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CALIFORNIA YOUTH SOCCER  
ASSOCIATION, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

RACHEL MEHR; BEATA IVANAUSKIENE, as  
parent of minor R.K.I. JR.; SARAH ARANDA,  
as parent of minors B.A., D.A., AND I.A.; KIRA  
AKKA-SEIDEL; KAREN CHRISTINE  
O'DONOGHUE, as parent of minor L.L.M., on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

FÉDÉRATION INTERNATIONALE DE  
FOOTBALL ASSOCIATION a/k/a "FIFA"; THE  
UNITED STATES SOCCER FEDERATION,  
INC.; US YOUTH SOCCER ASSOCIATION,  
INC.; AMERICAN YOUTH SOCCER  
ORGANIZATION; NATIONAL  
ASSOCIATION OF COMPETITIVE SOCCER  
CLUBS, INC. d/b/a US CLUB SOCCER, and  
CALIFORNIA YOUTH SOCCER  
ASSOCIATION,

Defendants.

CASE NO. 4:14-CV-03879 PJH

**DEFENDANT CALIFORNIA YOUTH  
SOCCER ASSOCIATION, INC.'S (1)  
NOTICE OF JOINDER AND JOINDER  
TO DEFENDANTS UNITED STATES  
SOCCER FEDERATION'S and  
FÉDÉRATION INTERNATIONALE DE  
FOOTBALL ASSOCIATION'S  
MOTIONS TO DISMISS COMPLAINT  
PURSUANT TO FRCP 12(b)(1), 12(b)(6)  
and 12(b)(7); (2) NOTICE OF JOINDER  
AND JOINDER TO DEFENDANT  
FÉDÉRATION INTERNATIONALE DE  
FOOTBALL ASSOCIATION'S MOTION  
TO COMPEL ARBITRATION and (3)  
NOTICE OF MOTION AND MOTION  
TO DISMISS COMPLAINT PURSUANT  
TO FRCP 12(b)(1) AND 12(b)(6);  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Judge: Hon. Phyllis J. Hamilton  
Date: May 6, 2015  
Time: 9:00 a.m.  
Dept.: Courtroom 3

Complaint filed 08/27/2014

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**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

	<u>Page</u>
I. INTRODUCTION.....	2
II. RELEVANT FACTUAL BACKGROUND.....	3
A. CYSA’s Role as a Regional Organization Affiliated with US Soccer and US Youth Soccer Association to Help Organize Youth Soccer Programs in Northern California.....	3
B. Background on Plaintiffs and the CYSA Release .....	4
III. PLAINTIFFS LACK STANDING TO OBTAIN THE RELIEF SOUGHT IN COUNTS 1 (NEGLIGENCE) AND 2 (VOLUNTARY UNDERTAKING).....	5
A. None of the Plaintiffs Alleges an Injury That Would Give Rise to a Right to Medical Monitoring Relief from Defendants.....	5
B. Plaintiffs Lack Standing to Seek Prospective Injunctive Relief with Respect to CYSA.....	6
C. Plaintiff Mehr’s Claims Are Time-Barred.....	7
IV. PLAINTIFFS HAVE NOT, AND CANNOT, ALLEGE VIABLE CLAIMS FOR NEGLIGENCE IN COUNTS 1 AND 2 BECAUSE CYSA HAD NO DUTY TO IMPLEMENT THE CONSENSUS STATEMENT OR TO CHANGE THE RULES OF SOCCER TO PROHIBIT HEADING.....	9
A. CYSA Has No Legal Duty to Implement the Consensus Statement Recommendations for Concussion Management.....	9
1. CYSA has no legal obligation to enforce the recommendations contained in the Consensus Statement.....	10
2. CYSA does not have a “relationship” with Plaintiffs that gives rise to a duty to enforce the recommendations in the Consensus Statement.....	11
3. CYSA did not assume a duty to enforce the recommendations contained in the Consensus Statement.....	12
B. CYSA Has No Legal Obligation To Change The Rules Of The Game Of Soccer To Prohibit Or Restrict “Heading”.....	13
C. CYSA Has No Duty Because the California Plaintiffs Signed Express Liability Waivers.....	15
V. PLAINTIFFS’ INDEPENDENT CLAIM FOR MEDICAL MONITORING (COUNT 3) SHOULD BE DISMISSED WITH PREJUDICE.....	17
VI. PLAINTIFFS DID NOT PLEAD ANY CLAIMS AGAINST CYSA.....	17
VII. CONCLUSION.....	18

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**TABLE OF AUTHORITIES**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Page

**CASES**

*Artiglio v. Corning Inc.*  
18 Cal.4th 604 (1998) ..... 13

*Avila v. Citrus Community College Dist.*  
38 Cal.4th 148 (2006) ..... 14

*Benedek v. PLC Santa Monica, LLC*  
104 Cal.App.4th 1351 (2002)..... 16

*Berman v. Parker*  
348 U.S. 26 (1954)..... 11

*Bernhardt v. County of Los Angeles*  
279 F.3d 862 (9th Cir. 2002) ..... 5

*Bushnell v. Japanese-American Religious & Cultural Center*  
43 Cal.App.4th 525 (1996)..... 14

