

AMERICAN ARBITRATION ASSOCIATION  
Commercial Arbitration Tribunal

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SARAH WEBSTER AND OLIVIA SIMPSON	§	
	§	
v.	§	AAA Case No. 01-21-0004-5382
	§	
USA GYMNASTICS	§	
	§	
and	§	
	§	
CHARLOTTE DRURY, JESSICA STEVENS, HALLY PIONTEK, MAIA AMANO, AND SYDNEY SENTER	§ § §	

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FINAL ARBITRATION AWARD

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I, the undersigned arbitrator (“Arbitrator”), having been designated in accordance with the Ted Stevens Olympic and Amateur Sports Act (“Act”), 36 U.S.C. § 220505 *et seq.*, and Section 9 of the United States Olympic Committee (“USOPC”) Bylaws, having been duly sworn, and having duly heard the proofs and allegations, and considering any and all evidence provided by Sarah Webster (“Webster”) and Olivia Simpson (“Simpson”) (collectively “Claimants”), USA Gymnastics (“USAG”), and Charlotte Drury (“Drury”), Jessica Stevens (“Stevens”), Hally Piontek (“Piontek”), Maia Amano (“Amano”), and Sydney Senter (“Senter”) (collectively “Affected Athletes”) (individually “Party” or collectively the “Parties”) hereby finds, concludes, determines, and awards as follows:

**I. Procedural History**

On June 27, 2021, Claimants submitted their *Commercial Arbitration Rules Demand for Arbitration* and *Section 9 of USOPC Bylaws Complaint Form*.

On June 29, 2021, the Arbitrator was appointed to serve as the arbitrator in this proceeding.

On June 29, 2021, the Parties exchanged emails and agreed upon a briefing schedule, schedule for exchange of exhibits and information, and the date and time of hearing. The Parties agreed to conduct the evidentiary hearing on July 2, 2021 beginning at 10:00 a.m. CT.

On June 29, 2021, AAA issued the *Notice of Hearing* confirming the evidentiary hearing to be held on July 2, 2021 beginning at 10:00 a.m. CT.

On June 30, 2021 at 2:26 p.m. CT and again on July 1, 2021 at 12:39 p.m. CT, AAA issued the *Notice of Pending Arbitration and Hearing*. Such notice provided the Parties and Affected Athletes with log-in information necessary to join the Zoom hearing.

The final hearing was held via Zoom conference on July 2, 2021 commencing at 10:00 a.m. CT and concluding at 4:05 p.m. CT. During the hearing, Claimants appeared along with their counsel, Howard L. Jacobs and Katy Freeman of the Law Offices of Howard L. Jacobs, USAG appeared by and through its counsel, Christopher J. Schneider and Jacob L. Carlton of Miller, Johnson, Snell & Cummiskey, P.L.C., Charlotte Drury appeared along with her counsel, Matthew D. Kaiser of Global Sports Advocates, LLC, Jessica Stevens appeared *pro se*, Hally Piontek appeared *pro se*, and Maia Amano appeared *pro se*. In addition to the Parties and counsel, the following individuals attended the telephonic hearing: Flip Piontek (father of Hally Piontek), Kacie Wallace (USOPC Office of the Ombudsman), Emily Azevedo (USOPC Office of the Ombudsman), Amanda Bailey Davis (coach of Simpson), Dmitri Poliaroush (coach of Webster), and Holden Cammack (Barlow Garsek & Simon, LLP). At the conclusion of the hearing, the Parties confirmed they were provided a full and fair opportunity to submit and argue necessary facts, allegations, legal arguments, evidence, and present all witnesses they deemed appropriate. During and at the conclusion of the hearing, no party or counsel filed an objection or indicated additional time was necessary to fully and fairly present this matter for consideration.

On July 2, 2021 at 6:36 p.m. CT, at the request of the Parties, the Arbitrator issued a preliminary decision set forth verbatim as follows:

Thank you to all of the parties, counsel, witnesses, and the affected athletes for your participation in the arbitration of this matter on July 2, 2021. Counsel for the parties were well prepared and thoroughly addressed the facts and circumstances with little time to prepare for the expedited hearing. I have considered all of the facts, allegations, arguments, testimony, and evidence submitted by the parties in the present proceeding and have reviewed the case de novo. After conducting such review and providing Ms. Webster and Ms. Simpson and all affected athletes a full and fair opportunity to be heard, I find that Ms. Webster and Ms. Simpson met their burden, by the preponderance of the evidence, showing the superior jury had authority to offer athletes competing at the VIP Classic a second opportunity to perform their preliminary routines. In accordance with Section 7.8.1(1) of the FIG 2020/2021 Technical Regulations, the superior jury has such authority in “extraordinary circumstances affecting the conduct of the competition.” Sunlight affecting vision and safety during a gymnastics trampoline competition conducted indoors constitutes “extraordinary circumstances”. The decision made by the superior jury as to whether all athletes were affected and the remedy provided falls within the field of play doctrine. My role, as arbitrator in this dispute, is not to supplant my judgment and analysis of the competition. Decisions about the application of the rules of gymnastics are best left to field officials who are specifically trained to officiate and preside over gymnastics competitions. Accordingly, the decision of the USAG Ethics, Grievance, and Safe Sport Hearing Panel is overturned and the second attempt scores awarded to Ms. Webster and Ms. Simpson shall be reinstated. I wish the parties well in future competitions and endeavors.

## II. Evidence Submitted by the Parties

The Parties submitted the exhibits and called witnesses as set forth below. All such exhibits were admitted into evidence.

