2012) (quoting *Monsanto Co. v. Spray-Rite Serv. Corp.*, 465 U.S. 752, 764, 104 S.Ct. 1464, 79 L.Ed.2d 775 (1984) (emphasis omitted)). In other words, an antitrust plaintiff must allege an agreement; a "unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement." *Am. Tobacco Co. v. United States,* 328 U.S. 781, 809-10, 66 S.Ct. 1125, 90 L.Ed. 1575 (1946); *Starr v. Sony BMG Music Entm't*, 592 F.3d 314, 321 (2d Cir. 2010) (explaining that because Section 1 of the Sherman Act does not prohibit all restraints of trade, but only *agreements* to restrain trade, the "crucial question in a Section 1 case is [] whether the challenged conduct stem[s] from independent decision or from an agreement, tacit or express.") (internal quotation marks omitted). Independent action by one party is not proscribed; there is a "basic distinction between concerted and independent action," and a party "generally has a right to deal, or refuse to deal, with whomever it likes,

as long as it does so independently." *Monsanto*, 465 U.S. at 760-61, 104 S.Ct. 1464.

Because parallel conduct could simply be the result of "coincidence, independent responses to common stimuli, or mere interdependence unaided by an advance understanding among the parties," allegations of parallel conduct alone are insufficient to allege the existence of a conspiracy. *Twombly*, 550 U.S. at 556 n.4, 127 S.Ct. 1955 (internal quotation marks omitted); *Apex Oil Co. v. DiMauro*, 822 F.2d 246, 253 (2d Cir. 1987) (noting that while evidence of "[p]arallel conduct can be probative . . . [of] an antitrust conspiracy," such evidence "alone will not suffice."). Indeed, parallel conduct that "does not result from an agreement is not unlawful even if it is anticompetitive." *Apple*, 791 F.3d at 315.

In the absence of direct evidence of an agreement, such as a "recorded phone call in which two competitors agreed to fix prices," a plaintiff must present circumstantial facts, known as "plus factors," to support the inference that there was a conspiratorial agreement. *Mayor & City Council of Balt. v. Citigroup, Inc.*, 709 F.3d 129, 136 (2d Cir. 2013). These plus factors may include, but are not limited to, "a common motive to conspire, evidence that shows that the parallel acts were against the apparent individual economic self-interest of the alleged conspirators, and evidence of a high level of interfirm communications." *Id.* (citation omitted).

Regardless of whether the plaintiff presents direct or circumstantial evidence, at "the pleading stage, a complaint claiming conspiracy, to be plausible, must plead 'enough factual matter (taken as true) to suggest that an agreement was made,' *i.e.,* it must provide 'some factual context suggesting [that the

parties reached an] agreement,' not facts that would be 'merely consistent' with an agreement." *Anderson News*, 680 F.3d at 184 (quoting *Twombly*, 550 U.S. at 556, 549, 557, 127 S.Ct. 1955) (alteration in original). Mere "conclusory allegation[s] of [an] agreement at some unidentified point," are insufficient to allege a violation of Section 1 of the Sherman Act. *Cenedella v. Metro. Museum of Art*, 348 F. Supp. 3d 346, 358 (S.D.N.Y. 2018) (quoting *Twombly*, 550 U.S. at 557, 127 S.Ct. 1955). Finally, a complaint may be dismissed "where there is an obvious alternative explanation to the facts underlying the alleged conspiracy among the defendants." *Id.* (citing *Twombly*, 550 U.S. at 567, 127 S.Ct. 1955; *Abbott Labs. v. Adelphia Supply USA*, No. 15-CV-5826, 2017 WL 5992355, at *10 (E.D.N.Y. Aug. 10, 2017)).

If an antitrust plaintiff sufficiently alleges an agreement, it must next allege that the agreement "constituted an unreasonable restraint of trade either per se or under the rule of reason." *Cap. Imaging Assocs., P.C. v. Mohawk Valley Med. Assocs., Inc.*, 996 F.2d 537, 542 (2d Cir. 1993). Few restraints of trade are unreasonable per se; conduct constituting a per se violation must be so "manifestly anticompetitive that it would almost invariably tend to restrict competition and decrease output." *Cenedella*, 348 F. Supp. 3d at 360 (citing *Hertz Corp. v. City of New York*, 1 F.3d 121, 130 (2d Cir. 1993)). As a result, the per se rule is appropriate only "in the relatively narrow circumstance[s] where courts have sufficient experience with the [alleged wrongful] activity to recognize that it is plainly anticompetitive and lacks any redeeming virtue." *Hertz*, 1 F.3d at 129; *Caruso Mgmt. Co. v. Int'l Council of Shopping Centers*, 403 F. Supp. 3d 191, 201 (S.D.N.Y. 2019). Agreements

among horizontal competitors to set prices are per se illegal, while vertical agreements, or agreements between parties at different levels of a market structure, are not. *Apple*, 791 F.3d at 313–14; *see also Leegin Creative Leather Prods., Inc. v. PSKS, Inc.*, 551 U.S. 877, 882, 127 S.Ct. 2705, 168 L.Ed.2d 623 (2007).

As a result of the "rigorous standard and [] presumption against applying the per se rule," courts apply the rule of reason in analyzing most alleged restraints of trade. *Caruso Mgmt. Co.*, 403 F. Supp. 3d at 201. At the motion to dismiss stage, the rule of reason inquiry requires the plaintiff to "identify the relevant market affected by the challenged conduct and allege an actual adverse effect on competition in the identified market." *Watkins v. Smith*, No. 12-CV-4635, 2012 WL 5868395, at *7 (S.D.N.Y. Nov. 19, 2012), *aff'd*, 561 F. App'x 46 (2d Cir. 2014).

B. Plaintiff Fails to Allege an Unlawful Vertical Agreement

Plaintiff alleges that USSF and "FIFA's other National Associations" entered into a vertical agreement with FIFA to apply the FIFA Policy against their member leagues and teams.[7] *See, e.g.,* Am. Compl. ¶¶ 6, 21, 71, 165, 166, 168. Plaintiff alleges that this "agreement to adhere to the FIFA

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[7] At oral argument, Plaintiff's counsel indicated that Plaintiff was *not* alleging a separate vertical agreement. Tr., Dkt. 94 at 51-52. Nevertheless, because the Amended Complaint alleges an unlawful vertical agreement between FIFA and USSF, *see e.g.,* Am. Compl. ¶¶ 4, 6, 168, and Plaintiff's opposition brief argues that a vertical agreement exists, Pl. Opp., Dkt. 77 at 43-45, despite Plaintiff's apparent abandonment of the theory, for the sake of completeness, the Court will address the allegations of a vertical agreement between USSF and FIFA.

market division policy has suppressed competition and reduced output in the relevant market." *Id.* ¶ 98. In support of the existence of this purported agreement, Plaintiff alleges that USSF admitted that it will not sanction Plaintiff's proposed games "because of its agreement to follow the FIFA geographic market division policy." *Id.* ¶ 129. Similarly, Plaintiff points to a letter USSF sent to Plaintiff denying a sanction for Plaintiff's proposed Official Game, in which USSF allegedly stated that it had "communicated with FIFA" regarding the proposed game and FIFA had "confirmed that the game was prohibited by the market division policy, which USSF had agreed to follow." *Id.* ¶ 130.

Plaintiff's allegations of a vertical agreement between FIFA and USSF fail to state a claim for the same reasons articulated in this Court's prior Opinion. Dkt. 47 at 12-15. Plaintiff continues to rely on USSF's admitted compliance with the FIFA Policy as evidence of an unlawful agreement between USSF and FIFA. This Court has already held, however, that USSF's compliance with the Policy, without additional factual allegations, is insufficient to constitute direct evidence of an unlawful agreement. Dkt. 47 at 13 (citing *Citigroup, Inc.*, 709 F.3d at 136 (explaining that direct evidence "would consist, for example, of a recorded phone call in which two competitors agreed to fix prices at a certain level"); *Starr*, 592 F.3d at 325 (noting that allegations in a Sherman Act § 1 complaint based on direct evidence of agreement would likely require references to "specific time, place, or person involved in the alleged conspiracies") (quoting *Twombly*, 550 U.S. at 565 n.10, 127 S.Ct. 1955)). Plaintiff's Amended Complaint still alleges no facts to support the

inference that, in complying with the FIFA Policy, USSF actually entered an agreement with FIFA to restrict output. *See Am. Tobacco*, 328 U.S. at 809-10, 66 S.Ct. 1125 (an antitrust plaintiff must allege a "unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement"); *Monsanto,* 465 U.S. at 761, 104 S.Ct. 1464 (holding that a party "generally has a right to deal, or refuse to deal, with whomever it likes, as long as it does so independently."). Plaintiff's repeated characterizations of USSF's decision to comply with the FIFA directive as an unlawful agreement, *see, e.g.,* Am. Compl. ¶¶ 4, 6, 21, 26, 34, 35, 71, 98, 129, 130, 131, 162, 164, 165, 166, 174, are conclusory.[8] *Twombly*, 550 U.S. at 557, 127 S.Ct. 1955 (holding that mere "conclusory allegation[s] of [an] agreement at some unidentified point," are insufficient to allege plausibly a Sherman Act violation); *In re Elevator Antitrust Litig.*, 502 F.3d 47, 51-52 (2d Cir. 2007); *Cenedella*, 348 F. Supp. 3d at 358 (rejecting plaintiff's attempts to "summarily assert[] several times that there is an agreement" as "nothing more than conclusory allegations.").

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[8] Moreover, the Court notes that certain of Plaintiff's allegations are simply inaccurate. *See* Am. Compl. ¶¶ 34, 35, 98, 117. For example, Plaintiff alleges that "under the agreed-upon FIFA Statutes, each National Association is required to *agree* to 'comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time.'" *Id.* ¶ 34 (emphasis added) (quoting FIFA Stat. Art. II.14(1)(a)). As evidenced by the portion of the FIFA statute that Plaintiff quotes directly, the statute merely requires individual National Associations to comply with its statutes, regulations, and directives; it does not require or encourage any *agreement* among National Associations or with FIFA to do so.

As this Court noted in its prior opinion, although USSF's adherence to the FIFA Policy may be "*consistent*" with a vertical agreement, Plaintiff must plead facts "to suggest that an agreement *was made*." *Anderson News*, 680 F.3d at 184 (quoting *Twombly*, 550 U.S. at 556, 549, 557, 127 S.Ct. 1955) (emphasis added); *Citigroup, Inc.*, 709 F. 3d at 136 ("A plaintiff's job at the pleading stage, in order to overcome a motion to dismiss, is to allege enough facts to support the inference that a conspiracy actually existed."). USSF's admitted compliance with the FIFA Policy is insufficient to support an inference that USSF and FIFA shared a "unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement." *Am. Tobacco*, 328 U.S. at 809-10, 66 S.Ct. 1125; *United States v. Colgate & Co.*, 250 U.S. 300, 307, 39 S.Ct. 465, 63 L.Ed. 992 (1919) (explaining that it is not concerted action for a party to announce the terms under which it is willing to deal and to then act in accordance with that unilateral announcement, even if the practical effect may be to achieve conformity of behavior); *Tarrant Serv. Agency, Inc. v. Am. Standard Inc.*, 12 F.3d 609, 617-18 (6th Cir. 1993) (affirming the district court's grant of summary judgment on plaintiff's § 1 conspiracy claim on the grounds that plaintiff produced no evidence of a conspiracy and noting that the contested "broker policy was unilaterally implemented by [defendant]" and a third party's "mere adherence to the [] policy [did] not illustrate the existence of a conspiracy."). As the Court previously noted, there are obvious rational reasons why USSF would comply with the FIFA Policy without being part of an unlawful agreement to do so, such as its desire not to take action that could result in all U.S. men's soccer

players and teams being deemed ineligible for World Cup play.[9] Am. Compl. ¶ 100; *Cenedella*, 348 F. Supp. 3d at 358 (noting that a complaint may be dismissed "where there is an obvious alternative explanation to the facts underlying the alleged conspiracy among the defendants.").

In sum, Plaintiff has failed to allege adequately that there was an unlawful agreement between USSF and FIFA; without an adequate allegation of an agreement, Plaintiff has not stated a claim for a violation of Section 1 of the Sherman Act.[10]

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[9] Plaintiff added allegations regarding the relationship among USSF, MLS, and SUM, the marketing and promotion arm of MLS, to the Amended Complaint. *See* Am. Compl. ¶¶ 91, 105-110. Specifically, Plaintiff alleges that USSF's alleged economic dependence on SUM "incentivizes USSF to promote, participate in and adhere to the FIFA market division agreement," because the agreement purportedly shields MLS from competition. *Id.* ¶ 107. Even assuming the truth of those allegations, Plaintiff's allegations do not give rise to the inference that USSF entered an agreement with FIFA to restrict output. Instead, the fact that the FIFA Policy has beneficial economic consequences for USSF provides yet another rational reason why USSF would unilaterally comply with the Policy. If complying with the Policy were contrary to USSF's economic interests, *that* would be circumstantial evidence of an unlawful agreement.

[10] Plaintiff also appears to allege that an identical vertical agreement to comply with the FIFA Policy exists among FIFA and *all* of the 211 National Associations. *See e.g.,* Am. Compl. ¶¶ 166, 168. But Plaintiff alleges no facts to support the inference that the remaining 210 National Associations also entered an agreement with FIFA to restrict output. To the contrary, Plaintiff alleges that Ecuador's National Association agreed to allow two Ecuadorian teams to participate in Plaintiff's proposed Official Game in 2019, notwithstanding the FIFA Policy. Am. Compl. ¶ 125; Pl. Opp., Dkt. 77 at 30. Moreover, as noted *supra*, a National Association's unilateral compliance with

C. Plaintiff Fails to Allege an Unlawful Horizontal Agreement

Plaintiff alleges a horizontal agreement among the "FIFA-affiliated top-tier men's professional soccer leagues and their teams" to "geographically allocate the markets in which they are permitted to stage official season games, including in the U.S. market." Am. Compl. ¶ 4, *see also* ¶¶ 26, 117, 167. Plaintiff alleges that "these leagues and teams have agreed, along with their respective FIFA-affiliated National Associations," including USSF, to "adhere to the FIFA rules and policies establishing and enforcing the horizontal market division agreement." *Id.* ¶ 4; Pl. Opp., Dkt. 77 at 27. At the outset, the Amended Complaint nowhere specifies with which of the leagues, teams, and National Associations USSF purportedly conspired, a deficiency this Court also identified in its prior opinion. Dkt. 47 at 16-17 (citing *Cenedella*, 348 F. Supp. 3d at 358-59 (dismissing plaintiff's complaint as including "nothing more than conclusory allegations . . . completely devoid of facts indicating who agreed with whom, to what, and when," and noting that the complaint merely referred to "other unnamed co-conspirators, whom the plaintiff [made] little effort to describe")). In its opposition brief, Plaintiff argues that "*all* the top-tier

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the FIFA Policy, without more, is insufficient evidence from which the Court can infer the existence of an unlawful agreement. *See Monsanto,* 465 U.S. at 761, 104 S.Ct. 1464 (holding that a party "generally has a right to deal, or refuse to deal, with whomever it likes, as long as it does so independently."); *Apple*, 791 F. 3d at 318 ("[C]onduct resulting solely from competitors' independent business decisions—and not from any 'agreement'—is not unlawful under § 1 of the Sherman Act, even if it is anticompetitive.").

men's professional soccer leagues and teams" have "agreed, through their National Associations, to adhere to all FIFA rules and policies, including the geographic market division policy." Pl. Opp., Dkt. 77 at 28-29 (emphasis added).[11] Accordingly, the Court will assume that the alleged horizontal agreement is among *all* 211 National Associations and *all* leagues and teams.

