

UNITED STATES OLYMPIC & PARALYMPIC COMMITTEE

HOPE SOLO,)	
)	
Complainant)	
)	ORDER
v.)	
)	
US SOCCER FEDERATION,)	
)	
Respondent.)	November 9, 2020

I. BACKGROUND

1. On May 8, 2020, the Hearing Panel issued a Preliminary Report, Mediation and Scheduling Order setting forth certain deadlines in advance of the hearing, scheduled for December 14 and 15, 2020.

2. On July 9, 2020, the Hearing Panel issued an Amended Scheduling Order extending certain deadlines from the May 8, 2020, Scheduling Order. The Amended Scheduling Order gave the Parties until September 29, 2020, to submit discovery disputes, until October 20, 2020, to conclude discovery, and until November 2, 2020, to submit a joint statement of uncontested facts and stipulations.

3. On September 25, 2020, the Parties submitted a Report on Mediation and Joint Request for Extension of Deadlines. Due to the Parties Joint Request for Extension of Deadlines, the Parties did not submit their discovery disputes to the Hearing Panel, which were due on September 29, 2020.

4. On October 2, 2020, the Hearing Panel e-mailed the Parties and declined the Request for Extension of Deadlines stating that the Section 10 Complaint had been ongoing since January 2018. The Hearing Panel also advised

that it wanted to bring this matter to resolution in a manner that was fair and equitable to the parties and the process itself and that the Hearing Panel did not want to delay the proceeding indefinitely. However, since the September 29 date had passed, the Hearing Panel extended the Parties' time for submitting discovery disputes until October 9, 2020. Additionally, the Hearing Panel ordered that all discovery be completed by October 28, 2020, that the joint stipulations and designations of expert witnesses should be completed by November 6, 2020, and that all other deadlines remained as ordered by the Hearing Panel.

5. On October 8, 2020, the Parties requested that the Hearing Panel enter a Stipulated Protective Order. The Hearing Panel declined to enter the Stipulated Protective Order as there were items of concern to the Hearing Panel. Additionally, the Hearing Panel stated it was not a court of law, and therefore not in a position to enter a Protective Order.¹

6. The Hearing Panel asked the Parties if they had considered (i) entering into a protective order in their underlying litigation (if they had not already entered into one); and (ii) executing a confidentiality agreement whereby the parties agree to follow that protective order in the context of this Section 10 proceeding, and agree to consent to the jurisdiction of the litigation court to enforce the terms of that confidentiality agreement. The Hearing Panel noted that the litigation court, not the Hearing Panel, could decide any disputes over whether

¹ In litigation, a court could impose sanctions on the breaching party or hold that party in contempt. A Section 10 proceeding is more akin to an arbitration, where confidentiality ultimately derives from a consensual agreement amongst the parties.

a particular confidentiality designation is appropriate. This would avoid conflicting decisions over whether a particular document is confidential.

7. On October 9, 2020, Hope Solo (“Solo”) submitted a Statement of Disputed Discovery Issues.

8. On October 22, 2020, the Hearing Panel held a status conference with the Parties to discuss discovery issues. During the conference the Parties led the Hearing Panel to believe that the Parties intended to sign an agreement that would resolve various issues related to the confidentiality of certain documents and that discovery would be completed by October 28, 2020. The Hearing Panel also requested the Parties to notify them by November 4, 2020, of any outstanding discovery issues.

9. On October 28, 2020, US Soccer Federation (“USSF”) submitted a Statement of Disputed Discovery Issues relating to the refusal of Solo to sign a Confidentiality Agreement that included an “Attorneys’ Eyes Only” provision (also referred to by the Parties as an “Outside Counsel Only” provision).

10. Solo filed a Response to USSF’s Statement of Disputed Discovery Issues on October 30, 2020, alleging that an “Attorneys’ Eyes Only” provision was not justified in this Section 10 proceeding.