### A. Claimant

Claimant submitted exhibits labeled C-1-C-17 and such exhibits included the following:

- Exhibit C-1: Amended USA Gymnastics Athlete Selection Procedures 2020 Olympic Games – Trampoline
- Exhibit C-2: Amended USA Gymnastics Athlete & Coach World Championships Selection Procedures 2021– Trampoline
- Exhibit C-3: Statement of Mary Swafford
- Exhibit C-4: Grievance Hearing Video
- Exhibit C-5: Statement of Patti Conner
- Exhibit C-6: Grievance Panel Decision
- Exhibit C-7: FIG Code of Points
- Exhibit C-8: FIG Technical Rules
- Exhibit C-9: USAG Elite T&T Special Rules
- Exhibit C-10: *Craig v. USA Taekwondo* (AAA 77 190E 00144 11 JENF)
- Exhibit C-11: *Lea v. USA Cycling* (AAA 01 16 0000 8307)
- Exhibit C-12: *Komanski v. USA Cycling* (AAA 01 15 0004 9907)
- Exhibit C-13: *Hyatt v. USA Judo* (AAA 01 14 0000 7635)
- Exhibit C-14: *Boxing Australia v. AIBA* (CAS 2000/O/1455)
- Exhibit C-15: *Simms v. FINA* (CAS OG 08/002)
- Exhibit C-16: *New Zealand Olympic Committee (NZOC) / The Salt Lake Organizing Committee for the Olympic Winter Games of 2002 (SLOC)* (CAS OG 02/006)
- Exhibit C-17: *DFB, et al. v. FIFA* (AAA 30 190 00750 04)

Claimant called the following witnesses at the final hearing who were sworn in and provided testimony under oath:

1. Dimitri Poiaroush
2. Amanda Bailey Davis
3. Olivia Simpson
4. Sarah Webster

*B. USAG*

USAG did not present exhibits or witnesses during the proceeding. In briefing provided to the Arbitrator, USAG stated “USA Gymnastics does not have a position on the outcome of this arbitration. USA Gymnastics will not present any evidence or witnesses during the evidentiary hearing scheduled for July 2, 2021.

*C. Affected Athletes*

Ms. Drury submitted exhibits labeled AA-1 – AA-13 and such exhibits included the following:

Exhibit AA-1: Ms. Charlotte Drury’s Statement

Exhibit AA-2: Full record of the *Piontek* grievance case (inclusive of videos)

Exhibit AA-3: USAG Athlete Selection Procedures for the 2020 Olympic Games (Trampoline)

Exhibit AA-4: 2017 – 2020 FIG Code of Points

Exhibit AA-5: Statement of Ms. Mary Swafford

Exhibit AA-6: USAG’s 2021 World Championships Selection Criteria

Exhibit AA-7: *Hyatt v. USA Judo*, AAA 01-14-0000-7635

Exhibit AA-8: *Hunter v. USA Boxing*, 77 190 E 00279 09 JENF

Exhibit AA-9: USAG Developmental Program Trampoline Code of Points, 2018 – 2021

Exhibit AA-10: FIG Technical Regulations 2020

Exhibit AA-11: The Law Dictionary, definition of “obvious”

Exhibit AA-12: Statement of Ms. Sarah Webster

Exhibit AA-13: Statement of Ms. Trinity Van Natta

Drury called the following witnesses at the final hearing who were sworn in and provided testimony under oath:

1. Mary Swafford
2. Charlotte Drury

Each one of the Affected Athletes was invited to attend the hearing. Drury, Stevens, Pinotek, and Amano attended the hearing and were invited to offer statements, present evidence, and call and cross-examine witnesses. Stevens provided a written statement. Piontek made an opening statement and a closing statement during the hearing.

### **III. Notice to Affected Athletes**

As stated above, on June 30, 2021 at 2:26 p.m. CT and again on July 1, 2021 at 12:39 p.m. CT, AAA issued written notice via email to the Parties and Affected Athletes. A copy of the *Notice of Pending Arbitration and Hearing* is set forth verbatim as follows:

Sarah Webster and Olivia Simpson have filed a Complaint under Section 9 of the USOPC Bylaws and a Demand for Arbitration with the American Arbitration Association regarding individual trampoline scores from the 2021 VIP Classic. A copy of the Section 9 Complaint and Demand for Arbitration are attached. The AAA has appointed Christian Dennie, Esq. of Fort Worth, Texas to serve as the Arbitrator in this matter.

Because the arbitration may affect your rights, you are entitled to participate in the arbitration as a party. Even if you do not participate, you will be bound by any decision rendered in the arbitration that affects your rights. If you have questions about the arbitration procedures or whether you need legal counsel, or need assistance in obtaining counsel, please contact Kacie Wallace or Emily Azevedo in the office of the Athlete Ombuds at [ombudsman@usathlete.org](mailto:ombudsman@usathlete.org) or 719-866-5000.

Mr. Dennie has set the arbitration upon the request of the parties to be conducted via Zoom commencing at **8:00 a.m. PST/9:00 MST/10:00 CST/11:00 EST on July 2, 2021**, a copy of the notice of hearing is attached. The Zoom login information is as follows:

<https://americanarb.zoom.us/j/99252943737>

Meeting ID: 992 5294 3737

Passcode: 211799

It would be appreciated if you could advise me at your earliest convenience about whether you intend to participate in any manner in this procedure. In any event, the arbitrator has ordered that all affected athletes will receive copies of all submissions made during this procedure. Please address any communications concerning this matter to me at the email above.