1. The FIFA Policy Itself is Not Direct Evidence of a Horizontal Conspiracy

Plaintiff argues that the FIFA Policy itself constitutes direct evidence of "Defendants' and their alleged conspirators' conscious commitment to [a] common scheme." Pl. Opp., Dkt. 77 at 32. The Court disagrees. Although actions of organizations comprised of horizontal competitors are certainly subject to scrutiny as potentially unlawful conspiracies, "[o]rganizational decisions do not inherently constitute § 1 concerted action." *N. Am. Soccer League, LLC v. United States Soccer Fed'n, Inc.*, 883 F.3d 32, 40 (2d Cir. 2018) ("*NASL*")[12]; *see*

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[11] Plaintiff confirmed at oral argument that its theory is that there is a worldwide conspiracy comprised of 211 National Associations and all top tier soccer leagues and teams. *See* Tr., Dkt. 94 at 52.

[12] Plaintiff makes much of the Second Circuit's comment in *NASL* that if the plaintiff "were challenging the Standards themselves—in totality—as violative of the antitrust laws, then the USSF Board's promulgation of them would constitute direct evidence of § 1 concerted action in that undertaking." 883 F.3d at 41. At the outset, that statement is dicta; the Circuit affirmed the District Court's holding that Section 1 would require an underlying "agreement to agree" among members of the USSF Board to adopt the standards in order for the standards to constitute direct evidence of an unlawful agreement. *Id.* at 39-

also AD/SAT, Div. of Skylight, Inc. v. Associated Press, 181 F.3d 216, 234 (2d Cir. 1999) (holding that "every action by a trade association is not concerted action by [its] members."); *LaFlamme v. Societe Air France*, 702 F. Supp. 2d 136, 148 (E.D.N.Y. 2010) (noting that "membership and participation in a trade association alone does not give rise to a plausible inference of illegal agreement."). In order for an organizational decision or policy to constitute concerted action and, therefore, to serve as direct evidence of an unlawful agreement, Plaintiff must plausibly allege an antecedent "agreement [among horizontal competitors] to agree to vote a particular way" to adopt such a policy.[13] *NASL*, 883 F.3d at 39;

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40. Moreover, Plaintiff in this case is *not* challenging FIFA's standards as a whole, but merely the impact of a single FIFA Policy. Finally, as noted *supra,* because Plaintiff has not alleged an underlying "agreement to agree" to adopt the Policy, the Policy does not constitute direct evidence of a conspiracy.

[13] Plaintiff relies on cases such as *Nat'l Collegiate Athletic Ass'n v. Alston et al.*, —— U.S. ——, 141 S.Ct. 2141, 210 L.Ed.2d 314 (2021), *Nat'l Collegiate Athletic Ass'n v. Bd. of Regents*, 468 U.S. 85, 99, 104 S.Ct. 2948, 82 L.Ed.2d 70 (1984), and *Allied Tube & Conduit Corp. v. Indian Head, Inc.,* 486 U.S. 492, 108 S.Ct. 1931, 100 L.Ed.2d 497 (1988), to argue that the FIFA Policy itself constitutes direct evidence of a conspiracy. Those cases are readily distinguishable. In *Alston,* the Supreme Court specifically noted that there was no dispute that NCAA and its members, which are undisputed horizontal competitors, "agreed to compensation limits on student-athletes." 141 S.Ct. at 2151. In other words, the Court in *Alston* began its analysis from the premise of "admitted horizontal price fixing." *Id.* at 2154. Similarly, in *Board of Regents*, the challenged policy was indisputably agreed upon by a vote among horizontal competitors. 468 U.S. at 99, 104 S.Ct. 2948. Finally, in *Allied Tube*, the defendant "conceded that it had conspired with the other steel interests to exclude respondent's [proposal]" by, *inter alia,* strategizing with other steel workers, "packing" the

see also AD/SAT, 181 F.3d at 234 ("an antitrust plaintiff must present evidence tending to show that association members, *in their individual capacities*, consciously committed themselves to a common scheme designed to achieve an unlawful objective.") (emphasis added); *LaFlamme*, 702 F. Supp. 2d at 147-48 (dismissing plaintiffs' § 1 claim because the complaint failed to "allege any specific facts providing any basis to infer an actual unlawful agreement," but rather relied on the "bald, conclusory allegation that 'it appears that defendants and others decided to adopt the terms of [the] [r]esolution' ").

Plaintiff's Amended Complaint lacks any non-conclusory factual allegations from which the Court can reasonably infer that the 37 members of the FIFA Council unlawfully agreed to adopt the Policy, or even that USSF and some of the members of the FIFA Council unlawfully agreed to adopt the Policy.[14]

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meeting with new members "whose only function would be to vote against" plaintiff's proposal, and instructing the voters "where to sit and how and when to vote by group leaders who used walkie-talkies and hand signals to facilitate communication." 486 U.S. at 496-97, 108 S.Ct. 1931. Put differently, Plaintiff relies on cases in which the existence of an underlying agreement was not disputed. Here, Plaintiff's Amended Complaint fails precisely because it does not include any well-pled facts from which the Court could infer that there was an unlawful agreement among Defendants and their horizontal competitors to adopt or enforce the Policy.

[14] The Court also notes that it is not at all clear whether the members of the FIFA Council, who represent various National Associations and regional confederations, are horizontal competitors. The Amended Complaint alleges that the FIFA-affiliated leagues and teams are "competitors," *see e.g.,* Am. Compl. ¶ 4, 88, but it does not allege that the six regional confederations and 211 National Associations are horizontal competitors. Instead, the Amended Complaint merely alleges

Plaintiff fails entirely to allege any facts suggesting that there was an "agreement to agree," *NASL*, 883 F.3d at 39, a "unity of purpose," *Am. Tobacco*, 328 U.S. at 810, 66 S.Ct. 1125, or a "meeting of the minds," *Twombly*, 550 U.S. at 557, 127 S.Ct. 1955, among USSF and any other member of the FIFA Council to adopt the Policy. Plaintiff's allegations that the FIFA Council adopted the rule "at the behest of USSF and MLS" and that unnamed "USSF and MLS allies [] push[ed] the policy through in the FIFA Council" are conclusory.[15] Am. Compl. ¶¶ 114, 117; *SD3, LLC v.*

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that each National Association is a "separate economic actor." *Id.* ¶ 161.

[15] The Amended Complaint identifies four other individuals who sat on the FIFA Council on behalf of the National Associations of England, Portugal, Canada, and Japan. Am. Compl. ¶ 41. Plaintiff does not, however, allege that any of those four individuals agreed with USSF to vote to adopt the FIFA Policy. Plaintiff also fails to identify the remaining members of the FIFA Council, let alone include allegations that those unidentified people agreed with USSF (or with anyone else) to vote in favor of the Policy.

At oral argument, the Court pressed Plaintiff on the facts that support its assertion that FIFA adopted the Policy at the behest of USSF. Tr., Dkt. 94 at 38, 54, 57-62. The resulting exchange leads the Court to suspect that Relevant does not fully understand the pleading standard announced over a decade ago in *Ashcroft v. Iqbal* and *Bell Atlantic v. Twombly*. Although Plaintiff's counsel assured the Court that he had "source information" and "other things" to back up the Amended Complaint's conclusory allegations regarding U.S. Soccer's role in the announcement of the FIFA Policy, when pressed on where those facts appear in the Amended Complaint, counsel could only assure the Court that the "allegations [in the Amended Complaint] are not made up out of whole cloth," and he had "a reasonable basis" for the allegations. Tr., Dkt. 94 at 59. If Plaintiff had sources who provided information that supported its conclusory allegations regarding USSF's role in pressing

Black & Decker (U.S.) Inc., 801 F.3d 412, 437 (4th Cir. 2015) (dismissing allegations that "a collective decision was made," and that the defendants "agreed to vote as a bloc" as conclusory, non-specific, and insufficient to support an inference of an unlawful agreement); *cf. Allied Tube*, 486 U.S. at 496-97, 108 S.Ct. 1931 (noting specific factual allegations that defendant had "pack[ed]" the meeting with new members "whose only function would be to vote against" plaintiff's proposal, and instructed voters "where to sit and how and when to vote by group leaders who used walkie-talkies and hand signals to facilitate communication."). Similarly, Plaintiff's allegation that former USSF President, Sunil Gulati, participated in the FIFA Council's adoption of the Policy "with the goal of shielding USSF's sole Division I league, MLS, from official season games competition from foreign leagues," Am. Compl. ¶ 39, is wholly unsupported and conclusory. The Court cannot plausibly infer, merely from Mr. Gulati's presence on the FIFA Council, that USSF facilitated or participated in an unlawful agreement to adopt the Policy. *See SD3, LLC,* 801 F.3d at 436 (rejecting plaintiff's argument that the court should "infer malfeasance because some of the defendants' representative[s] served on the relevant standard-setting panel"); *All Star Carts & Vehicles, Inc. v. BFI Can. Income Fund*, 596 F. Supp. 2d 630, 640 (E.D.N.Y. 2009) (allegations that Defendants participated in meetings, conversations and

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others on the FIFA Council to adopt the Policy (allegations that might have started to look like there was "an agreement to agree"), it should have included that information in the Amended Complaint, together with the sources' asserted basis for knowledge. That is the clear teaching of *Iqbal* and *Twombly*.

communications, and "reached agreement during these meetings as to their anticompetitive practices" were insufficient allegations of the existence of an agreement to survive a motion to dismiss). In sum, Plaintiff fails to allege any facts from which the Court can reasonably infer that the members of the FIFA Council, "in their individual capacities, consciously committed themselves to a common scheme designed to achieve an unlawful objective." *AD/SAT, Div. of Skylight, Inc.*, 181 F.3d at 234; *SD3, LLC*, 801 F.3d at 437 (dismissing certain allegations of an unlawful agreement because the complaint identified "no fact other than consistent votes against [plaintiff's] proposal . . . to establish the alleged illegal agreements."). Without such well-pled facts, the FIFA Policy is not direct evidence of an unlawful agreement

Plaintiff similarly fails to allege circumstantial evidence of an agreement among the members of the FIFA Council to adopt the Policy.[16] Although

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[16] As noted *supra* at note 7, at oral argument, Plaintiff's counsel strayed considerably from the allegations and arguments in his papers. For example, when pressed about the implications of Plaintiff's allegations regarding the role of the FIFA Stakeholders Committee, Plaintiff's counsel stated that its allegations that the FIFA Council adopted the Policy at the urging or "at the behest of U.S. Soccer and Major League Soccer" are "irrelevant to whether there is an agreement." Tr., Dkt. 94 at 35. Plaintiff's Amended Complaint and opposition, however, argue that the actions and statements of the members of the Stakeholders Committee are circumstantial evidence of an unlawful agreement. Am. Compl. ¶¶ 46, 51 114, 117; Pl. Opp., Dkt. 77 at 34. Accordingly, Plaintiff's theory of the role and impact of the FIFA Stakeholders Committee vis-à-vis the alleged unlawful agreements among the members of the FIFA Council to adopt the Policy or among the National Associations, leagues,

Plaintiff makes much of the fact that Don Garber, MLS Commissioner and a Board Member of USSF, and Carlos Cordeiro, a former-USSF President, were on the FIFA Stakeholders Committee,[17] Am. Compl. ¶¶ 44-45, Mr. Garber and others' participation on the Stakeholders Committee is not circumstantial evidence of an agreement among the members of the FIFA Council. At the outset, Plaintiff's allegations that Mr. Garber and Mr. Cordeiro "advocate[d] for a new geographic market division policy" and that the Stakeholders Committee "has taken a number of actions to support the adoption, implementation, enforcement—and, most recently, the strengthening —of the geographic market division agreement," *id.* ¶¶ 46, 114, are factually unsupported and conclusory. The Court cannot reasonably infer merely from Mr. Garber's presence on the Stakeholders Committee in 2018 that he "advocate[d]" for the Policy or took any action to "support the adoption, implementation, [or] enforcement" of the Policy. Moreover, and most significantly, the FIFA Policy was announced by the FIFA Council, *not* by the FIFA Stakeholders Committee, which has no rule-making authority. *Id.* ¶ 117. Accordingly, even accepting that members of the FIFA Stakeholders' Committee did in fact advocate for the adoption of the FIFA Policy (a conclusory allegation totally devoid of factual

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and teams to adhere to the Policy, is entirely unclear. Nevertheless, the Court assumes that Plaintiff is relying on allegations concerning the Stakeholders Committee as circumstantial evidence of an unlawful agreement and will analyze them as such.

[17] The FIFA Stakeholders Committee is a standing committee tasked with "advising and assisting" the FIFA Council. Am. Compl. ¶ 42.

support), Plaintiff alleges no facts to support the inference that such a recommendation had any bearing on whether the members of the FIFA Council formed a "conscious commitment to a common scheme designed to achieve an unlawful objective." *Monsanto*, 465 U.S. at 768, 104 S.Ct. 1464. Although the Court notes that the terms of the FIFA Policy indicate that it is "consistent with the opinion expressed by the Football Stakeholders Committee," Plaintiff alleges no facts to support an inference that (i) the FIFA Council adopted the Policy "at the urging," Am. Compl. ¶ 41, of the Stakeholders Committee; (ii) the Policy reflects any "unity of purpose or a common design and understanding" among the members of the Stakeholders Committee and the FIFA Council; or (iii) the Stakeholders Committee's recommendation precipitated any unlawful underlying agreement among the members of the FIFA Council to adopt the Policy.

Finally, even assuming that all 37 members of the FIFA Council did vote to adopt the Policy,[18] which is not alleged in the Amended Complaint, "consistent votes," absent additional evidence is best viewed as "parallel conduct . . . equally consistent with legal behavior." *SD3, LLC*, 801 F.3d at 437; *Twombly*, 550 U.S. at 556-57, 127 S.Ct. 1955 ("[W]hen allegations of parallel conduct are set out in order to make a § 1 claim, they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action."). The Court cannot reasonably

[18] The Amended Complaint does not allege how many votes on the FIFA Council are required to adopt a policy nor how many members voted in favor of the Policy at issue here.

infer, merely from the fact that the members of the FIFA Council met and subsequently announced a Policy, that there was a "unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement" to adopt that Policy. *Am. Tobacco Co.*, 328 U.S. at 809-10, 66 S.Ct. 1125.