11. In spite of the above disagreement, the Parties signed a Confidentiality Agreement with the “Attorneys’ Eyes Only” provision removed. However, USSF indicated that it would not produce documents that it maintained should be provided only under an “Attorneys’ Eyes Only” designation.

12. On October 28, 2020, the Parties exchanged various documents and other materials requested under the other Parties production request.

13. On November 4, 2020, USSF filed a Statement of Disputed Discovery Issues asserting that Solo had failed to produce certain documents in response to USSF's production request. USSF requested that the Hearing Panel order Solo to produce these documents, or to confirm that, after a diligent search, Solo has no such documents.

14. On November 4, 2020, Solo filed a Supplemental Statement of Disputed Discovery Issues asserting that USSF had failed to produce certain documents related to her discovery request. Solo requested that the Hearing Panel order USSF to produce the remaining responsive documents, including but not limited to those documents being withheld by USSF because of USSF's position that they would only be produced pursuant to an "Attorneys' Eyes Only" designation.

II. DISCUSSION

15. The Hearing Panel reviewed the submissions of the Parties related to ongoing discovery disputes and discussed how to proceed. It is not the Hearing Panel's inclination to be drawn into this controversy or to make decisions on discovery issues that may have some bearing on the federal court litigations currently underway between the Parties.²

² *Morgan. v U.S. Soccer Federation*, Case No. 2:19-cv-01717-RGK-AGR (C.D. Cal.) (Solo is one of the plaintiffs in this case) and *Solo v U.S. Soccer Federation*, Case No. 3:18-cv-05215-JD (N.D. Cal.). The Hearing Panel notes that a Stipulated Protected Order was ordered by the Court in the *Morgan* case on October 10, 2019 and that a Stipulated Protective Order was ordered by the Court in the *Solo* case on January 30, 2020.

16. Accordingly, the Hearing Panel makes the following determination regarding resolution of discovery issues between the Parties. The Parties shall proceed along one of the following avenues:

- a. The Parties meet and confer, and after a good faith effort to resolve their discovery issues, come to an agreement regarding the documents each will produce and whether any such documents deserve an “Attorneys’ Eyes Only” designation, or whether such documents can be produced pursuant to the Confidentiality Agreement currently in place.
- b. The Parties file an action in court (or request one of the courts in their current litigations) asking for the court to rule on their discovery issues.
- c. A special master will be appointed to resolve the Parties’ discovery issues. The Parties should come to an agreement on whom they would like to recommend to the Hearing Panel for appointment as special master. If the Parties cannot agree on a special master, then the Hearing Panel will determine who should serve as the special master. The Parties should inform the Hearing Panel no later than 5pm MST, November 16, 2020, either (i) that a special master has been agreed upon and who the special master is or (ii) that no agreement as to a special master has been reached. The Parties will share the special master’s fees equally.

17. The Hearing Panel orders that the Parties determine which discovery dispute avenue is suitable as soon as possible and then report back to the Hearing Panel no later than 5pm MST, November 16, 2020.

18. All discovery disputes shall be resolved and a Joint Report of such shall be provided to the Hearing Panel by 5pm MST, November 30, 2020.

19. Further, the Hearing Panel notes that a hearing is scheduled for this Section 10 proceeding on December 14 and 15, 2020. A number of other pre-hearing matters, such as the submission of exhibits, the submission of witness lists and the filing of pre-hearing briefs, were previously scheduled for prior to the hearing. Due to the Parties ongoing discovery disputes, it appears difficult for the Parties to meet their obligations under the Scheduling Order and Amended Scheduling Order and still have the hearing proceed as previously scheduled.

20. Accordingly, the Hearing Panel is staying all deadlines as were set forth in the Scheduling Order and Amended Scheduling Order from November 6, 2020, on. This includes the hearing, which was set for December 14 and 15, 2020. The Parties shall include in their November 30, 2020, Joint Report their recommendations as to a revised scheduling order and hearing date.

III. ORDER

21. It is so ordered.

Dated this November 9, 2020.



Robert Wood, Chair

for

Alex Natt, Panel member
Mark Ladwig, Panel member