#### IV. Jurisdiction

An arbitrator has jurisdiction over disputes if the dispute is protected under the Act, 36 U.S.C. § 220501, *et seq.*, and the controversy involves the opportunity to participate in national and international competition representing the United States. Section § 220522(a)(4) of the Act states:

An amateur sports organization, a high-performance management organization, or a paralympic sports organization is eligible to be certified, or to continue to be certified, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete . . . , which arbitration under this paragraph shall be conducted in accordance with the standard commercial arbitration rules of an established major national provider of arbitration and mediation services based in the United States and designated by the corporation with the concurrence of the Athletes' Advisory Council and the National Governing Bodies' Council, as modified and provided for in the corporation's constitution and bylaws, except that if the Athletes' Advisory Council and National Governing Bodies' Council do not concur on any modifications to such Rules, and if the corporation's executive committee is not able to facilitate such concurrence, the standard commercial rules of arbitration of such designated provider shall apply unless at least two-thirds of the corporation's board of directors approves modifications to such Rules. . . .

Additionally, Section § 220522(a)(8) of the Act states that a national governing body (“**NGB**”) must:

[P]rovide[ ] an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, age, or national origin, and with fair notice and opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate. . . .

Section 9.1 of the USOPC Bylaws provides as follows:

No member of the corporation may deny or threaten to deny any amateur athlete the opportunity to participate in the Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or other such protected competition as defined in Section 1.3 of these Bylaws nor may any member, subsequent to such competition, censure, or otherwise penalize, (i) any such athlete who participates in such competition, or (ii) any organization that the athlete represents. The corporation shall, by all reasonable means, protect the opportunity of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States in any of the aforesaid competitions. In determining reasonable means to protect an athlete’s opportunity to participate, the corporation shall consider its responsibilities to the individual athlete(s) involved or affected, to its mission, and to its membership.

Under USOPC Bylaws Section 1.3(x), “Protected Competition” means:

i. any Delegation Event as defined by these Bylaws

ii. any international competition between athlete(s) officially designated by the appropriate NGB as representing the United States, either individually or as part of a team, and any athlete(s) representing any foreign country where

1. the terms of such competition require that the entrants be individuals or teams representing their respective nations; and

2. the athlete(s) representing the United States are organized and sponsored by the appropriate NGB in accordance with a defined selection or tryout procedure that is open to all and publicly announced in advance except for domestic amateur athletic competition, which, by its terms, requires that entrants be expressly restricted to members of a specific class of athletes such as those referred to in Section 220526(a) of the Act (i.e., high school students, college students, members of the Armed Forces, or similar groups or categories);

iii. any domestic competition or event (i.e., a camp, tryout, or trials event) organized and conducted by an NGB or PSO in its selection procedure and publicly announced in advance as a competition or event directly qualifying each successful competitor as an athlete representing the United States in a Delegation Event or protected international competition as defined in ii. above.

USOPC Bylaws Section 9.7 provides that, “[i]f the complaint [under Section 9.1] is not settled to the athlete’s satisfaction the athlete may file a claim with the arbitral organization designated by the corporation Board against the respondent for final and binding arbitration.” Under both Sections 9.7 and 9.9 of the USOPC Bylaws, the arbitration proceeding may be expedited.

## V. Selection Procedures

Pursuant to the Act, the USOPC has “exclusive jurisdiction, directly or through constituent members [e.g., NGBs] . . . over all matter pertaining to United States participation in Olympic Games, the Paralympic Games, and the Pan-American Games, including representation of the United States in the games.” 36 U.S.C. § 220503(3)(A). The USOPC has both the authority and responsibility “to obtain for the United States, directly or by delegation to the appropriate national governing body, the most competent amateur representation possible in each event of the Olympic Games, the Paralympic Games, and the Pan-American Games.” 36 U.S.C. § 220503(4). In accordance with Section 19.3(i) of the USOPC Bylaws, the USOPC is authorized “to approve or disapprove selection procedures recommended by NGBs . . . .”

USAG is the NGB for gymnastics in the United States and is recognized as such by the USOPC and International Gymnastics Federation (“**FIG**”). USAG is authorized as the NGB for the sport of gymnastics to “establish procedures for the determination of eligibility standards for participation in competition” and to “recommend to the [USOPC] individuals and teams to represent the United States . . . .” 36 U.S.C. § 220523(a)(5-6). In accordance with Section

8.4.1(d)(ii) of the USOPC Bylaws, USAG must “establish clear ... procedures ... approved ... by the [USOPC] ... and timely disseminate such procedure to the athletes and team officials.”

USAG adopted certain policies and procedures for qualification for the 2020 Olympic Games (“**Olympics**”) and the 2021 World Championships (“**World Championships**”). USAG drafted and adopted the *USA Gymnastics Athletic Selection Procedures 2020 Olympic Games – Trampoline* on March 11, 2019 and the same was amended on May 30, 2019, October 14, 2019, July 14, 2020, and April 5, 2021 (“**Olympic Procedures**”). *Ex. C-1*. The Olympic Procedures were approved by the USOPC and timely posted by USAG. In pertinent part, the Olympic Procedures provide as follows:

## 1. SELECTION SYSTEM

1.1. Provide the minimum eligibility requirements for an athlete to be considered for selection to the Team:

1.1.1. Nationality/Passport requirements:

Athlete must be a national of the United States at the start of the Tryout Events (see 1.2.1.).

Athlete must hold a valid U.S. passport that will not expire for six (6) months after the conclusion of the Games.

1.1.2. Minimum International Olympic Committee (IOC) standards for participation:

Any competitor in the Olympic Games must be a national of the country of the National Olympic Committee (NOC) which is entering such competitor. For additional information regarding an athlete who is a national of two or more countries, has changed his or her nationality or acquired a new nationality, refer to the Olympic Charter (Rule 41), the IPC Handbook (Section 2, Chapter 3.1), or the PASO Statutes (Article XXII, Sections 4 and 5).