2. Unilateral Adherence to the FIFA Policy is Not Evidence of a Horizontal Conspiracy

The National Associations, leagues, and teams' adherence to the announced FIFA Policy, without additional factual allegations, is similarly insufficient to allege adequately the existence of a horizontal conspiracy. Plaintiff's repeated conclusory allegations that all of the National Associations, leagues, and teams have agreed to adhere to the FIFA Policy, *see, e.g.,* Am. Compl. ¶¶ 4, 35, 70, 98, 117, 162, 166, 167, 170-174, are just that – conclusory allegations that are not entitled to the presumption of truth. *Iqbal*, 556 U.S. at 681, 129 S.Ct. 1937; *Integrated Sys. & Power, Inc. v. Honeywell Int'l, Inc.*, 713 F. Supp. 2d 286, 290 (S.D.N.Y. 2010) ("While Plaintiff repeatedly asserts that Defendant's conduct constitutes a 'horizontal conspiracy,' . . . this characterization is a legal conclusion that the Court does not accept as true on a motion to dismiss."). Moreover, as noted *supra,* Plaintiff's allegation that FIFA "require[s]" the National Associations "*to agree* to 'comply fully with FIFA's Statutes' " is belied by the language of the cited FIFA statute. Am. Compl. ¶ 34 (emphasis added); *see also* ¶¶ 35, 98, 117. The relevant FIFA statute requires the National Associations to adhere to FIFA policies; it does not require them unlawfully to agree to adhere to them. *Id.* ¶ 34. In short, Plaintiff's Amended Complaint is

devoid of any factual allegations to support the inference that the Defendants in this case agreed with anyone, let alone with all 210 other National Associations and countless leagues and teams, to do anything, including to adhere to the Policy. *See Jessup v. Am. Kennel Club*, 862 F. Supp. 1122, 1129 (S.D.N.Y. 1994) (observing the weakness of antitrust claims where the plaintiff failed to "identify or refer to specific acts or activities suggesting any illegal agreement or concerted action by Defendants").

Plaintiff similarly fails plausibly to allege circumstantial evidence of an agreement among the National Associations, leagues, and teams to adhere to the Policy. Plaintiff relies on a statement made by Mr. Garber that "the respective leagues don't believe it's in their best interest" to permit Official Games to be held outside of their home markets and that while there may be "one or two" leagues that feel differently, MLS was not one of them. Am. Compl. ¶ 51. Plaintiff alleges that Mr. Garber's statement constitutes an "admission" of "his intention to use the FIFA market division agreement to shield MLS from official games competition in the U.S." *Id.* At the outset, Mr. Garber made this statement in 2020, two years after the FIFA Policy was announced. *Id.* Accordingly, Plaintiff's argument that Mr. Garber's statement is circumstantial evidence of an agreement to adhere to a policy that was announced two years earlier is tenuous at best. Moreover, Mr. Garber's expression of MLS or USSF's opinion regarding the benefits of the Policy does not necessarily signify an underlying conspiracy among all National Associations, leagues, and teams to enforce the Policy. *See Plant Oil Powered Diesel Fuel Sys., Inc. v. ExxonMobil Corp.*, 801 F. Supp. 2d 1163, 1195 (D.N.M. 2011) (noting that

defendant's statement that it opposed changing a standard-setting organization's proposed standard did not suggest an unlawful agreement but merely "unilateral conduct."). To the contrary, Mr. Garber's statement that there are leagues who do *not* support the FIFA Policy undermines Plaintiff's argument by suggesting that there is, in fact, no "agreement" among *all* of the National Associations, leagues, and teams to adhere to the Policy.

Finally, even assuming that all National Associations, leagues, and teams do comply with the FIFA Policy, in the absence of any factual allegations supporting an inference of an actual agreement to restrict output, such conduct does not violate the Sherman Act. *See Apple*, 791 F. 3d at 318 ("[C]onduct resulting solely from competitors' independent business decisions—and not from any 'agreement'—is not unlawful under § 1 of the Sherman Act, even if it is anticompetitive."); *Anderson News*, 680 F.3d at 174 (noting that "unilateral parallel conduct" does not itself "create an inference of collusion"); *Abraham v. Intermountain Health Care Inc.*, 461 F.3d 1249, 1256 (10th Cir. 2006) ("unilateral conduct, regardless of its anti-competitive effects, is not prohibited by § 1 of the Sherman Act.") (internal quotation marks omitted).

In sum, Plaintiff has failed to allege an unlawful horizontal agreement.[19] As such, Plaintiff has not

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[19] Plaintiff makes much of a letter written by the Department of Justice to FIFA and USSF on March 16, 2020. Am. Compl., Ex. 1. The letter, which is attached to Plaintiff's Amended Complaint, concerned a proposed rule that FIFA never adopted. The letter does not concern the FIFA Policy adopted in 2018 and does not contain any additional facts to support the existence of an unlawful vertical or horizontal agreement among

stated a claim for a violation of Section 1 of the Sherman Act.

CONCLUSION

For the foregoing reasons, Defendants' motions to dismiss Plaintiff's antitrust claim are GRANTED.

No later than **July 30, 2021**, Plaintiff must submit a letter indicating whether it intends to pursue its tort claim. If Plaintiff intends to pursue the tort claim in arbitration, this case will be stayed pending arbitration.

The Clerk of Court is respectfully directed to close the open motions at docket entries 65 and 68.

SO ORDERED.

FIFA, USSF, the regional confederations, National Associations, leagues, and teams to adhere to the Policy.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of May, two thousand twenty-three.

Relevent Sports, LLC, Plaintiff - Appellant,	
v.	**ORDER**
United States Soccer Federation, Inc., Federation Internationale de Football Association, Defendants - Appellees.	Docket No: 21-2088

Appellees, United States Soccer Federation Inc., and Federation Internationale de Football Association, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe
[Court's Seal Omitted]

[2020 WL 6566925]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RELEVENT SPORTS, LLC, Plaintiff, v. FÉDÉRATION INTERNATIONALE DE FOOTBALL ASSOCIATION and UNITED STATES SOCCER FEDERATION, INC., Defendants.	Civil Action No. 19-cv-8359 (VEC) **Amended Complaint**

Plaintiff Relevent Sports, LLC ("Relevent"), by its undersigned attorneys for its Amended Complaint, alleges as follows:

INTRODUCTION

1. This action seeks redress for Defendant Fédération Internationale de Football Association's ("FIFA") and Defendant United States Soccer Federation, Inc.'s ("USSF") violations of the federal antitrust laws (and USSF's violation of state tort

law[1]). Specifically, FIFA and USSF, in combination with numerous FIFA-affiliated men's top-tier professional soccer leagues and teams, including Major League Soccer ("MLS") and its teams, have entered into an agreement to divide geographic markets, including the United States market, which stifles competition in the U.S. The purpose and effect of Defendants' anticompetitive agreement is to thwart cross-border competition between top-tier men's professional soccer leagues and their teams. Absent this geographic market division, top-tier men's professional soccer leagues and teams would compete with each other to conduct official season games in the U.S.

2. The specific purpose and effect of FIFA's and USSF's geographic market division agreement is to block the efforts of Relevent, and companies like it, which have attempted to host and promote games in the U.S. that are part of the official season of a foreign top-tier men's professional soccer league. Indeed, this anticompetitive agreement was expressly formulated in 2018 in response to Relevent's efforts to organize and promote an official season foreign league game in the U.S. in competition with MLS.

3. By suppressing this competition, FIFA and USSF have maintained a monopoly in the relevant U.S. market for USSF's most prominent member, MLS, which is the only top-tier men's professional soccer league permitted by FIFA and USSF to conduct its official season games in the U.S. This geographic market division unreasonably restrains competition

[1] In light of the Court's order compelling arbitration and staying Plaintiff's tort claim, Plaintiff has left that claim materially unchanged herein.

in the U.S., reduces output below competitive levels in the relevant market, and directly inflicts antitrust injury on promoters, like Relevent (who directly participate in the relevant market) and on U.S. fans of top-tier men's professional soccer leagues.

4. Defendants' geographic market division agreement is effectuated both horizontally and vertically. Horizontally, it is an agreement among the FIFA-affiliated top-tier men's professional soccer leagues and their teams, who are actual and potential competitors with one another, to geographically allocate the markets in which they are permitted to stage official season games, including in the U.S. market. These leagues and teams have agreed, along with their respective FIFA-affiliated "National Associations," to adhere to the FIFA rules and policies establishing and enforcing the horizontal market division agreement.

5. Absent this anticompetitive horizontal agreement, and the available penalties to enforce it, a number of these leagues and their teams would compete with each other and with MLS to conduct official season games in the relevant U.S. market. Indeed, some of these leagues and teams, as described below, have already expressed a desire to conduct official season games in the U.S.—and to have them promoted by Relevent—but have been blocked and coerced from doing so by the prospect of FIFA penalties, which are used to enforce the unlawful market division agreement.

6. Vertically, the market division agreement is directed and facilitated by FIFA and carried out and enforced downstream through the agreement and actions of USSF, and FIFA's other National Associations, which agree to apply FIFA's market

division rules against their member leagues and teams. FIFA's enforcement of what amounts to a horizontal cartel agreement to divide markets is maintained by the threat of a group boycott and other FIFA penalties for any league, team or player who violates the market division agreement by playing in an unsanctioned official season game (and thus cheats on the cartel's rules).

7. Under the market division agreement, men's top-tier professional soccer leagues' official season games (i.e., regular season or tournament games which count towards the competing teams' official league or tournament records) are only permitted to be played in the geographic territory allocated to each league by FIFA and FIFA's National Associations. In the U.S., this means that only MLS—the sole men's professional soccer league sanctioned by USSF as top-tier (Division I)—and its teams are able to conduct official season games in this country. As a result, MLS faces *no* competition in the U.S. for men's top-tier official season professional soccer league games.

8. Defendants' market division agreement has prohibited, and continues to prohibit, foreign top-tier men's professional soccer leagues and teams—such as "La Liga" in Spain and "LigaPro Serie A" in Ecuador—from participating in official season games in the U.S. It further prohibits Relevent and other promoters like it from hosting and promoting such games. The agreement has thus suppressed competition and the output of men's top-tier official season professional soccer league games in the U.S., notwithstanding the significant demand for such games by U.S. fans and sponsors, and notwithstanding the desire of Relevent and others to

conduct and promote such games in competition with MLS.

9. Unsurprisingly, MLS—whose Commissioner serves on both the Board of USSF and one of the key FIFA policy-making Committees—has been directly involved in proposing, supporting, and implementing the unlawful market division agreement in order to shield itself from official season game competition.

10. The Antitrust Division of the U.S. Department of Justice has recently written to both FIFA and USSF to express its concern that the FIFA market division agreement could violate Section 1 of the Sherman Antitrust Act, as it precludes foreign top-tier men's professional soccer leagues from conducting official season games in the U.S. in competition with MLS and in competition with each other.[2]

11. Despite the Antitrust Division's warning, FIFA, USSF and their co-conspirators have continued their unlawful market division agreement, and have continued to apply it to prohibit any FIFA-affiliated foreign leagues and teams who seek to compete in the U.S. from playing such games in this country. Pursuant to this unlawful market division agreement, USSF has refused to grant a FIFA sanction for any official season games by foreign teams that Relevent has sought to host and promote in the U.S. If a game were played absent such a sanction, FIFA penalties would be applied to any of the game's participants.

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[2] A copy of the Department of Justice's communication to FIFA and USSF is attached hereto as Exhibit 1.

12. In this action, Relevent seeks a permanent injunction against the continued application and enforcement by FIFA and USSF of their unlawful geographic market division agreement, so that a FIFA sanction will be made available by USSF to any qualified promoter, such as Relevent, who seeks to host and promote official season games in the U.S. Such an injunction would permit all FIFA-affiliated leagues and teams to choose for themselves whether to participate in official season games in the U.S., in competition with MLS and each other.

13. Relevent also seeks treble damages for the antitrust injuries it has suffered as a result of Defendants' unlawful market division agreement, as Defendants have blocked each of Relevent's prior efforts to promote official season games in the U.S, causing Relevent to suffer significant antitrust injury to its business and property.

14. Section 1 of the Sherman Antitrust Act applies to Defendants' global market division agreement, which is expressly intended to cause, and has the effect of imposing, an unreasonable restraint of trade in the relevant U.S. market. This Court should thus grant a permanent injunction, treble damages, and other appropriate relief to prevent FIFA and USSF from continuing to violate U.S. antitrust law with impunity in the face of Department of Justice warnings.

15. Further, by participating in and enforcing the illegal market division agreement to block Relevent from promoting official season games in the U.S—i.e., by denying it a FIFA sanction for such games—USSF has tortiously interfered, and continues to tortiously interfere, with Relevent's

business relations in violation of New York state and other state tort laws.

PARTIES

Plaintiff Relevent Sports, LLC

16. Relevent is a limited liability company organized under the laws of the State of Delaware, with its principal place of business in New York, New York.

17. Since 2013, Relevent has organized and promoted the famed International Champions Cup (the "ICC"), an annual series of "friendly," *i.e.*, exhibition, men's professional soccer games between international teams staged throughout the world, including in the U.S. The 2019 edition of the ICC featured eleven "friendly" men's professional soccer games throughout the U.S., four in Asia, and three in Europe.

18. Relevent has also organized, promoted, and hosted three of the five highest-attended soccer games in the U.S. The 2014 "friendly" between Real Madrid (Spain) and Manchester United (England) still holds the attendance record for a soccer game in the U.S., with over 109,000 fans in attendance.

19. In 2018, Relevent and La Liga—Spain's top-tier men's professional soccer league—created a joint venture, La Liga North America, to market and promote La Liga in the U.S., and to bring official season La Liga soccer games to U.S. venues.

20. Such an official season game between La Liga teams in the U.S. would directly compete for fans and sponsors with the official season games of USSF-member MLS, which currently benefits from a monopoly position in the U.S. market—granted to it

by FIFA and USSF—for men's top-tier official season professional soccer league games.

21. Due to the market division agreement among USSF, FIFA, and FIFA's other National Associations—on behalf of their respective professional soccer leagues and teams—to prohibit all official season games outside of the participating league's and teams' home territory, Relevent has been blocked from conducting and promoting an official season game in the U.S. for teams from La Liga, LigaPro Serie A or any other foreign soccer league.

22. Should USSF's and FIFA's implementation and enforcement of their anticompetitive market division agreement be enjoined, Relevent is ready, willing and able to conduct and promote men's top-tier official season professional soccer league games in the U.S. that would not otherwise take place due to Defendants' anticompetitive agreement.

23. A number of foreign top-tier men's professional soccer leagues and their teams, including La Liga, Liga MX (Mexico) and LigaPro Serie A (Ecuador), would, if not blocked by the unlawful market division agreement, be interested in participating in official season games in the U.S. and have them organized and promoted by Relevent.

Defendant Fédération Internationale de Football Association

A. FIFA's Organizational Structure and Rule-Making Procedures

24. FIFA is a private international membership-based association, which identifies itself as "an association registered in the Commercial

Register of the Canton of Zurich in accordance with art. 60 ff. of the Swiss Civil Code."[3]

25. FIFA is a self-declared, international governing body for soccer and is organized as a private membership-based association. Its voting members are the over 200 National Associations that FIFA authorizes to act on its behalf in countries around the world, including USSF in the U.S.