1.1.3. Minimum International Gymnastics Federation (FIG) standards for participation (if any):

- Athlete must be a minimum of 18 years of age by December 31, 2021 (born on or before December 31, 2003).
- Hold a valid FIG Athlete License through the end of the 2020 Olympic Games Trampoline Gymnastics competitions.
- Have reached the minimum technical standard established by the FIG and available at [www.fig-gymnastics.com](http://www.fig-gymnastics.com).



1.1.4. Other requirements (if any):

- Athletes must have successfully completed all Games Registration requirements by stated deadline.
- Athlete must be a member in good standing with USA Gymnastics at the time of nomination.
- Athlete must meet the Senior Elite mobility requirements to compete as a Senior Elite athlete. Mobility requirements are posted in the 2020-2021 Trampoline & Tumbling Rules & Policies (Sec. VI) (due to be published by September 2020).
- Any athlete age 18 or older will be required to undergo a background screen in accordance with the current USOPC Background Check Policy.
- Any athlete age 18 or older as of the Olympic Games Closing Ceremony will be required to complete the U.S. Center for SafeSport's online training.

1.2. Tryout Events:

- 1.2.1. Provide the event names, dates and locations of all trials, events and camps to be used as part of the selection process.

Additional information regarding the final competition dates, competition schedule and the competition format will be published via the T&T (Trampoline & Tumbling) page of the USA Gymnastics website at [https://usagym.org/pages/tt/events/program\\_events.html](https://usagym.org/pages/tt/events/program_events.html) a minimum of 45 days prior to the start of each of the Tryout Events listed below. Due to the ongoing pandemic, recent changes made to the FIG Qualification system, and schedule conflicts between the recently confirmed dates for remaining opportunities for the U.S. to qualify Olympic quotas (World Cup and Continental Qualifier) and domestic Tryout Events, the Tryout Events are now as follows:

Tryout Event 1:

- 2021 Elite Challenge – May 13-16, 2021, Birmingham, AL

Tryout Event 2:

- 2021 VIP Classic – June 3-6, 2021, Marion, OH

OR

- 2021 Brescia World Cup – June 4-5, 2021, Brescia, ITA \*

- \* Scores may only be used from the 2021 Brescia World Cup if the athlete is eligible as described in 1.2.2.

Tryout Event 3:

- 2021 USA Gymnastics Championships – June 22-27, 2021, St. Louis, MO

OR

- 2021 Pan American Championships, June 11-13, 2021, Rio de Janeiro, BRA \*\*

\*\* Scores may only be used from the 2021 Pan American Championships if the athlete is eligible as described in 1.2.2. and is unable to compete at the 2021 USA Gymnastics Championships due to complications arising from competing internationally (for example, quarantine restrictions or testing positive for COVID).

1.2.2. Provide event names, dates, locations and description of how athletes qualify for the trials, events and camps listed above in 1.2.1. (if any).

- To qualify to compete at the 2021 VIP Classic and 2021 Elite Challenge, athletes must meet mobility requirements as a Senior Elite as stated in the 2020-2021 Trampoline & Tumbling Rules & Policies (Sec. VI).
- To compete at the 2021 USA Gymnastics Championships, athletes must meet qualification requirements as stated in the 2020-2021 Trampoline & Tumbling Rules & Policies (Sec. VI).
- The process for selecting athletes to participate in World Cups and continental championships is described in the 2021 T&T International Assignments & Selections document, however, to be eligible to use scores from the 2021 Brescia World Cup and/or 2021 Pan American Championships as part of the process for selection to the Olympic Team as outlined in 1.3.3., an athlete must be mathematically able to secure the USA a quota place to the Olympic Games, based on the current FIG qualification procedures, points earned to-date and remaining opportunities, defined as:

- Brescia World Cup: any athlete with world ranking points prior to Brescia World Cup per the FIG World Rankings list found at [www.gymnastics.sport/site/rankings/ranking\\_tra.php](http://www.gymnastics.sport/site/rankings/ranking_tra.php).
- Pan American Championships: Senior Men (due to having no current continental representation within the allocated quota places – see official Olympic Games Qualification System).

If an athlete does not meet this criteria and chooses to participate in the 2021 Brescia World Cup and/or 2021 Pan American Championships, he or she will forego the opportunity to earn a score through Tryout Event 2, and if unable to also compete at 2021 USA Gymnastics Championships, through Tryout Event 3.

USAG drafted and adopted the *USA Gymnastics Athletic & Coach Selection Procedures 2021 World Championships – Baku, Azerbaijan – Trampoline & Tumbling* on November 20, 2020 and the same was amended on February 1, 2021 and March 17, 2021 (“**World Championship Procedures**”). *Ex. C-2*. The World Cup Procedures were approved by the USOPC and timely posted by USAG. In pertinent part, the World Championship Procedures provide as follows:

## I. SELECTION SYSTEM

### A. Minimum eligibility requirements for an athlete to be considered for selection to the Team.

#### 1. Citizenship

- Athlete must be a citizen of the United States at the start of the selection process and at the time of selection hold a current U.S. passport that will not expire for six (6) months after the conclusion of the event.

#### 2. Minimum International Federation standards for participation (if any)

- Athlete must be at least 17 years of age at December 31, 2021.
- Athlete must hold a valid FIG Athlete License at the time of event accreditation.

#### 3. Other requirements (if any)

- Athlete must compete as Senior Elite at time of selection events noted in I.B.1.
- Athlete must be a member in good standing of USA Gymnastics.
- Any athlete age 18 or older will be required to complete SafeSport training.

### B. Tryout Events

#### 1. Event names, dates and locations of all trials, events and camps to be used as part of the selection process.

Event Group 1:

- 2021 Elite Challenge – May 13-16, Birmingham, AL

Event Group 2:

- 2021 VIP Classic – June 3-6, Marion, OH

OR

- 2021 Brescia World Cup – June 2-5, Brescia, ITA

Event Group 3:

- 2021 USA Gymnastics Championships – June 22-27, Saint Louis, MO

OR

- 2021 Pan American Championships – June 8-13, Rio de Janeiro, BRA\*

\* Scores may only be used from the 2021 Pan American Championships if the athlete is unable to compete at the 2021 USA Gymnastics Championships due to complications arising from competing internationally (for example, quarantine restrictions or testing positive for COVID).

To be eligible for selection, athletes must compete full preliminary routines or passes at two (2) of the three (3) Tryout Events (i.e.: 20 skills in Individual Trampoline, 16 skills in Tumbling, and 4 skills in Double-Mini, or until interruption; saluting does not fulfill this requirement).

Additional information regarding the final competition dates, competition schedule and the competition format will be published on the USA Gymnastics website prior to the start of each of the Tryout Events.

2. Event names, dates, locations and description of how athletes qualify for any Tryout Events, or procedures that are prerequisites to attend any of the Tryout Events.

- To qualify to compete at the Tryout Events, athletes must meet mobility requirements as a Senior Elite as stated in the 2021 T&T Rules & Policies (Sec. VI).
- To compete at the 2021 USA Gymnastics Championships athletes must meet qualification requirements as stated in the 2021 T&T Rules & Policies (Sec. VI).
- The process for selecting athletes to participate in World Cups and continental championships is described in the 2021 T&T International Assignments & Selections document, however, to be eligible to use scores from the 2021 Brescia World Cup and/or 2021 Pan American

Championships as part of the process for selection to the Olympic Team as outlined in 1.3.3., an athlete must be mathematically able to secure the USA a quota place to the Olympic Games, based on the current FIG qualification procedures, points earned to-date and remaining opportunities, defined as:

- Brescia World Cup: any athlete with world ranking points prior to Brescia World Cup per the FIG World Rankings list.
- Pan American Championships: Senior Men (due to having no current continental representation within the allocated quota places – see official Olympic Games Qualification System).

If an athlete does not meet these criteria and chooses to participate in the 2021 Brescia World Cup and/or 2021 Pan American Championships, he or she will forego the opportunity to earn a score through Event Group 2, and if unable to also compete at 2021 USA Gymnastics Championships, through Event Group 3.

## **VI. Discussion and Analysis**

The undersigned has considered all the facts, allegations, arguments, testimony, and evidence submitted by the Parties in the present proceeding. In drafting and explaining the *Arbitration Award*, the arbitrator refers in this *Arbitration Award* only to the submissions and evidence considered necessary to explain the reasoning in this decision. After considering all evidence submitted, based on the preponderance of the evidence, the undersigned makes the following findings:

### **A. Standard of Review and Burden of Proof**

The applicable standard of review in Section 9 cases is *de novo*. *Crowell v. US Equestrian Federation*, AAA Case No. 77 190 E 00193 09 JENF (May 3, 2009); *Nadmichettu v. US Table Tennis Ass’n*, AAA Case No. 77 190 169 10 JENF (Apr. 23, 2010); *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Fogarty v. USA Badminton*, AAA Case No. 01-19-0000-7585 (June 21, 2019). “In exercising *de novo* review in a team selection dispute, the arbitrator ensures that: 1) the athlete is given adequate procedural due process by providing a full and fair opportunity to be heard regarding [her] claims; and 2) the merits of an NGB’s challenged decision comply with the foregoing requirements of law of private associations by analyzing whether the athlete selection procedures are valid; were followed and applied consistently; its discretionary decision was rational/reasonable (*i.e.*, not arbitrary or capricious) and in good faith (*i.e.*, without any bad faith or bias); and complies with applicable federal and state laws.” *Liu v. USA Table Tennis, Inc.*, AAA Case No. 01-19-0002-0105 (June 20, 2019); *see also Nieto v. USA Track & Field*, AAA Case No. 77 190 00275 08 (July 19, 2008)(stating claimant did not carry the burden of persuasion to show that the NGB rule lacks rational basis); *Wright v. Amateur Softball Assn.*, AAA Case No. 301900046602 (Jan. 23, 2003)(stating “an arbitrator

should not disturb the selections by the [NGB] unless the arbitrator finds that the body abused its discretion in the selection process”); *Scott v. Amateur Softball Assn.*, AAA Case No 301901500 (Apr. 14, 2000)(stating “claimant did not meet its burden of proof” that the NGB breached its selection procedures). In Section 9 proceedings based on a selection decision, it is well established that a claimant has the burden of proving his or her claim by a preponderance of the evidence. *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011).

In *Quigley v. Union International de Tir*, the panel, in pertinent part, stated as follows:

Regulations that affect the careers of dedicated athletes should be predictable . . . and not the product of an obscure process of accretion. Athletes and officials should not be confronted by a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the de facto practice over the course of many years of a small group of insiders.

*Quigley v. Union International de Tir*, CAS 94/129 (Apr. 20, 1995). “The whole purpose for the development of criteria for qualification for [protected competitions] is for the contenders to know how they will be selected and against what criteria they will be judged.” *Klug v. US Ski and Snowboard Association*, AAA Case No. 30 190 0056 06 (Jan. 27, 2006).