26. FIFA's National Association members vote upon and agree to adhere to and enforce numerous policies and rules which regulate the soccer leagues and teams that are members of the National Associations. Many of these policies, such as the rules of the game itself (e.g., the size of the field, the number of players, etc.) are benign. But other FIFA rules and policies have an economic purpose and effect, and when they seek to restrain economic competition among the professional leagues and teams that are National Association members, they must comply with applicable competition laws in the jurisdictions in which the rules are applied.

27. FIFA's rules and policies do not have any governmental or statutory source of authority.

28. To help adopt, enforce and effectuate FIFA rules and policies, FIFA's National Association members belong to a network of six regional governing bodies (known as "Confederations"). The regional Confederations assist FIFA in enforcing its policies and rules at (roughly) the continental level. The Confederation that covers North American soccer is the Confederation of North, Central and Caribbean

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[3] FIFA STATUTES, at 10, Art. I.1(1) (June 2019).

Association Football ("CONCACAF"). USSF has been a member of CONCACAF since 1961.

29. Each FIFA National Association is a membership-based association, made up of, among other members, professional soccer leagues and/or teams based in the National Association's territory. To compete in any FIFA-affiliated events, a professional soccer league and its teams must be sanctioned by their corresponding National Association and FIFA.

30. Each National Association is authorized by its members, including professional leagues and teams, to act as its members' representative in FIFA decision-making, including by exercising the National Association's right to vote in the FIFA Congress and to elect or appoint members to FIFA decision-making bodies and committees in order to establish, agree to and enforce FIFA's rules and policies.

31. Each National Association is authorized to represent FIFA in the geographic territory to which it has been assigned. USSF has been the FIFA-authorized National Association for the U.S. since 1914.

32. FIFA's self-described "supreme and legislative body"[4] is the FIFA Congress. Each National Association, including USSF, is provided one vote in the FIFA Congress.[5] And, each National Association, including USSF, selects a delegate to represent it in the FIFA Congress.[6]

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[4] FIFA STATUTES at 27, Art. V.24(1).

[5] *Id.* at 28-29, Art. V.26(1).

[6] *Id.* at 29, Art. V.26(2).

33. The FIFA Congress is responsible for adopting and amending the FIFA Statutes, which contain many of FIFA's rules and policies.[7] A proposal to adopt or amend the Statutes is effective if it is approved by three-quarters of the National Associations present to vote.[8]

34. Under the agreed-upon FIFA Statutes, each National Association is required to agree to "comply fully with the Statutes, regulations, directives and decisions of FIFA bodies at any time . . . ."[9] Each National Association, in turn, agrees to require its members to agree to comply with FIFA's Statutes, regulations, directives and decisions.[10] Failure to adhere to FIFA's policies and rules can result in suspension or expulsion from FIFA.[11]

35. USSF's Bylaws require USSF and its members to agree to adhere to all FIFA rules and policies so long as such rules and polices are in compliance with applicable law.[12]

36. The FIFA Council is one of the "FIFA bodies" that has authority to interpret the FIFA Statutes and to adopt rules and policies not specifically addressed in the FIFA Statutes. The Council is made up of individuals elected by the

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[7] *Id.* at 33, Art. V.29(1).

[8] *Id.* Art. V.29(4).

[9] *Id.* at 16, Art. II.14(1)(a).

[10] *Id.* at 14, Art. II.11(4)(a).

[11] *Id.,* at 18-19, Art. II.16-17.

[12] BYLAWS OF THE UNITED STATES SOCCER FEDERATION, INC., Bylaw 103 § 1 ("[USSF] and its members are, to the extent permitted by governing law, obliged to respect the statutes, regulations, directives and decisions of FIFA . . . and to ensure that these are likewise respected by their members.").

members of each of the six Confederations.[13] Each National Association is entitled to submit one candidate for the Council to its Confederation.[14] There are 37 members of the Council, five of whom are elected by the North American Confederation's (CONCACAF) National Association members.[15]

37. On October 26, 2018, the FIFA Council adopted a policy embodying the anticompetitive market division agreement at issue in this case, which prohibits official season games from being played anywhere except the territory allocated to the participating league and teams. The Council did so in direct response to the efforts of Relevent, from its headquarters in this District, to organize and promote an official La Liga soccer game in the U.S., which is outside of La Liga's allocated territory (Spain).

38. Sunil Gulati—who served as USSF President from 2006 until 2018, and was a member of the USSF Board of Directors—has served on the FIFA Council as a representative of CONCACAF and USSF since 2013. From MLS's inception in 1995 until 2014, Mr. Gulati held high-level roles in MLS and its teams, including serving as the first deputy commissioner of MLS from 1995 to 1999 before working for Kraft Soccer Group, an MLS team investor-operator, where he held multiple positions, including President.

39. Mr. Gulati participated in the FIFA Council's consideration and adoption of the geographic market division agreement in October 2018, with the goal of shielding USSF's sole Division

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[13] FIFA STATUTES at 30, Art. V.27(3).

[14] *Id.*

[15] *Id.* at 36, Art. V.33(1), (4).

I league, MLS, from official season games competition from foreign leagues.

40. Mr. Gulati is a resident of this District and, upon information and belief, has regularly conducted business in his role on the FIFA Council from this District.

41. Other members of the FIFA Council at the time of the adoption of the unlawful geographic market division agreement included, among others:

- David Gill. From 2012 to 2017, Mr. Gill was Vice President of England's National Association—the English Football Association—of which all professional soccer teams in England are members. Mr. Gill was succeeded in his role on the FIFA Council in 2019 by Greg Clarke who simultaneously serves as the Chairman of the English Football Association.
- Fernando Gomes, President of the National Association governing soccer in Portugal—Federação Portuguesa de Futebol—which reserves one of its Vice President positions (and board seats) for the President of the top-tier men's professional soccer league in Portugal.
- Vittorio Montagliani, President of CONCACAF and previously the President of Canada's National Association—the Canadian Soccer Association—of which all Canadian professional soccer teams, including the three that play in MLS, are members. The Canadian Premier League,

Canada's only professional soccer league, is also a Canadian Soccer Association member.

- Kohzo Tashima, President of Japan's National Association—the Japan Football Association—of which all professional soccer teams, as well as Japan's top-tier men's professional league, the J1 League, are members.

42. The FIFA Council adopted the market division policy at the urging of the FIFA Football Stakeholders Committee. The Stakeholders Committee is a "Standing Committee" tasked with "advis[ing] and assist[ing] the FIFA Council in their respective fields of function" and to "deal with football matters, particularly the structure of the game and the relationship between clubs, players, leagues, member associations, confederations and FIFA as well as with issues relating to the interests of club football worldwide."[16]

43. The FIFA Football Stakeholders Committee was created in 2016 upon a vote of FIFA's National Associations.[17] Since its inception, the Committee has been chaired by Vittorio Montagliani, who serves as Vice President of FIFA, President of CONCACAF, and previously served as the President of the Canadian Soccer Association, which has three MLS teams as members.

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[16] *Id.* at 44, Arts. V.39(1)(e), V.39(2), V.44. "Club football" refers to professional soccer leagues.

[17] *First meeting of the FIFA Football Stakeholders Committee*, FIFA.COM (Mar. 23, 2017), https://www.fifa.com/who-we-are/news/first-meeting-of-fifa-football-stakeholders-committee-2876941.

44. At all relevant times before March 2020, USSF has had two members on the FIFA Football Stakeholders Committee: MLS Commissioner and USSF Board member Don Garber and then-USSF President Carlos Cordeiro. Mr. Garber also serves on the Stakeholders Committee as a representative of the World League Forum, which he co-chairs. The World League Forum is a collective of 42 men's professional soccer leagues around the world, including MLS, which represents approximately 1,100 men's professional soccer teams.

45. Messrs. Cordeiro and Garber are residents of the U.S. and, upon information and belief, regularly conducted FIFA Football Stakeholders Committee business in the U.S. Mr. Garber did so from his office at MLS Headquarters in this District, which is his primary place of business.

46. The FIFA Football Stakeholders Committee has taken a number of actions to support the adoption, implementation, enforcement—and, most recently, the strengthening—of the geographic market division agreement being challenged in this action.

47. Other members of the FIFA Football Stakeholders Committee who participated in the Committee's actions to support the adoption, implementation, enforcement and strengthening of the market division agreement include the following:

- Ivan Gazidis, who between 2018 and today has served in executive roles for Arsenal, a top-tier English men's professional team, and A.C. Milan, a top-tier Italian men's professional team. Mr. Gazidis was a member of the MLS

management team from its founding and, in 2001, became its deputy commissioner, a position in which he served until the end of 2008.

- Fernando Gomes, President of the National Association governing soccer in Portugal—Federação Portuguesa de Futebol.
- Vittorio Montagliani, President of CONCACAF and previously the President of the Canadian National Association—the Canadian Soccer Association—of which all of Canada's professional soccer teams, including the three that play in MLS, are members.
- Claudius Schaefer, CEO of the Swiss Football League, which includes the top-tier men's professional soccer league in Switzerland.
- Christian Seifert, CEO of the Deutsche Fußall Liga—which includes the top-tier men's professional soccer league in Germany. Mr. Seifert also serves as the Vice President of the German National Association—the Deuscher Fußall-Bund—and as Mr. Garber's co-chair of the World League Forum.

48. On February 27, 2020, the FIFA Football Stakeholders Committee—with the participation of Messrs. Garber and Cordeiro as USSF representatives—recommended that the market division agreement be further strengthened by

formally adding it as an amendment to the FIFA Statutes.[18]

49. This action was taken in response to Relevent's continuing efforts, from its headquarters in this District, to seek to promote foreign leagues' and teams' official season games in the U.S.

50. Mr. Garber engaged in preparation for this recommendation in his role on the FIFA Football Stakeholders Committee while in this District. Indeed, Mr. Garber spoke publicly from this District about his intention to support the efforts to have the geographic market division agreement made a formal part of the FIFA Statutes.

51. Specifically, Mr. Garber stated that "the respective leagues don't believe it's in their best interest" to permit official season games to be held outside of their home markets. He further stated that "[t]here might be one or two" leagues that feel differently, but indicated that MLS was not one of them.[19] This was an admission by Mr. Garber, made in this District as a member of the FIFA Football Stakeholders Committee, and representative of USSF, of his intention to use the FIFA market division agreement to shield MLS from official games competition in the U.S. from those FIFA-affiliated leagues who "feel differently."

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[18] Jeff Carlisle, *FIFA urged to ban staging of league games in other countries,* ESPN.COM (Feb. 27, 2020), https://www.espn.com/soccer/blog-fifa/story/4061817/fifa-urged-to-ban-staging-of-league-games-in- other-countries.

[19] Jeff Carlisle, *MLS' Don Garber against staging league games in other countries,* ESPN.COM (Feb. 26, 2020), https://www.espn.com/soccer/major-league-soccer/story/4061460/mls-don-garber-against-staging-league-games-in-other-countries.

B. FIFA's Substantial Business Connections to this District

52. FIFA regularly conducts business in the U.S., including in this District, both through its own actions and through the actions of FIFA's National Association member USSF and members of FIFA decision-making bodies who reside in the U.S.

53. FIFA's actions to adopt and enforce the market division agreement, as set forth above, were taken in direct response, and with the specific intent, to block the efforts of Relevent, acting out of its headquarters in this District, to seek to promote official season games in the U.S.

54. FIFA carries out many of its actions in the U.S. through USSF, which is incorporated as a New York State non-profit. As FIFA's National Association in the U.S., USSF is vested with the exclusive authority to sanction, on behalf of FIFA, all men's professional soccer leagues and games played in this country. In this regard, USSF, acting on behalf of FIFA, and pursuant to the market division agreement, has refused to sanction the official season games which Relevent, from its headquarters in this District, has sought to promote in the U.S.

55. USSF, on behalf of FIFA, has also sanctioned MLS—which is headquartered in this District and features a team that plays its home games in this District (at Yankee Stadium)—as the sole Division I men's professional soccer league in the U.S.

56. Another way that FIFA conducts business in New York and this District is through its licensing of official FIFA Match Agents. Under USSF's rules, every foreign soccer league or team that wishes to

play a game in the U.S. must have the game promoted and organized by a licensed FIFA Match Agent.[20]

57. One of FIFA's licensed Match Agents is Mr. Charles Stillitano, who is the FIFA Match Agent employed by Relevent in this District. It was Mr. Stillitano—along with Relevent—who was the Match Agent listed on each of the official season game sanctioning applications that Relevent submitted and that USSF has refused to sanction on behalf of FIFA because such games are prohibited by the market division agreement.

58. Besides Mr. Stillitano, FIFA has three other licensed Match Agents in this District, where they are overseen by FIFA and carry out their Match Agent business under the auspices of, and for the benefit of, FIFA.

59. FIFA also oversees thirteen licensed Match Agents in the U.S. outside of New York, each of whom carries out their Match Agent business in this country on FIFA's behalf.

60. In addition, FIFA conducts business in the U.S. and in this District by authorizing USSF to sanction, on its behalf, FIFA-sanctioned soccer games. Since 2013, six "friendlies"—exhibition games—have been sanctioned to take place in this District by USSF on behalf of FIFA, which were played in Yankee Stadium. Between 2013 and 2019 alone, USSF sanctioned scores of soccer games in the U.S. on behalf of FIFA.

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[20] *International Games Approval Process*, USSOCCER.COM, https://www.ussoccer.com/federation-services/international-games/hosting-international-matches (last visited Aug. 31, 2020)

61. According to its 2018 Financial Report, between 2016 and 2018, FIFA provided nearly $3 million in funding for soccer development in the U.S. Upon information and belief, FIFA's funding of soccer in the U.S. continues at a similar rate through today, and a portion of this funding has been dispensed to promote soccer in this District.

62. FIFA is currently a party to broadcasting agreements with New York-based FOX and NBCUniversal (Telemundo) worth approximately $1 billion. Upon information and belief, FIFA has participated in negotiations that took place in this District and otherwise communicated directly with FOX and NBCUniversal executives in this District in order to enter into and maintain these broadcast agreements.

63. On June 13, 2018, the FIFA Congress announced that its most prestigious tournament, the FIFA World Cup, will be hosted jointly by the United States, Canada and Mexico in 2026. Upon information and belief, FIFA officials participated in meetings in this District and in other locations in the U.S. in connection with FIFA's consideration of the U.S. bid to host this tournament. The FIFA World Cup is the source of the vast majority of FIFA's revenues.

64. New York City is one of the locations being considered by FIFA to serve as a "Host City" for the 2026 World Cup. Upon information and belief, FIFA officials have visited this District as part of FIFA's 2026 "Host City" considerations. FIFA officials also visited New York City when the U.S. was under consideration as a possible host for the 2018 and 2022 FIFA World Cups. And, New York City was

previously selected as a Host City by FIFA for the 1994 FIFA World Cup.