The arbitrator must determine whether USAG breached the approved and published Olympic Procedures and World Championship Procedures, applied the Olympic Procedures and World Championship Procedures inconsistently to athletes similarly situated, acted in bad faith towards or with bias against the athlete, and/or violated applicable federal or state laws. *Craig v. USA Taekwondo, Inc.*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Hyatt v. USA Judo*, AAA Case No. 01 14 0000 7635 (June 27, 2014); *Tibbs v. United States Paralympics*, AAA Case No. 71-190-E-00406 12 JENF (Aug. 28, 2012). Other arbitrations filed under the Act have determined this review to mean that a decision by USAG must have no rational basis, *i.e.* is unreasonable, arbitrary or capricious, will not meet the Act’s requirements. *Rivera v. USA Cycling, Inc.*, AAA Case No. 01 16 0002 6302 (July 26, 2016). The Arbitrator’s role is not to determine whether USAG chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USAG in establishing the Olympic Procedures and World Championship Procedures. *Id.* Rather, it is a *de novo* review, with no deference, of the application of the Olympic Procedures and World Championship Procedures to the facts of the individual case. *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015).

***B. Whether the Superior Jury at the 2021 VIP Classic had authority to award a second attempt to athletes.***

The 2021 VIP Classic was held on June 3-6, 2021 in Marion, Ohio. The 2021 VIP Classic was a qualifying tryout event for both the Olympics and the World Championships. As a result of the worldwide pandemic and the necessity to reschedule and move certain events, the 2021 VIP Classic occurred at the same time as the 2021 Brescia World Cup in Brescia, Italy. Claimants competed at the 2021 VIP Classic on June 4, 2021 and June 5, 2021. During Simpson’s preliminary routines, on June 4, 2021, she fell and afterwards informed her coach, Amanda Bailey Davis, that sunlight beamed through windows in the gym and obstructed her vision. Webster also indicated that sunlight “completely came into my eyes” and she had “no idea when I was going to

hit the trampoline.” Ms. Bailey Davis approached Patti Conner, the onsite USAG representative, to discuss the sunlight’s affect on Simpson’s performance and stated the sunlight constitutes a “safety hazard”. Ms. Conner directed Ms. Bailey Davis to Deanna Hanford, the Meet Referee and T&T Technical Representative. Ms. Bailey Davis explained that she went to the judges panel and explained that the sunlight affected Simpson’s performance and requested the opportunity for a second attempt to perform her preliminary routines. Mary Swafford, the Chair of the Judge’s Panel, testified she was busy starting the second flight of the day, but overheard Ms. Bailey Davis saying “something about a second attempt” and addressing the sunlight. Ms. Hanford conferred with Dante Herbert, the Technical Committee Trampoline Representative. Ms. Hanford, ultimately, informed Ms. Bailey Davis that the request for a second attempt was denied.

After the female competitors concluded their competition on June 4, 2021, the male competitors started warming up to compete. One of the coaches for the male competitors approached the panel of judges and indicated the sunlight was making it difficult for athletes to see and was a safety concern. After reviewing the circumstances and the sunlight, in consultation with USAG, the Technical Committee, consisting of Mr. Herbert, Ms. Hanford, Billie Willis, and Laurie Cavarretta, delayed the start of the competition for male competitors and covered the windows so sunlight could not come into the gym.

The following day, on June 5, 2021, the Technical Committee, in consultation with USAG, revisited Ms. Bailey Davis’ request for a second attempt. After considering the previous day’s events and taking into account that the event was postponed for male competitors due to sunlight, the Technical Committee offered a second attempt to all female competitors who competed in the preliminary sessions and did not accept evidence from Ms. Bailey Davis. If athletes chose to take a second attempt, they would not be permitted to use their original preliminary scores. The athletes were given one hour to determine whether they would elect to use a second attempt. Simpson and Webster were the only two athletes who elected to take a second attempt and scored much more favorably.

Subsequently, Piontek filed a grievance with the *USA Gymnastic Ethics, Grievance and Safe Sport Hearing Panel* (“**Hearing Panel**”). The Hearing Panel consisted of Lisa Fennell and Jasmine Kerber. The Hearing Panel conducted a hearing on June 18, 2021, but did not allow Simpson or Webster to appear. On June 23, 2021, the Hearing Panel issued a decision on the grievance filed by Piontek. The Hearing Panel confirmed sunlight in the gym during the 2021 VIP Classic affected the performance of athletes and stated “it was clear to the [Hearing Panel] that the sun was a factor from the outset of the elite women’s competition.” *Exhibit C-6* The Hearing Panel further noted:

The judge’s panel voiced concerns about the sun amongst themselves prior to the competition; the men’s competition was ultimately postponed due to the sun; and alterations were made to the windows during the next day of the competition due to the sun’s impact on the first day of the event.

*Exhibit C-6*. However, the Hearing Panel granted Piontek’s grievance and ordered that the original preliminary scores be reinstated. *Exhibit C-6*. The Hearing Panel concluded, in pertinent part, as follows:

As such, this [Hearing Panel] finds that it is more likely than not that Ms. Swafford did not defer her duties to anyone, but rather, was neither initially consulted regarding Ms. Simpson's request for a second attempt, nor informed of the Jury of Appeal's decision to reach out to Jacqui Godfrey for guidance. Ultimately, the Jury of Appeals and not the CJP decided to allow all the athletes to take a second attempt. Accordingly, this [Hearing Panel] finds that the Jury of Appeal's actions violated COP Section 5.3.1 as only the CJP can make determinations regarding second attempts. Given how rarely second attempts are allowed as well as several USAG members' failure to abide by the applicable regulation, **this Panel grants Ms. Hally Piontek's request to have the original preliminary scores reinstated.** Again, this [Hearing Panel] would like to emphasize the seriousness of athlete safety concerns and in no way wants to discourage athletes from coming forward to make them; however, once made, the proper procedures and protocols must be followed to ensure that all athlete's safety concerns are appropriately and uniformly addressed.

*Exhibit C-6* (emphasis in original).

Thereafter, Claimants filed the Section 9 Complaint at issue. The sole issue in this matter is whether the Technical Committee had authority to order a second attempt for athletes competing at the 2021 VIP Classic. Claimants and Drury conflict on the applicable rule at issue. Claimants argue that Section 7.8.1(1) of the *2020/2021 FIG Technical Regulations* applies to this dispute. Section 7.8.1(1) of the *2020/2021 FIG Technical Regulations* is as follows:

#### **Art. 7.8.1 Superior Jury**

The Superior Jury consists of the TC President and the members of the TCs without voting right for the Athletes' representative. The specific tasks of each member are defined by the TC concerned.

The functions of the Superior Jury are:

1. To supervise the competition and to deal with any breaches of discipline or any extraordinary circumstances affecting the conduct of the competition.

*Exhibit C-8.* Drury, on the other hand, argued that Section 5.2 of the *FIG Code of Points 2017-2020*<sup>1</sup> applies to this dispute. Section 5.2 of the *FIG Code of Points 2017-2020* is as follows:

5.2 Second attempts at routines are not allowed.

5.2.1 If a gymnast is obviously disturbed in a routine (faulty equipment or substantial external influence or the like), the Chair of Judges' Panel may allow another attempt. A gymnast's clothing cannot be classed as "equipment".

5.2.2 Spectator noise, applause and the like would not normally constitute a disturbance.

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<sup>1</sup> The *FIG Code of Points 2017-2020* is valid until the end of 2021.



*Exhibit C-7.* Section 1.4 of the *2020/2021 FIG Technical Regulations* states “[t]he [*FIG Code of Points 2017-2020*] must be read in conjunction with the [*2020/2021 FIG Technical Regulations*]. In case of conflict of interpretation between the provisions of any of the [*FIG Code of Points 2017-2020*], the principles of the [*2020/2021 FIG Technical Regulations*] shall take precedence. *Exhibit C-7.*

Drury argued that the Chair of the Judges’ Panel, Ms. Swafford, was the only person who could have granted a second attempt to athletes competing at the 2021 VIP Classic. Ms. Swafford testified that she did not grant such attempt and, in fact, was not consulted. Ms. Swafford vehemently opposed the decision to grant a second attempt and believed her authority to grant such a request was usurped by the Technical Committee. However, Ms. Swafford testified that she overheard Ms. Bailey Davis requesting a second attempt for Simpson due to sunlight that affected Simpson’s vision during her preliminary routines. Even if Ms. Swafford did hear such a request made, she did not issue a decision of any kind or take further action granting or denying the second attempt request. It is clear that Ms. Swafford did not ask follow up questions. She testified that she learned more about the request for a second attempt from Ms. Hanford after the date of competition at issue.

Claimants, however, countered Ms. Swafford’s testimony with the testimony of Dmitri Poliaroush. Mr. Poliaroush is a multi-time Olympian and national team coach and is, currently, the Vice President of the FIG Technical Committee for Trampoline. Mr. Poliaroush was involved in the drafting of the *FIG Code of Points 2017-2020*. Ms. Swafford confirmed that Mr. Poliaroush is a preeminent expert on FIG rules and regulations. Mr. Poliaroush is Webster’s coach, but did not attend the 2021 VIP Classic due to obligations at the 2021 Brescia World Cup. Mr. Poliaroush testified and confirmed that the Superior Jury is authorized to offer a second attempt during competition in circumstances involving “extraordinary circumstances” citing to Section 7.8.1(1) of the *2020/2021 FIG Technical Regulations*. The precedent for such authority was a decision made during the 2000 Olympic Games in Sydney, Australia where athletes were awarded a second attempt after it was discovered that two of the four vault rotations competed on a block that was set at 120 centimeters rather than the standard 125 centimeters.<sup>2</sup>

The Parties agreed that the 2021 VIP Classic was a smaller event and, certainly, not to the size of the 2021 Brescia World Cup. Accordingly, the committees at the 2021 VIP Classic were not as defined as they were at an international competition like the 2021 Brescia World Cup. There was a dispute as to whether the Superior Jury or the Jury of Appeal granted the second attempt. It appears, to some extent, the Parties used the terms Superior Jury and the Jury of Appeal synonymously. Mr. Poliaroush, however, testified that the Technical Committee at the 2021 VIP Classic constituted a Superior Jury. In this circumstance, Mr. Poliaroush acknowledged that the Chair of the Judge’s Panel should have ruled on the request for a second attempt, but did not. The Superior Jury, thus, had the authority to overrule the Chair of the Judge’s Panel even if she did not rule. The Superior Jury was granted such authority under Section 7.8.1(1) of the *2020/2021 FIG Technical Regulations* to grant a second attempt. Even if there was a perceived conflict between Section 7.8.1(1) of the *2020/2021 FIG Technical Regulations* and *FIG Code of Points 2017-2020*,

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<sup>2</sup> <https://www.nytimes.com/2000/09/22/sports/sydney-2000-gymnastics-romania-sweeps-as-controversy-swirls.html>

Section 1.4 of the *2020/2021 FIG Technical Regulations* makes it clear the language in the *2020/2021 FIG Technical Regulations* is controlling.

Drury pointed to *Hyatt v. USA Judo* as authority for the proposition that USAG was not permitted to grant a second attempt and, further, indicated USAG must reinstate results from the original preliminary routines. In *Hyatt v. USA Judo*, USA Judo afforded an athlete an extra 30 minutes to weigh in at an event despite having no written documentation regarding the reason for granting an extension of time. *Hyatt v. USA Judo*, AAA Case No. 01-14-0000-7635 at 6-7 (June 27, 2014). The arbitrator concluded that the athlete “never made weight within the ‘official weigh in period’” and, thus, the selection procedures were violated for granting the athlete an extension of time to weigh in, because there was no language in the selection procedures permitting such an extension. *Id.* at 11.