65. In 2019, FIFA hired New York-based Raine Group to help it organize a Club World Cup event. Upon information and belief, FIFA officials have met with Raine Group employees in this District and have otherwise communicated with Raine Group employees in this District to help plan this event, which is expected to involve 24 professional league-affiliated soccer teams from around the world competing to become the FIFA Club World Champion.

Defendant United States Soccer Federation, Inc.

66. Defendant USSF is a not-for-profit corporation organized under the laws of the State of New York, with its principal place of business in Chicago, Illinois.

67. USSF is a private, membership-based association, which includes among its members men's professional soccer leagues, such as MLS.

68. Based on the authority granted to the United States Olympic Committee by the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C. § 220501 *et seq*. (1998) ("Ted Stevens Act"), USSF is also recognized as the National Governing Body ("NGB") for amateur soccer in the U.S.

69. However, the Ted Stevens Act does not provide any authority for USSF to regulate or sanction professional soccer league games or events. Instead, USSF claims such authority from its membership as a National Association of FIFA.

70. USSF exercises the authority to act on behalf of FIFA as its National Association in the U.S. and, among other things, uses that FIFA authority to

sanction—or refuse to sanction—professional soccer league games played in the U.S. All of the most successful and prominent professional soccer leagues and teams in the world are affiliated with FIFA through one of FIFA's National Associations, and such leagues and teams have agreed, or have been coerced to agree, that they will not participate in unsanctioned official season games in the U.S. because of the group boycott and other penalties imposed by FIFA to enforce its geographic market division agreement.

71. Pursuant to its agreements with FIFA and FIFA's other National Association members, USSF has utilized its authority to enforce FIFA's geographic market division policy and to protect MLS from official season games competition in the U.S. by refusing to sanction official season games sought to be promoted by Relevent.

72. USSF is governed by a Board of Directors.

73. From February 2018 to March 2020, Carlos Cordeiro was the President of USSF. As President, Mr. Cordeiro was a voting member of the USSF Board of Directors.[21] In addition to that role, Mr. Cordeiro served as a member of the FIFA Football Stakeholders Committee where he advocated in support of the adoption of the FIFA market division policy on behalf of USSF and MLS.

74. From 2006 to 2018, Sunil Gulati served as President of USSF. Mr. Gulati also had a longstanding involvement in the administration of MLS. He was one of the original employees of MLS after its creation in 1994 and served as its first deputy

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[21] USSF BYLAWS at 21, § 412(1).

commissioner until 1999. From 1999 until 2014, Mr. Gulati held various positions, including President, with Kraft Soccer Properties, which owned one or more teams in MLS during Mr. Gulati's tenure. From 2006 until 2014, he maintained his role with Kraft Soccer Properties while simultaneously serving as President of USSF.

75. Although Mr. Gulati is no longer President of USSF, his status as "past President of the Federation" entitles him to a vote on the USSF National Council,[22] which is responsible for, among other things, "amend[ing USSF's] Bylaws."[23]

76. In addition, from February 2018 until March 2020, Mr. Gulati—as "immediate past president" of USSF—was a non-voting member of the USSF Board of Directors, which entitled him to participate in all USSF affairs, including meetings of the Board of Directors.[24]

77. In 2013, while serving as USSF President and working for MLS's Kraft Soccer Properties, Mr. Gulati was elected to the FIFA Council.[25] In 2013 and 2014, Mr. Gulati simultaneously served on the FIFA Council, as USSF President and held a position with Kraft Soccer Properties.

78. Mr. Gulati has continuously held his position on the FIFA Council through today and has been an advocate, on behalf of USSF and MLS, in

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[22] *Id.* at 12, § 302(4).

[23] *Id.* § 301(2).

[24] *Id.* at 21, § 412(3).

[25] *Sunil Gulati elected to FIFA executive committee* SPORTS ILLUSTRATED (Apr. 19, 2013), https://www.si.com/soccer/2013/04/19/sunil-gulati-fifa-executive-committee.

support of the FIFA Council's adoption of the geographic market division policy to protect MLS from official season games competition in the U.S.

79. Don Garber, whose primary place of business is in this District at MLS Headquarters, serves on the USSF Board of Directors in his role as Chairman of the USSF Professional Council.[26] Mr. Garber is also the Commissioner of MLS and the CEO of MLS's marketing and promotion arm, Soccer United Marketing ("SUM").

80. SUM is an actual and potential competitor of Relevent for the promotion of men's top-tier official season professional soccer league games in the U.S., and MLS is the sole top-tier (Division I) men's professional soccer league sanctioned by USSF to conduct official season games in the U.S.

81. Since its inception, Mr. Garber has been one of two USSF representatives on the FIFA Football Stakeholders Committee. As set forth in paragraphs 42-51 above, the Committee, with Mr. Garber's active participation on behalf of USSF and MLS, issued a recommendation to the FIFA Council to adopt the geographic market division policy in 2018, and more recently in February of 2020, to recommended that this anticompetitive policy be codified in the FIFA Statutes, in order to maximize the protection of MLS from official season games competition in the U.S.

<u>JURISDICTION AND VENUE</u>

82. This Court has subject matter jurisdiction over Relevent's antitrust claim pursuant to 28 U.S.C. §§ 1331 and 1337 because Relevent's claim arises under laws of the U.S. that regulate commerce and

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[26] *Id.* at 21, § 412(6).

protect commerce against restraints and monopolies: Section 4 of the Clayton Act (15 U.S.C. § 15), Section 16 of the Clayton Act (15 U.S.C. § 26) and Section 1 of the Sherman Act (15 U.S.C. § 1). This Court has supplemental jurisdiction over Relevent's state-law tort claim pursuant to 28 U.S.C. § 1367 because such claim arises from the same case or controversy as the antitrust claim.

83. This Court has *in personam* jurisdiction over Defendant USSF because USSF (a) transacts substantial business in this District; (b) is incorporated in this District under New York law; (c) engages in antitrust violations in substantial part in this District; (d) organizes and holds games in this District, including games in the Lamar Hunt U.S. Open Cup; (e) sanctions entities and games in this District and receives sanctioning fees for men's professional soccer games played in this District, including for the games of the ICC (promoted by Relevent); (f) adheres to and implements the FIFA geographic market division agreement that is expressly aimed at, is intended to have, and has had, an anticompetitive effect on commerce in this District (including by precluding competition from Relevent, which is headquartered in this District); and (g) has substantial aggregate contacts with the U.S., generally, including in this District.

84. This court has *in personam* jurisdiction over Defendant FIFA because FIFA (a) transacts substantial business in this District, including through: its multi-year billion-dollar television contracts with New York-headquartered entities; its licensing and overseeing the activities of four Match Agents in this District, including Mr. Stillitano; its work with New York City-based Raine Group in

connection with the FIFA Club World Cup; its continuous funding of soccer development in this District; and its continuous business activities in this District in connection with the 2026 FIFA World Cup; (b) authorizes USSF, a New York entity, to act on its behalf to sanction and hold games in this District, including games for the Lamar Hunt U.S. Open Cup; (c) authorizes USSF, a New York entity, to act as its National Association in the U.S., including in this District; (d) authorizes USSF, a New York entity, to act on its behalf to sanction professional soccer leagues in the U.S. and this District (such as MLS, which is headquartered in this District); (e) engages in the FIFA geographic market division conspiracy that is expressly aimed at, is intended to have, and has had, an anticompetitive effect on commerce in this District by, among other things, blocking official season soccer games sought to be promoted by Relevent and Mr. Stillitano from this District; (f) further engages in the FIFA geographic market division agreement through the actions taken by USSF, a New York entity, to implement the agreement (including its refusal to sanction the official season games sought to be promoted by Relevent from its headquarters in this District), and through the participation in this District, by Sunil Gulati (on the FIFA Council) and by Don Garber (on the FIFA Football Stakeholders Committee), to adopt and implement the geographic market division agreement directed at Relevent in this District and (g) has substantial aggregate and regular business contacts with the U.S., generally.

85. Venue is proper in this Court pursuant to Section 12 of the Clayton Act (15 U.S.C. § 22), 28 U.S.C. §§ 1391(b), (c) and (d), and N.Y.C.P.L.R.

§ 302(a)(1) because a substantial part of the events giving rise to Relevent's claims occurred in this District, a substantial portion of the affected interstate trade and commerce has been carried out in this District, USSF and FIFA have each aimed their anticompetitive conduct at Relevent in this District, and USSF and FIFA each do business in, have agents in, and are found in or transact business in this District. Relevent also has its principal place of business in this District.

THE FIFA MARKET DIVISION AGREEMENT AND ITS ANTICOMPETITIVE EFFECTS IN THE RELEVANT MARKET

A. USSF, Together with FIFA, Exercises Market Power to Control Access to the Relevant Market for Men's Top-Tier Official Season Professional Soccer League Games in the U.S. and Has Granted a Monopoly Position in this Market to MLS

86. The relevant product and geographic market in which USSF's and FIFA's conduct has unreasonably restrained competition is the market for men's top-tier official season professional soccer league games in the U.S.

87. The consumers in the relevant market include fans who purchase, or would purchase, tickets to men's top-tier official season professional soccer league games played in the U.S. and sponsors who purchase, or would purchase, the promotional and other benefits of association with such games played in the U.S.

88. The actual and potential competitors in the market for men's top-tier official season professional

soccer league games played in the U.S. include (1) MLS—which is the only Division I men's professional soccer league sanctioned by USSF to play official season games in the U.S.— and its teams; and (2) foreign top-tier men's professional soccer leagues and their teams, working in combination with promoters like Relevent and Match Agents like Mr. Stillitano, who seek to organize and promote top-tier official season professional soccer league games in the U.S.

89. FIFA and USSF—acting on behalf of their respective competing members—have bestowed a monopoly position in the relevant market on MLS, as it is the only league they have sanctioned to conduct men's top-tier official season professional soccer league games in the U.S., while their geographic market division agreement prevents any other men's top-tier professional soccer league from playing official season games in the U.S. in competition with MLS.

90. The only exception has been for MLS's marketing affiliate SUM (an entity owned by MLS's investors), which has been sanctioned by USSF and FIFA to host and promote certain post-season official season games in the U.S. played by Mexico's top-tier men's professional soccer league, Liga Mx, *i.e.*, its annual championship game. This single exception to the FIFA geographic market division agreement illustrates how a central anticompetitive objective of the agreement has been to bestow a monopoly position in the U.S. on MLS and its marketing affiliate SUM.

91. USSF had an economic motive to advocate for and then use the geographic market division policy to protect MLS and SUM from official season games

competition because USSF is economically intertwined with and dependent upon MLS and SUM. Specifically, USSF and SUM have a longstanding agreement under which SUM conducts all of the marketing and promotion, including the sale of broadcasting and sponsorship rights, for USSF with respect to the U.S. Women's and Men's National Teams in exchange for a substantial annual guaranteed rights fee paid by SUM to USSF. That payment constitutes the single largest source of USSF's annual revenues. Further, SUM markets USSF's broadcast and sponsorship rights in combination with the rights of MLS so that USSF has a substantial economic linkage to the success of MLS itself.

92. Absent the anticompetitive FIFA market division agreement, promoters like Relevent would be able to host and promote foreign men's top-tier official season professional soccer league games in the U.S. These games would compete with MLS's official season games and with each other.

93. The FIFA geographic market division policy has created a barrier to entry which has prevented leagues and teams that do not want to adhere to this policy from competing in the relevant market. Indeed, these leagues and teams are coerced into complying with the FIFA market division policy by the threat of a group boycott and other penalties that may be imposed on any league or team that violates the policy.

94. Men's top-tier professional soccer league games have attributes that distinguish them in the eyes of consumers from non-soccer professional sporting events held in the U.S. Such other professional sports have different rules of play and

competitive attributes that are not reasonably interchangeable with men's top-tier professional soccer league games and do not serve as close substitutes for those games. Fans and sponsors of men's top-tier professional soccer league games played in the U.S. do not view other professional sports as close substitutes, and there is no cross-elasticity of demand between men's top-tier professional soccer league games and other professional sports in this country, such as Major League Baseball, the National Basketball Association, the National Football League and the National Hockey League.

95. Men's top-tier professional soccer league games are also distinct from, and not close substitutes for, Women's and Men's National Team soccer games because fans and sponsors draw a distinction between men's professional soccer league games played in the U.S. and National Team games played in the U.S. and do not view such games as being interchangeable with one another. Men's top-tier professional soccer league games are also distinct from lower-tier men's professional soccer league games and collegiate soccer games, which are viewed by fans and sponsors as presenting a lower quality or minor league product in comparison to top-tier men's professional soccer league games.

96. There is also a distinction between official season games of men's top-tier professional soccer leagues—regular season or post season games which affect the official standing of teams in their leagues or tournaments—and "friendly," *i.e.*, exhibition, games played by teams in these leagues. The reason is that official season games have a direct impact on the standing and success of the game's participants.

Friendly games, by contrast, do not have the same "high stakes" for the teams and players involved and thus often do not feature the participating teams' best players or strongest lineups and are frequently used as opportunities to experiment with new team strategies or help players get into game shape. Due to these differences, friendlies are not viewed by fans and sponsors as being interchangeable with official season games and there is no cross-elasticity of ticket or stadium sponsor demand between these different types of games.

97. The relevant market is geographically limited to the U.S. and does not include professional soccer league games, including men's top-tier professional soccer league games, that take place outside of the U.S., because such games outside the U.S. do not permit regular attendance by U.S. fans or the purchase of on-site stadium sponsorships in the U.S.

98. To remain affiliated with and avoid penalties from FIFA, all of FIFA's National Associations, leagues, teams and players must agree to comply with FIFA's rules and policies, including its geographic market division policy and its rule prohibiting teams and players from competing in any games in the U.S. that are not sanctioned by USSF on behalf of FIFA. This enforced agreement to adhere to the FIFA market division policy has suppressed competition and reduced output in the relevant market.

99. Although USSF's Bylaws only bind USSF to adhere to FIFA polices and rules that do not violate

applicable U.S. law,[27] USSF has been a willing sponsor of, and participant in, the FIFA geographic market division agreement because of its desire to protect MLS from official season games competition. Indeed, Messrs. Garber, Gulati and Cordeiro have each advocated on behalf of USSF in favor of the adoption and enforcement of the FIFA market division policy for the specific purpose of blocking Relevent's efforts to promote official season games in competition with MLS. USSF has been a strong supporter of the FIFA market division policy and its participation in this anticompetitive agreement has not been the result of coercion.

100. While there are some FIFA-affiliated leagues and teams that have indicated they would like to play official season games in the U.S. in competition with MLS, they have been blocked from doing so by the FIFA geographic market division policy and the knowledge that any violation of FIFA's rules or policies—such as by playing in an unsanctioned game in the U.S.—would subject the league, its teams and their players to FIFA penalties and discipline.[28] For example, a league that does not follow FIFA rules or policies may be subject to discipline.[29] And a player who competes in a game not sanctioned by FIFA's authorized designee, such as USSF, risks being deemed ineligible to participate in prestigious FIFA-sanctioned competitions, including

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[27] USSF BYLAWS at 1, § 103(1).