This matter differs from *Hyatt v. USA Judo* in that Section 7.8.1(1) of the *2020/2021 FIG Technical Regulations* expressly permits the Superior Jury to take action when “extraordinary circumstances” are present. The actions the Superior Jury may take are not defined, but Mr. Poliaroush presented testimony that second attempts are within the discretion of the Superior Jury. “Extraordinary circumstances” is also not defined in the *2020/2021 FIG Technical Regulations*; thus, the Arbitrator must apply the plain meaning of “extraordinary” and “circumstances”. Extraordinary is defined as “[o]ut of the ordinary; exceeding the usual, average, or normal measure or degree.” <https://thelawdictionary.org/extraordinary/>. Circumstances is defined as “[a] principal act.” <https://thelawdictionary.org/circumstances/>. Trampoline is a sport that is performed indoors and, thus, sunlight is not usual or a normal circumstance that an athlete must take into account when competing. Flying through the air indoors while encountering blinding or potentially blinding sunlight constitutes “extraordinary circumstances” that can affect the performance of athletes and can also pose a safety risk. Certainly, sunlight is not considered “extraordinary circumstances” in all sports or at all events. It would be foolish to consider sunlight “extraordinary circumstances” in baseball or football where athletes must commonly manage the sun when making plays. Trampoline, however, is not one of those sports where it is reasonable to have to manage the sunlight while competing.

The Arbitrator concludes that the Technical Committee was the Superior Jury of the 2021 VIP Classic. In accordance with Section 7.8.1(1) of the *2020/2021 FIG Technical Regulations*, the Superior Jury at the 2021 VIP Classic had authority to grant second attempts when “extraordinary circumstances” were present. The Arbitrator finds that sunlight, under the circumstances presented here, constitutes “extraordinary circumstances” that affected the safety of the athletes while competing. Accordingly, the results from the second attempts at the 2021 VIP Classic shall be reinstated. By coming to this conclusion, the Arbitrator does not find that Claimants are superior athletes to Affected Athletes or Affected Athletes are superior athletes to Claimants.

***C. The Field of Play Doctrine governs decisions in applying the rules of gymnastics during the competition at issue.***

The Field of Play Doctrine is set forth in Section 9.13 of the USOPC Bylaws. Section 9.13 states as follows:

The final decision of a referee during a competition regarding a field of play decision (a matter set forth in the rules of the competition to be within the discretion of the referee) is not reviewable through or the subject of these complaint procedures unless the decision is (i) outside the authority of the referee to make or (ii) the product of fraud, corruption, partiality or other misconduct of the referee. For the purposes of this Section, the term “referee” includes any individual with discretion to make field of play decisions.

On the field decisions are “best left to field officials, who are specifically trained to officiate the particular sport and are best placed, being on-site, to settle any question relating to it.” *Yang Tae Young v. FIG*, CAS 2004/A/704 (Oct. 21, 2004). Arbitrators should not “interfere with the application of the rules governing the play of the particular game” even when the referee makes an incorrect decision as long as such decision is not made with prejudice or fraud. *NAOC v. IAAF & USOC*, CAS 2008/A/1641 (Mar. 6, 2009); *Yang Tae Young v. FIG*, CAS 2004/A/704 (Oct. 21, 2004). In *Korean Olympic Committee v. ISU*, the panel stated as follows:

[D]ifferent phrases, such as “arbitrary”, “bad faith”, “breach of duty”, “malicious intent”, “committed a wrong”, and “other actionable wrongs” are used, apparently interchangeably, to express the same test. In the Panel’s view, each of those phrases means more than the decision is wrong or one that no sensible person could have reached. If it were otherwise, every field of play decision would be open to review on its merits. Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence of bad faith. If viewed in this light, each of those phrases means there must be some evidence of preference for, or prejudice against, a particular team or individual.

Here, the Superior Jury decided to offer each attempt competing at the 2021 VIP Classic a second attempt to complete their preliminary routines. As the arbitrator in this dispute, it is not my role to supplant my judgment and analysis of the competition as to whether offering second attempts to all competitors was the best way to remedy the sunlight that affected preliminary routines for some or all of the competitors. Decisions about the application of the rules of gymnastics are best left to field officials who are specifically trained to officiate and presided the 2021 VIP Classic.

## **VII. Decision**

Based on the foregoing findings and analysis, the undersigned decides and awards as follows:

- The Arbitrator finds that Claimants met their burden, by the preponderance of the evidence, showing the Superior Jury had authority to offer athletes competing at the 2021 VIP Classic a second opportunity to perform their preliminary routines. In accordance with Section 7.8.1(1) of the *FIG 2020/2021 Technical Regulations*, the Superior Jury has such authority in “extraordinary circumstances affecting the conduct of the competition.” Sunlight affecting vision and safety of athletes during a gymnastics trampoline competition conducted indoors constitutes “extraordinary circumstances”. The decision made by the Superior Jury as to whether all athletes were affected and the remedy provided falls within the field of play doctrine. Accordingly,

the Arbitrator overturns the decision of the Hearing Panel and orders that the second attempt scores awarded to Claimants shall be reinstated;

- The Parties shall bear their own attorneys' fees and costs associated with this arbitration.
- The administrative fees and arbitrator compensation for AAA are to be borne as incurred.
- This award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.



Christian Dennie, FCI Arb  
Arbitrator

Date: July 9, 2021