[28] FIFA STATUTES, at 17, Art. II.14(2).

[29] FIFA STATUTES, at 18-19, Art. II. 16(1), 17(1)(b); FIFA DISCIPLINARY CODE at 14-15, tit. II.15(1).

the FIFA World Cup, or being deemed ineligible to be transferred to a FIFA-affiliated team.[30]

101. Because of these penalties and threats, an official season soccer game in the U.S. not sanctioned by USSF on behalf of FIFA cannot obtain the participation of top-tier teams with the highest quality players. The result is that USSF, by virtue of the sanctioning authority vested in it by FIFA, has monopoly power to control access to the relevant market for men's top-tier official season professional soccer league games played in the U.S. As USSF recently told the New York Supreme Court, it "has exclusive authority to sanction international soccer games played in the United States." That authority, which it exercises on behalf of FIFA, gives USSF the ability to control entry and access to the relevant market and it has used that power, pursuant to the FIFA market division policy, to bestow and maintain a monopoly position in the relevant market for MLS.

B. Relevent's Soccer Game Event Business

102. Relevent's business centers on organizing and promoting international soccer games and events in the U.S. and around the world. Since its founding in 2012, Relevent has been responsible for the successful presentation of over 100 soccer events in the U.S., including several iterations of the ICC, a "friendly" men's professional soccer tournament featuring premier European men's club teams playing in the U.S., Canada, Asia and Europe.

103. Apart from the ICC, Relevent's business prioritizes providing U.S. soccer fans with consistent

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[30] FIFA DISCIPLINARY CODE, tit. 6-7, 1.6(c) (players may be banned from "taking part in any football-related activity").

access to high quality live games. For example, since 2013, Relevent has been responsible for organizing and promoting "friendly" men's professional soccer games in America for the Brazilian Men's National Team, routinely one of the top-ranked men's national teams in the world and the only national team to have won five FIFA World Cup titles.

104. Building on its successes in promoting "friendly" men's professional soccer games and tournaments in the U.S. and elsewhere, the next step for Relevent's business was to provide logistical and marketing support, as well as a registered FIFA Match Agent, to promote official season games by foreign leagues and teams seeking to play such games in the U.S. Despite opportunities for these games to become a reality, USSF and FIFA, in carrying out the anticompetitive market division agreement, have blocked Relevent and other promoters from offering such games to the many consumers and businesses in the U.S. who would like to attend or sponsor them.

C. <u>MLS's and SUM's Business and Close Economic Ties to USSF</u>

105. SUM, the marketing affiliate of MLS, has been described by FIFA's Confederations as the "preeminent commercial soccer enterprise in North America, overseeing the marketing, promotion and operational execution of the region's most successful soccer entities."

106. Since the early 2000s, SUM has had the exclusive right to market USSF's sponsorship and broadcast rights and bundle them with those of MLS and others—including the Mexican National Team—to offer a single package of these rights to sponsors and broadcasters. In exchange, SUM has committed

to pay tens of millions of dollars to USSF each year in guaranteed payments.

107. This arrangement effectively ties the economic fortunes of USSF to those of SUM and MLS and incentivizes USSF to promote, participate in and adhere to the FIFA market division agreement, which protect MLS's and SUM's monopoly position in the market for men's top-tier official season professional soccer league games in the U.S.

108. According to USSF's most recent Audited Financial Statement:

> [T]hird-party sponsorship, television and licensing revenues (for example, excluding those received from Nike) are paid to SUM, and SUM pays USSF annual guaranteed compensation . . . Revenue under the agreement approximated $28,500,000 and $27,250,000 for the years ended March 31, 2019 and 2018, respectively.[31]

109. SUM CEO Don Garber has stated that, by the conclusion of the current SUM-USSF agreement, SUM will have paid USSF nearly $300 million in guaranteed payments irrespective of the value realized by SUM. As Garber further explained, this guaranteed revenue is particularly important to the economic fortunes of USSF in years where it would otherwise struggle to generate its expected media and sponsorship revenues, such as in 2018 when one of USSF's most valuable assets, the U.S. Men's National Team, failed to qualify for the World Cup.

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[31] USSF Consolidated Financial Statements 2019 at 13 (Mar. 31, 2019), https://www.ussoccer.com/governance/financial-information (last visited Aug. 31, 2020).

110. With SUM's guarantee making up the largest single source of USSF's annual revenue, the USSF-SUM relationship provides USSF with a material economic incentive to promote, participate in and adhere to the FIFA market division agreement, which provides MLS and SUM with protection from any competition from foreign league official season games sought to be promoted by Relevent or other actual or potential competitors in the relevant market.

D. The Conspiracy Between and Among USSF, FIFA, FIFA's Other National Associations, and their Leagues and Teams, to Divide Geographic Markets and Restrict Output for Men's Top-Tier Official Season Professional Soccer League Games in the U.S.

i. USSF Has Agreed with FIFA and the Other National Associations and Their Member Leagues and Teams to Divide Geographic Markets and Refuse to Sanction Any Foreign League's or Teams' Official Season Games in the U.S.

111. In August 2018, after Relevent and La Liga agreed to host an official season La Liga game in the U.S. between FC Barcelona and Girona FC, Relevent met with USSF to indicate that it would be seeking a USSF sanction for the event. In response, USSF President Carlos Cordeiro instructed Relevent to first obtain approvals from the FIFA's National Association for Spain (Real Federación Española de Fútbol, "RFEF") and the FIFA Confederation for Europe (the Union of European Football Associations, "UEFA")—before making such a proposal to USSF.

112. In reality, USSF had no desire to grant the sanction to Relevent, as such a sanction would permit a top-tier foreign professional soccer league and its teams to compete with MLS and its teams in the U.S. market for men's top-tier official season professional soccer league games. USSF wanted to protect MLS (and SUM) from such competition and it was buying time to seek a new FIFA geographic market division agreement to block such competition.

113. USSF found an ally for its efforts to protect MLS from competition at the highest levels of FIFA. Indeed, shortly after Relevent met with Cordeiro, FIFA President Gianni Infantino indicated his desire to shield MLS from competition when he stated: "I think I would prefer to see a great MLS game in the U.S. rather than La Liga being in the U.S . . . ."[32]

114. USSF, CONCACAF and RFEF—recognizing that there was no FIFA policy in place to block Relevent and La Liga from conducting an official season La Liga game in the U.S.— referred the issue to the FIFA Council. Upon information and belief, they knew that the FIFA Council would look to the FIFA Football Stakeholders Committee—where Mr. Garber and Mr. Cordeiro would advocate for a new geographic market division policy—and that Mr. Gulati and other USSF and MLS allies would push the policy through in the FIFA Council so that it would protect MLS.

115. Upon information and belief, Messrs. Garber, Cordeiro and Gulati were supporters of the

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[32] Adriana Garcia, *FIFA chief Gianni Infantino expresses doubt over La Liga game in U.S.*, ESPN.COM (Sept. 17, 2018), https://www.espn.com/soccer/blog-fifa/story/3636865/fifa-chief-gianni-infantino-expresses-doubt-over-la-liga-game-in-us.

market division policy because USSF and MLS wanted it in place to block Relevent from promoting men's top-tier official season professional soccer league games in the U.S. in competition with MLS.

116. On October 26, 2018, in direct response to the efforts of Relevent to seek to promote an official season La Liga game in the U.S., the FIFA Council, with Sunil Gulati participating on behalf of USSF, issued a policy prohibiting FIFA's National Association members, including USSF, from sanctioning any official season games held outside of the participants' home territory.

117. The specific policy announced by the FIFA Council on October 26, 2018 was as follows:

> Consistent with the opinion expressed by the Football Stakeholders Committee, the [FIFA] Council emphasised the sporting principle that official league matches must be played within the territory of the respective member association.[33]

In other words, the FIFA Council—one of FIFA's decision-making bodies with authority to issue policies that each National Association and their member leagues and teams have agreed to follow—adopted a geographic market division policy, at the behest of USSF and MLS, that was specifically intended to block Relevent from organizing and promoting an official season game by a foreign league or its teams in the U.S. Further, because this was a formal policy announced by a FIFA decision-making

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[33] *FIFA Council makes key decisions for the future of football development*, FIFA.COM (Oct. 26, 2018), https://www.fifa.com/about-fifa/who-we-are/news/fifa-council-makes-key-decisions-for-the-future-of-football-development.

body, any leagues and teams who did not comply with it would run the risk of FIFA penalties and all such leagues and teams were required to agree to adhere to this policy.

118. The FIFA geographic market division policy was, and is, a horizontal division of geographic markets agreement, which precludes men's top-tier professional soccer leagues and teams from competing in each other's markets to offer official season games and is intended to prevent any attempts by promoters like Relevent and foreign leagues and teams to conduct official season games in the U.S.

119. In November 2018, after CONMEBOL—the South American Football Confederation under FIFA—and Argentinian soccer officials determined that the championship game for CONMEBOL's Copa Libertadores tournament between Argentinian rivals Boca Juniors and River Plate could not take place as scheduled in Argentina due to safety concerns, Relevent approached USSF President Cordeiro to discuss promoting this official season tournament championship game in Miami, Florida. With knowledge that SUM had, for several years, received USSF's sanction to organize and promote the championship game for Mexico' official season tournament, SuperCopa Mx, in the U.S., Relevent similarly sought to obtain a sanction to promote the Copa Libertadores in the U.S. However, USSF refused to engage in discussions with Relevent on granting such a sanction.

120. Instead, as reported in the *New York Times*, USSF President Cordeiro "made his opposition

clear" directly to CONMEBOL.[34] Indeed, although Argentina's daily newspaper *La Nación* reported that Miami was at one time the favorite to host this game, a CONMEBOL official later explained that the game was not played in Miami because "Carlos Cordeiro (the president of US Soccer) did not want to."[35] These actions by Mr. Cordeiro were part of the anticompetitive FIFA market division agreement, as FIFA rules would not permit CONMEBOL to play its official season championship tournament in the U.S.

121. Just days later, FC Barcelona withdrew from its commitment to participate in Relevent's proposed La Liga official season game in the U.S. The Club issued the following statement (translated from Spanish):

> The Board of Directors of FC Barcelona has decided to withdraw its decision to play the match against Girona FC in Miami, after confirming a lack of consensus on the proposal. FC Barcelona was and remains willing to play a La Liga match in Miami . . . but acknowledges that while there is no agreement between all parties, this project will not succeed.[36]

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[34] Rory Smith, *A Final for All time, Sacrificed on the Altar of the Modern Game*, NEW YORK TIMES.COM (Nov. 30, 2018), https://www.nytimes.com/2018/11/30/sports/soccer/copa-libertadores-boca-river-madrid.html.

[35] *Id.* (citing Alejandro Casar González, *La Conmebol fijó que la final de la Copa Libertadores se juegue en el Santiago Bernabéu, de Madrid, el 9 de diciembre*, LA NACION (Nov. 29, 2018), https://www.lanacion.com.ar/deportes/futbol/destino-impensado-final-copa-libertadores-se-jugara-nid2197523.).

[36] *El Barça deja sin efecto su disposición de jugar en Miami*, FCBARCELONA.ES (Dec. 11, 2018), https://www.fcbarcelona.es/es/noticias/940120/el-barca-deja-sin-efecto-su-disposicion-de-jugar-

122. This "lack of consensus" was a veiled reference to the geographic market division policy adopted by the FIFA Council—a policy that was designed to, among other things, protect MLS from official season games competition and thereby prevent any teams, including FC Barcelona, from participating in Relevent's proposed La Liga official season game in the U.S.

123. Thereafter, Relevent identified two more teams from a men's top-tier professional soccer league that were interested in playing an official season game in the U.S.—this time rivals from Ecuador's LigaPro Serie A. Relevent formally sought USSF's sanction for the game, which was scheduled to be played on May 5, 2019 (the "May 5 Event").

124. On March 29, 2019, Relevent submitted an official sanctioning application to USSF seeking approval for the May 5 Event. The first page of the application listed New York-based Relevent and its New York-based FIFA Match Agent, Charlie Stillitano, as the promoters for the event.

125. Prior to submitting its application, Relevent had already secured Hard Rock Stadium in Miami, Florida as the site of the May 5 Event and obtained written approval from the participating teams' league (LigaPro), the Ecuadorian national association (Ecuadorian Football Federation), and Ecuador's governing regional Confederation (CONMEBOL). These approvals were submitted to USSF as part of Relevent's initial application. In accordance with USSF's application requirements, Relevent also submitted its application fee and performance bond

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en-miami?_ga=2.56777198.575772544.1565127786-1757679914.1565127786.

by April 5, 2019—a full month in advance of the May 5 Event—and emailed USSF to inform its officers that the application was fully submitted.

126. On April 8, 2019, USSF confirmed receipt of Relevent's application, but claimed the application could not be reviewed because Mr. Stillitano was purportedly renewing his Match Agent insurance and did not appear on FIFA's official Match Agent list on its website. Relevent promptly informed USSF that Mr. Stillitano's insurance remained valid, had the insurance policy sent to USSF, and contacted FIFA to restore Mr. Stillitano to the online Match Agent list. Relevent then sent USSF confirmation from FIFA that Mr. Stillitano remained appropriately registered and overseen by FIFA and that FIFA would update its website to correct the error.

127. Despite these confirmations, USSF informed Relevent on April 12, 2019, that USSF would only consider Mr. Stillitano's status resolved when his name appeared on the FIFA website. Further, USSF informed Relevent that it intended to contact the Ecuadorian National Association and CONMEBOL, notwithstanding the letters of approval those entities had already provided (which were in USSF's possession), to discuss the fact that the planned game was part of LigaPro's regular season, as opposed to a "friendly." USSF closed its letter by threatening Relevent with fines, the withholding of future sanctions, and other penalties if Relevent advertised the May 5 Event before USSF issued a sanction.

128. Although USSF was well aware of the rapidly approaching date for the May 5 Event, and was provided with copies of all signed approvals and the stadium reservation confirmation, Relevent heard

nothing from USSF until April 22, 2019, when USSF issued a letter denying Relevent's sanction application.

129. This time, USSF expressly stated that the true reason for its refusal to provide the sanction was because of its agreement to follow the FIFA geographic market division policy, adopted by the FIFA Council, that official season games held outside of a league's home territory are prohibited. Specifically, in a New York state court filing, USSF explicitly identified its agreement to comply with the policy adopted by the FIFA Council as the reason why it would not sanction any official season soccer games that Relevent sought to promote in the U.S.

130. In addition, USSF stated in its denial letter to Relevent that USSF had communicated with FIFA regarding Relevent's proposed May 5 Event, and that FIFA had confirmed that the game was prohibited by the market division policy, which USSF had agreed to follow.

131. USSF has also applied its agreement with the FIFA geographic market division policy to deny a sanction to at least one other promoter seeking to conduct an official season game in the U.S. for a foreign top-tier men's professional soccer league. On March 1, 2019, USSF received a completed application from a FIFA Match Agent on behalf of another promoter seeking USSF's sanction to host an official season game in the U.S. between two Ecuadorian LigaPro Serie A clubs on April 14, 2019 (the "April 14 Event").[37]

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[37] The April 14 Event was to feature two different Ecuadorian teams than Relevent sought to feature in the May 5 Event.

132. Prior to submitting its application, the other promoter had already secured Red Bull Arena in Harrison, New Jersey as the site of the game, obtained written agreement from the participating teams and the teams' league (LigaPro), and received letters of approval from both the Ecuadorian National Association and CONMEBOL, all of which were submitted to USSF as part of the other promoter's application.

133. In addition to the other promoter's completed application, on March 1, 2019, USSF received an email from the Secretary General of the Ecuadorian Football Federation, copying CONMEBOL, stating the Ecuadorian governing bodies' approval of the April 14 Event.

134. Notwithstanding the documented prior approval of its peer National Association and Ecuador's governing regional Confederation, on March 5, 2019, USSF refused to sanction the April 14 Event, citing its agreement to follow the FIFA geographic market division policy:

> Please note that we are not able to accept this application as it is our understanding that official league matches cannot be approved to be played outside of the home country. We have communicated this to the Ecuador Federation and to CONMEBOL as well.

ii. USSF and FIFA Continue to Enforce and Strengthen the Geographic Market Division Agreement Despite Antitrust Warnings from the U.S. Department of Justice.

135. On September 9, 2019, Relevent filed the original complaint in this action, asserting that the agreement of USSF, in combination with FIFA and its members, to deny a sanction for official season games featuring foreign professional soccer teams in the U.S. was an antitrust violation. Rather than reconsider the legality of the geographic market division policy, USSF and FIFA doubled down, electing to reinforce and strengthen the agreement.

136. Specifically, on February 27, 2020, the FIFA Football Stakeholders Committee—with the support of Messrs. Garber and Cordeiro who wanted to protect MLS and SUM from any official season games competition—met to consider whether to recommend that the market division policy be formally codified into the FIFA Statutes, where it could be more easily and strongly enforced.

137. The day before the meeting, on February 26, 2020, Mr. Garber spoke publicly, from this District, regarding his intention to seek to codify the market division policy in the FIFA Statutes.[38] While he conceded that there were one or two leagues who disagreed with the policy, he made it clear that MLS was not one of those leagues. In other words, his stated desire, on behalf of USSF and MLS, was to have FIFA codify the geographic market division policy in the FIFA Statutes to make sure that any top-

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[38] *MLS' Don Garber against staging league games in other countries, supra* note 19.

tier league or team who might want to compete with MLS by offering official season games in the U.S. would be prohibited from doing so by an explicit and unambiguous rule in the FIFA Statutes.

138. On February 27, 2020, the Stakeholders Committee, including USSF representatives Messrs. Garber and Cordeiro, affirmatively voted to propose to the FIFA Council that the geographic market division agreement be codified in the FIFA Statutes.

139. Following the publicity of these actions, on March 16, 2020, the United States Department of Justice, through its Antitrust Division, wrote to FIFA and USSF to inform them of the Department's "concern[] that FIFA could violate U.S. antitrust laws by restricting the territory in which teams can play league games."

140. Despite this warning, which set forth the Department of Justice's view that such a geographic market division agreement could violate U.S. antitrust law and that FIFA and its members were fully subject to this law, USSF and FIFA have kept their geographic market division agreement in effect and USSF has continued to defend the FIFA market division policy before this Court—arguing that it is not an agreement in violation of U.S. antitrust law—without disclosing the existence of the DOJ letter.

141. The FIFA geographic market division agreement stands in stark contrast to the manner in which professional leagues in other sports have operated. For example, since 1997, the NHL has played 34 regular season games at venues outside North America, in six different countries—and eight

total cities—across two continents.[39] In 2019, the Chicago Blackhawks and Philadelphia Flyers opened their regular season with a game in Prague, Czech Republic[40] and the Tampa Bay Lighting and Buffalo Sabres played a pair of mid-season games in Stockholm, Sweden.[41] Since 1990, the NBA has played nearly 30 regular season games outside of North America.[42] And, to date, 29 of the NFL's 32 clubs have played regular season games in London.[43] The NFL also hosted regular season games in Mexico City in 2005, 2016, 2017, 2019 and was scheduled to play another game in Mexico in 2020 before it was cancelled due to COVID-19.[44] Likewise, between

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[39] *Games Outside North America*, RECORDS.NHL.COM, https://records.nhl.com/events/games-outside-north-america (last visited Aug. 31, 2020).

[40] Sam Carchidi, *Flyers open season with 4-3 win over Chicago in Prague as Travis Konecny stars*, PHILADELPHIA INQUIRER (Oct. 4, 2019), https://www.inquirer.com/flyers/flyers-blackhawks-recap-score-prague-travis-konecny-carter-hart-20191004.html.

[41] Antony Sciandra, *Sabres swept by Lightning in Global Series*, DIEBYTHEBLADE.COM (Nov. 9, 2019), https://www.diebytheblade.com/2019/11/9/20956995/bufflo-sabres-swept-by-tampa-bay-lightning-in-global-series-sweden.

[42] Steve Swanson, *Globalisation strategies of the NFL and NBA*, Loughborough University, London, https://www.lborolondon.ac.uk/research/sport-business/case-studies/nfl-nba-strategies/ (last visited Aug. 27, 2020).

[43] *Four NFL London Games to be played in 2019*, NFL.COM (Oct. 29, 2018), https://www.nfl.com/news/four-nfl-london-games-to-be-played-in-2019-0ap3000000981459.

[44] Associated Press, *Mahomes, Chiefs Hold off Chargers 24-17 in Mexico City*, CBSSPORTS.COM (Nov. 19, 2019), https://www.cbssports.com/nfl/news/mahomes-chiefs-hold-off-chargers-24-17-in-mexico-city; *NFL cancels international*

1996 and 2019, Major League Baseball has played multiple regular season games in Australia, England, Japan and Mexico.[45]

142. The only official season games by a foreign soccer league that USSF has sanctioned in the U.S., since the adoption of the FIFA geographic market policy in 2018, have been the SUM-promoted Liga Mx championship games. These games, however, are consistent with the anticompetitive purpose of Defendants' market division agreement, which is to bestow and maintain a monopoly position in the U.S. for MLS and its affiliate SUM.

RELEVENT'S CLAIMS ARE NOT SUBJECT TO ARBITRATION

143. The ChampionsWorld litigation confirms that the antitrust claims Relevent asserts herein are not subject to arbitration.

144. In May 2006, now-defunct soccer promoter ChampionsWorld, LLC ("ChampionsWorld") brought suit against USSF and MLS alleging, among other things, violations of the Sherman Act and RICO. ChampionsWorld alleged that USSF "wrongly arrogated [its] authority to extract [] sanctioning fees by falsely holding itself out to be the exclusive governing body of men's professional soccer in the United States and by threatening to report

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games for 2020 season, NFL.COM (May 4, 2020), https://www.nfl.com/news/nfl-cancels-international-games-for-2020-season-0ap3000001112654

[45] David Adler, *Complete History of MLB Games Played Abroad,* MLB.COM (Mar. 6, 2020), https://www.mlb.com/news/baseball-games-played-outside-the-us-c272441130.

ChampionsWorld to FIFA as a 'promoter in bad standing.'"[46]

145. In May 2007, the court granted defendants' motion to compel arbitration of ChampionsWorld's claims on the basis that ChampionsWorld's Match Agent had agreed that all disputes between him and USSF would be pursued under FIFA's dispute-resolution procedures.[47] The court stayed the federal court litigation pending the FIFA arbitration.[48] ChampionsWorld accordingly commenced an arbitration against USSF before FIFA's Players' Status Committee, asserting claims nearly identical to the antitrust and other claims in its federal court action.[49]

146. FIFA thereafter advised that its rules only permitted individuals (as opposed to entities) to invoke the arbitration mechanism set forth under the match agent application. FIFA further advised that ChampionsWorld's antitrust and RICO claims were not within the categories of disputes that FIFA was permitted to adjudicate as part of its arbitration process.[50] Specifically, FIFA stated:

> [W]e understand that the dispute in question concerns claims [which] relate to 'antitrust, racketeering and other misconduct' and, therefore, neither appears to fall within the

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[46] *ChampionsWorld, LLC v. USSF*, 487 F. Supp. 2d 980, 984 (N.D. Ill. 2007).

[47] *Id.* at 986-87.

[48] *Id.* at 992.

[49] *See ChampionsWorld, LLC v. USSF*, 2008 WL 4861522, at *1 (N.D Ill. Nov. 7, 2008).

[50] *Id.*

> scope of [the FIFA dispute resolution regulations]. Consequently . . . it seems that none of our deciding bodies is competent to hear the present matter.[51]

147. In light of FIFA's ruling, ChampionsWorld petitioned the court to lift the stay of the action. Defendants objected, and USSF commenced its own arbitration before FIFA against the match agent, seeking confirmation that USSF had authority to sanction games played in the U.S. and to charge sanctioning fees for those games. FIFA determined that it had jurisdiction over the limited issues raised by USSF's arbitration demand.

148. On appeal, the Court of Arbitration for Sport ("CAS") held that FIFA's arbitration jurisdiction was limited to interpreting its own statutes and regulations—it had no authority to arbitrate any antitrust claims or other claims under U.S. law:

> *It should be clear that the Players' Status Committee's competence exists only with respect to FIFA's statutes and regulations.* While Article 22, paragraph 1, and Article 26 of the MARs seem to suggest that the Players' Status Committee's jurisdiction over disputes between match agents and national associations is unlimited, *it is clear that the Players' Status Committee may consider only disputes to the*

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[51] August 13, 2008 Letter from FIFA to ChampionsWorld, filed *in ChampionsWorld v. USSF*, No. 1:06-cv-05724 (N.D. Ill. Aug. 14, 2008) (ECF No. 90).

> *extent that they implicate FIFA's statutes and regulations*.[52]

149. In a subsequent decision in the same dispute, CAS reiterated its prior ruling that FIFA's arbitral jurisdiction "existed only with respect to FIFA's statutes and regulations, since [it] *is not in a position to rule on issues of U.S. law*."[53]

150. Back before the U.S. federal court, USSF and MLS moved for judgment on the pleadings.[54] In denying defendants' motion in substantial part, the court held:

> [I]t is clear that FIFA has no power to grant USSF an exemption, either express or implied, from the antitrust laws. Only Congress may do this. Similarly, FIFA does not have, or claim to have, authority to interpret acts of Congress. Furthermore, it seems far-fetched to believe that FIFA would discipline USSF for obeying the antitrust laws of the United States. . . [Thus,] USSF is not entitled to an exemption from the antitrust laws regarding professional soccer, except to the extent necessary for USSF to oversee Olympic and related events. USSF has no clear mandate from Congress to govern the whole of professional soccer in the U.S.[55]

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[52] Decision, *Stillitano v. USSF & FIFA*, CAS 2009/A/1812, at 6 (Sept. 24, 2009) (emphases added); *ChampionsWorld v. USSF*, 890 F. Supp. 2d 912, 922 (N.D. Ill. 2012).

[53] Award, *Stillitano v. USSF & FIFA*, CAS 2010/A/2241 (July 12, 2011) (emphasis added).

[54] *See ChampionsWorld v. USSF*, 726 F. Supp. 2d 961 (N.D. Ill. 2010).

[55] *Id.* at 969–70.

151. In a subsequent decision confirming the arbitration award USSF had obtained from FIFA on claims not asserted under U.S. law, the court likewise reiterated that the arbitral ruling did not preclude its ability to consider whether USSF's sanctioning authority violated U.S. antitrust law.[56]

152. It is thus established that there is no agreement to arbitrate any claim against USSF or FIFA under the United States antitrust laws. This ruling is binding on USSF and FIFA under principles of collateral estoppel. Further, while Relevent has employed a FIFA Match Agent (as required by FIFA and USSF sanctioning regulations), it has never itself entered into any agreement with FIFA or USSF to arbitrate any of these or other claims.

153. On July 20, 2020, the Court in this action ruled that Relevent's antitrust claims are not subject to arbitration but also ruled that Relevent is required to arbitrate its tort claims against USSF—if Relevent intends to pursue them—while they are stayed in this action.

THE 2016 SETTLEMENT AGREEMENT BETWEEN RELEVENT AND USSF DOES NOT BAR THIS ACTION

154. In 2016, Relevent mounted a challenge to USSF's authority to impose sanctioning fees on the ground that they were inconsistent with the Ted Stevens Act and USSF's own written policy.

155. Relevent and USSF resolved that specific dispute through a May 2016 settlement agreement (the "2016 Settlement Agreement"). As part of the settlement, Relevent covenanted not to sue USSF on

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[56] *ChampionsWorld,* 890 F. Supp. 2d at 946–51.

certain limited bases enumerated in the 2016 Settlement Agreement. Specifically, Relevent only agreed not to bring suit against USSF "challenging [USSF's] jurisdiction over International Games, [USSF's] authority to charge Sanctioning Fees, or the reasonableness of the Sanctioning Fees charged by [USSF]."

156. The 2016 Settlement Agreement does not contain any covenant not to challenge USSF's future participation in an anticompetitive agreement, in violation of the antitrust laws and state tort law, to allocate the markets in which professional men's soccer leagues may compete and to engage in a group boycott of leagues, clubs and players who participate in unsanctioned official season games. Nor did Relevent covenant not to pursue claims concerning USSF's exercise of its sanctioning authority, in violation of U.S. antitrust laws, to (1) prohibit official season games in the U.S. or (2) otherwise restrict output of men's professional soccer league games in the U.S. In fact, there is no mention of antitrust claims in the limited covenant not to sue that was agreed to in the 2016 Settlement Agreement.

157. This action does not challenge USSF's jurisdiction or authority to charge sanctioning fees in general, nor the reasonableness of any particular sanctioning fee imposed by USSF. Instead, Relevent seeks remediation for USSF's and FIFA's violations of the federal antitrust laws as a result of their participation in the anticompetitive FIFA geographic market division agreement, which restricts output and creates barriers to entry in the U.S. market for top-tier official season men's professional soccer league games in the U.S. These claims are not covered by the covenant not to sue.

158. Moreover, even if the covenant not to sue were construed to apply to the antitrust and tort law claims in this action, public policy precludes any release, covenant not to sue or waiver of antitrust or intentional tort claims directed at future conduct engaged in by USSF after the date of any such covenant, release or waiver.[57] The covenant not to sue thus cannot be applied to the claims asserted here for this additional reason, as the damages and

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[57] *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 637 n.19 (1985) (an agreement that "operate[s] . . . as a prospective waiver of a party's right to pursue statutory remedies for antitrust violations," would be condemned); *In re Am. Express Merchants' Litig.*, 667 F.3d 204, 214 (2d. Cir. 2012) *("Amex III") rev'd on other grounds* ("An agreement which in practice acts as a waiver of future liability under the federal antitrust statutes is void as a matter of public policy."); *Madison Square Garden, L.P., v. Nat'l Hockey League*, 2008 WL 4547518, at *7 (S.D.N.Y. Oct. 10, 2008) ("[B]ecause '[a] no suit agreement may be one of the devices for shoring up a cartel' . . . the Supreme Court has indicated that it would condemn as against public policy an agreement that 'operated . . . as a prospective waiver of a party's right to pursue statutory remedies for antitrust violations.'") (internal citation omitted). *Great N. Assocs., Inc. v. Cont'l Cas. Co.*, 596 N.Y.S.2d 938, 940 (N.Y. App. Div. 1993) (cited with approval in *Charron v. Sallyport Global Holdings*, 2014 WL 464649, at *4 (S.D.N.Y. Feb. 3, 2014) (holding that New York tort law prohibits exculpatory agreements that purport to release the signatory from "intentional, willful or grossly negligent acts"); *Kalisch-Jarcho, Inc. v. City of N.Y.*, 448 N.E.2d 413, 426 (N.Y. Ct. App. 1983) ("[A]n exculpatory agreement . . . will not exonerate a party from [tort] liability under all circumstances. . . [I]t will not apply to exemption of willful or grossly negligent acts.") (cited with approval in *In re CCT Comm., Inc.*, 464 B.R. 97, 106 (S.D.N.Y. 2011)). *See also* 8 Williston on Contracts § 19:24 (4th Ed.) ("An attempted exemption from liability for a future intentional tort . . . is generally held void.").

injunction being sought are only for antitrust violations and intentional torts committed by USSF and FIFA that took place starting in 2018 after the execution of the 2016 Settlement Agreement.

159. There is thus no applicable or enforceable contractual bar to Relevent pursuing its antitrust and intentional tort claims in this action, which will vindicate not only the rights of Relevent, but of consumers and sponsors of top-tier men's official season professional soccer league games in the U.S., and further the public interest.

CLAIMS FOR RELIEF

COUNT I

Violation of Section 1 of the Sherman Act and Claims for Relief under Sections 4 and 16 of the Clayton Act

160. Relevent incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this First Amended Complaint.

161. Defendant USSF is a separate economic actor from Defendant FIFA and each National Association. In addition, the constituent members of each Confederation and National Association, including each men's professional soccer league, and each league's respective professional soccer teams, are separate economic actors which do not share profits and losses with each other or otherwise compete as a single economic entity.

162. These separate economic actors have agreed, through their respective representatives in FIFA decision-making bodies, to enter into a geographic market division agreement which has the purpose and effect of allocating geographic territories

to specific leagues and their teams, which leagues and teams are then prohibited from staging their official season games in another geographic territory in competition with each other.

163. This agreement was adopted with the specific purpose and effect of eliminating competition and shielding MLS from any competition from official season games that would otherwise be promoted by Relevent, or other persons, in the relevant U.S. market for men's top-tier official season professional soccer league games. As a result of this geographic market division agreement, MLS (and its marketing affiliate SUM) have been granted a monopoly position in the relevant market.

164. The actions of USSF and FIFA in concert with each National Association and their respective constituent member leagues and teams constitute an agreement by separate economic actors engaged in concerted action to restrict entry into, and limit the output of, the relevant market for men's top-tier official season professional soccer league games in the U.S. Indeed, the specific intention of this anticompetitive agreement is to create a barrier to entry and thwart the efforts of Relevent and other persons to organize and promote such official season games in the U.S. in competition with MLS.

165. USSF has an economic motive to conspire with FIFA and FIFA's other National Associations and leagues and teams to protect the monopoly position of MLS and SUM because of its economic dependence on SUM for the majority of its annual revenues and its close economic ties to the success of MLS. Further, USSF has expressly admitted that it has agreed to adhere to and enforce the FIFA market

division policy and not issue any sanction for official season games that would violate that policy.

166. This unlawful agreement also includes USSF's, FIFA's and each National Association's agreement to enforce the geographic market division policy against any leagues or teams that violate it. Such enforcement mechanisms are set forth in written agreements embodied in the rules of FIFA which require all FIFA members to adhere to FIFA polices and set forth discipline which FIFA may impose on any National Associations, leagues, teams or players that do not adhere to FIFA policies, such as the market division agreement. Absent these enforcement mechanisms for the FIFA market division agreement, there are a number of foreign men's top-tier professional soccer leagues and teams, including those in Spain, Ecuador and Mexico, that would participate in official season games promoted by Relevent or other persons in the U.S.

167. The FIFA market division agreement includes a horizontal agreement by each National Association's men's top-tier professional soccer leagues and teams, all of which are actual or potential competitors, to divide the geographic markets for official season games competition even though there are a number of top-tier men's professional soccer leagues and teams that would otherwise compete with each other in these markets. The only reason such official season games competition with MLS has not taken place in the relevant U.S. market—which is lucrative and attractive to a number of top-tier foreign men's leagues and teams—is because the horizontal geographic market division agreement enforced by USSF and FIFA has blocked it.

168. The FIFA market division agreement may alternatively be viewed as a vertical agreement between USSF, FIFA, the other National Associations and their respective members, in which USSF, FIFA and the other National Associations act as the vertical facilitators and enforcers of the market division agreement that is then imposed upon the foreign leagues and their teams to, among things, shield MLS from competition in the relevant U.S. market for men's top-tier official season professional soccer league games.

169. Whether viewed from a horizontal, or a vertical perspective, the geographic market division agreement and the penalties to enforce it constitute an unreasonable market division agreement and group boycott, which on its face would always or almost always tend to restrict competition and decrease output, is plainly anticompetitive, and obviously lacks any redeeming procompetitive virtues. Accordingly, USSF's and FIFA's participation in this agreement to allocate the market for, and limit the output of, men's top-tier official season professional soccer league games in the U.S. is a *per se* violation of Section 1 of the Sherman Act.

170. The horizontal and vertical agreement between USSF, FIFA and each of the other National Associations—which includes the agreement of their respective professional soccer leagues and teams—is also a naked restraint on competition, blocking entry into the relevant market, which bestows a monopoly upon MLS, that cannot be justified on procompetitive grounds. Accordingly, and in the alternative, USSF's and FIFA's participation in this agreement to allocate and limit output in the relevant market is a violation

of Section 1 of the Sherman Act under an abbreviated rule of reason analysis, *i.e.*, the "quick look" test.

171. The horizontal and vertical agreement between USSF, FIFA and each of the other National Associations—which includes the agreement of their respective professional soccer leagues and teams—has had significant anticompetitive effects in the relevant market for men's top-tier official season professional soccer league games in the U.S., resulting in antitrust injury to consumers, sponsors, competitors, and potential competitors as alleged herein. This antitrust injury has included reduced output and lowered the quality of games.

172. The horizontal and vertical agreement between USSF, FIFA and each of the other National Associations—which includes the agreement of their respective professional soccer leagues and teams—serves no procompetitive purpose in the relevant market (indeed, USSF and FIFA have not even tried to articulate such a procompetitive purpose) and instead serves to restrict output in, and block entry to, the relevant market, resulting in an anticompetitive monopoly position for MLS. Reasonable less restrictive alternatives also would exist to achieve any plausible procompetitive purpose of the geographic market division agreement. As a result, the participation of Defendants in the geographic market division agreement would, in the alternative, be a violation of Section 1 of the Sherman Act under a full rule of reason analysis.

173. The horizontal and vertical agreement between USSF, FIFA and each of the other National Associations—which includes the agreement of their respective professional soccer leagues and teams—which was first implemented in 2018 (subsequent to

the 2016 Settlement Agreement), directly and proximately caused antitrust injury and damages to the business and property of Relevent, to similarly situated promoters, to fans and sponsors in the relevant market, and to those foreign men's top-tier professional soccer leagues and teams which, absent the anticompetitive agreement, would participate in official season games in the U.S. Relevent is a direct participant in the relevant market as a promoter of official season games and is, in fact, a specifically intended target of the market division agreement.

174. The anticompetitive market division agreement is directly evidenced in, among other things, the written market division policy adopted by the FIFA Council, the actions of the FIFA Council and the FIFA Football Stakeholders Committee to formulate and implement the market division policy, the admitted agreement of USSF to adhere to the market division policy, the FIFA rules which require the agreement of all the National Associations and their leagues and teams to adhere to all policies adopted by the FIFA Council as a FIFA "Body" (which includes the market division policy), the admission of USSF that it denied a sanction to the official season games that Relevent sought to promote because of USSF's agreement to adhere to the FIFA market division policy, the written FIFA rules for enforcement against any leagues, teams or players that do not adhere to the FIFA market division policy, and the actions of Sunil Gulati, Carlos Cordeiro, and Don Garber (on behalf of USSF and MLS) with other participants in the FIFA Council and FIFA Football Stakeholders Committee to adopt the FIFA market division policy, as well as in the public statements of FIFA President Gianni Infantino indicating his

support for the adoption of a FIFA policy to protect MLS as the only men's top-tier league sanctioned to offer official season games in the U.S.

175. Further, the fact that top-tier leagues and teams in Spain and Ecuador have indicated their desire to participate in official season games in the U.S., but have been prevented from doing so by the threat of sanctions and opposition from other FIFA entities, demonstrates that absent the FIFA market division agreement, it would not be in the individual economic interests of these leagues and teams to forego competing in the relevant U.S. market. Only concerted action leading to their coerced participation in the FIFA market division agreement can explain the ultimate decision by these leagues and teams to not participate in the official season games that Relevent has sought to promote.

176. The FIFA market division agreement has caused antitrust injury to U.S. consumers in the form of blocked official season games that were to be held in the U.S. and the inability to attend future official season games in the U.S. involving foreign leagues and teams.

177. Relevent, other promoters, foreign soccer leagues and teams who wish to participate in official season games in the U.S. and consumers and sponsors for such games, will continue to suffer antitrust injury unless USSF and FIFA are enjoined from continuing to implement and enforce the FIFA market division agreement and are required to sanction such games in the U.S., including games promoted by Relevent.

178. Relevent has already suffered significant antitrust injury and damages to its business and property as a result of being prevented, by the

anticompetitive market division agreement, from being able to promote any official season soccer games in the U.S. since 2018. Relevent is entitled to an award of treble damages, in an amount to be proven at trial, for the injuries it has suffered as a result of Defendants' market division agreement in violation of Section 1 of the Sherman Act.

COUNT II

Tortious Interference with Existing and Prospective Business Relationships

179. Relevent incorporates and realleges, as though fully set forth herein, each and every allegation set forth in the preceding paragraphs of this Complaint.

180. Relevent possesses a legitimate and protectable interest in its business relations with international soccer leagues, National Associations, clubs, and vendors with respect to the promotion of its events in the U.S.

181. Relevent has or had preexisting business relationships with multiple international soccer leagues, National Associations, clubs, and event vendors, including La Liga, as well as other leagues and clubs that have participated in, or considered participating in, official season games promoted by Relevent the U.S.

182. USSF holds itself out as the exclusive sanctioning body for all international men's professional soccer games in the U.S. on behalf of FIFA and has required Relevent to submit applications to USSF for each proposed game to be held in the U.S., including the May 5 Event that Relevent wished to promote in the U.S. At all relevant times, USSF was aware of Relevent's

business relationships with multiple international soccer leagues, National Associations, clubs, and event vendors that were seeking to participate in such events in the U.S.

183. In 2018 and 2019, Relevent approached USSF and informed it that Relevent had arranged to promote three separate official season games in the U.S. USSF intentionally ignored, delayed and/or ultimately rejected all of Relevent's attempts to obtain a USSF sanction for these events, which USSF knew was essential in order for Relevent to conduct the events. As a result, each of these planned official season games had to be cancelled and Relevent's relationships with its business partners, which were known to USSF, were severely harmed.

184. USSF interfered with Relevent's business relationships in this manner without any legitimate justification and pursuant to its anticompetitive agreements with FIFA and others to restrict output in the U.S. of men's top-tier official season professional soccer league games.

185. USSF has thus exercised its authority from FIFA to willfully interfere with and disrupt Relevent's business relationships without any lawful justification or privilege to do so.

186. USSF's conduct was undertaken with malice, or in knowing disregard of or indifference to Relevent's rights and interests, and USSF's conduct was so outrageous as to warrant the imposition of punitive damages.

187. USSF's intentional and malicious conduct to interfere with Relevent's business relationships was also undertaken in an effort to protect the interests of its economic partners MLS and SUM.

188. As a direct and proximate result of USSF's willful and tortious interference, Relevent was unable to organize and promote at least three official season games in the U.S. and stands to lose more such business opportunities as a result of USSF's continued tortious conduct, which prevents Relevent from promoting any such future official season games.

189. As a direct and proximate result of USSF's willful and tortious interference, Relevent suffered and will continue to suffer irreparable injury, loss of goodwill, harm to its business, and other injury and damages for which there is no adequate remedy at law.

190. Relevent will suffer this harm unless and until USSF is restrained from its current and intended future tortious conduct.

191. As a direct and proximate result of USSF's willful and tortious interference, Relevent has suffered damages in New York, which continue to accrue in the form of lost business, in an amount to be proven at trial.

192. With respect to the official season games USSF interfered with that were to be held in Miami, Florida, USSF's tortious conduct also violated Florida law and caused damages to Relevent that are recoverable thereunder, in an amount to be proven at trial.

PRAYER FOR RELIEF

Accordingly, Relevent prays for judgment with respect to its Amended Complaint as follows:

193. That the unlawful contracts, conspiracies, or combinations alleged herein, and the acts done in furtherance thereof by FIFA, USSF and their co-

conspirators, be adjudged and decreed a violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

194. That the Court enjoin FIFA and USSF from continuing to implement, adhere to or enforce their unlawful market division agreement to unreasonably restrain trade in the U.S., to cease withholding the sanctioning of official season games to be played by foreign soccer leagues and teams and promoted by Relevent or other promoters in the U.S., and to cease exercising their sanctioning authority to restrict the output of official season games in the relevant market to bestow an anticompetitive monopoly on MLS, all in violation of Section 1 of the Sherman Act with relief to be provided under Section 16 of the Clayton Act;

195. That the Court award compensatory and treble damages to Relevent resulting from the injury to its business and property caused by FIFA's and USSF's violations of Section 1 of the Sherman Act in an amount to be determined at trial with relief to be provided under Section 4 of the Clayton Act;

196. That the Court award compensatory damages to Relevent resulting from USSF's tortious interference with Relevent's existing and prospective business relationships in an amount to be determined at trial;

197. That the Court award exemplary and punitive damages for USSF's violation of New York and Florida tort law in an amount to be determined at trial;

198. That the Court award pre-judgment and post-judgment interest at the maximum legal rate;

199. That the Court award Relevent's costs, expenses, and reasonable attorneys' fees in this action; and

200. That the Court award such other relief as it may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Dated: September 14, 2020

By: */s/ Jeffrey L. Kessler*

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15 U.S.C. § 1

§ 1. Trusts, etc., in restraint of trade illegal; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding $100,000,000 if a corporation, or, if any other person, $1,000,000, or by imprisonment not exceeding 10 years, or by both said punishments, in the discretion of the court.