*Coates v. Newhall Land & Farming, Inc.*  
191 Cal.App.3d 1 (1987)..... 15, 16

*Collins v. Schweitzer, Inc.*  
21 F.3d 1491 (9th Cir. 1994) ..... 12

*Connelly v. Mammoth Mountain Ski Area*  
39 Cal.App.4th 8 (1995)..... 14

*Fortier v. Los Rios Community College Dist.*  
45 Cal.App.4th 430 (1996)..... 14

*Gest v. Bradbury*  
443 F.3d 1177 (9th Cir. 2006) ..... 6

*Johnson v. Mitsubishi Electronics America, Inc.*  
578 F. Supp. 2d 1229 (C.D. Cal. 2008)..... 9

*Kahn v. East Side Union High School Dist.*  
31 Cal. 4th 990 (2003)..... 14

*Knight v. Jewett*  
3 Cal.4th 296 (1992) ..... 14

*Kormylo v. Forever Resorts, LLC*  
2015 U.S. Dist. LEXIS 1630 (S.D. Cal. Jan. 6, 2015)..... 12

*Levinson v. Owens*  
176 Cal. App. 4th 1534 (2009) ..... 14

*Los Angeles v. Lyons*

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1 461 U.S. 95 (1983).....6

2 *Lujan v. Defenders of Wildlife*

3 504 U.S. 555 (1992).....6

4 *Nalwa v. Cedar Fair, L.P.*

5 55 Cal. 4th 1148 (2012).....15

6 *Nemarnik v. Los Angeles Kings*

7 103 Cal. App. 4th 631 (2002).....15

8 *Potter v. Firestone Tire & Rubber Co.*

9 6 Cal.4th 965 (1993) .....17

10 *Settle v. World Sav. Bank, F.S.B.*

11 2012 U.S. Dist. LEXIS 4215 (C.D. Cal. Jan. 11, 2012).....8

12 *West v. Sundown Little League of Stockton*

13 96 Cal.App.4th 351 (2002).....14

14 *White v. Lee*

15 227 F.3d 1214 (9th Cir. 2000) .....5

16 CODES AND STATUTES

17

18

19

20

21

22

23

24

25

26 Federal Rules of Civil Procedure, Rule 9(b) .....8

27

28

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**NOTICE OF MOTION AND MOTION**

1  
2 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that defendant California Youth Soccer Association, Inc.  
4 (“CYSA” or “Cal North”) hereby joins in the (1) Notice of Motion and Motion to Dismiss  
5 Plaintiffs’ Complaint filed by Defendant United States Soccer Federation, Inc. (“US Soccer” or  
6 “USSF”) (“US Soccer’s Motion”); (2) Notice of Motion and Motion to Dismiss Plaintiffs’  
7 Complaint filed by Defendant Fédération Internationale de Football Association’s (“FIFA”)  
8 (“FIFA’s Motion”); and (3) FIFA’s Motion to Compel Arbitration, all pending before this Court  
9 and scheduled for hearing simultaneously with this Motion. CYSA respectfully requests that any  
10 relief ordered by the Court relative to US Soccer’s Motion, FIFA’s Motion, or FIFA’s Motion to  
11 Compel Arbitration be ordered also in favor of CYSA.

12 Additionally, PLEASE TAKE NOTICE that on May 6, 2015, at 9:00 a.m., or as soon  
13 thereafter as the matter may be heard by the Court in the courtroom of the Honorable Phyllis J.  
14 Hamilton, Courtroom 3, Third Floor, United States District Court, 1301 Clay Street, Oakland,  
15 California 94612, Defendant CYSA will, and hereby does, move the Court for an order dismissing  
16 Plaintiffs’ Complaint with prejudice on the additional grounds noted below. This motion is based  
17 upon this Notice of Motion, the Memorandum of Points and Authorities, Request for Judicial  
18 Notice (“RJN”) and Declaration of J. Peter Zopfi (“Zopfi Decl.”), oral argument, and such other  
19 matters as the Court may consider.

**STATEMENT OF ISSUES**

20  
21 CYSA joins in US Soccer’s Motion to Dismiss Plaintiffs’ Complaint on the grounds that  
22 Plaintiffs lack standing to pursue the relief sought as to Counts 1 and 2, and that Count 3 should be  
23 dismissed because the states where Plaintiffs reside do not recognize independent claims for  
24 medical monitoring, and Plaintiffs have no alleged exposure to a known hazardous substance.  
25 CYSA also joins FIFA’s Motion and FIFA’s Motion to Compel Arbitration.

26 In addition, the Complaint should be dismissed with prejudice as to CYSA based on the  
27 following additional defenses, which are specific to CYSA:

- 28
- Only two of the named Plaintiffs, Rachel Mehr (“Mehr”) and Kira Akka-Seidel

1 (“Akka-Seidel”), allege that they played soccer in California for CYSA-affiliated  
 2 teams. Of those two, Mehr’s claims are time-barred. Given her birthdate of  
 3 November 21, 1993, she would have turned 18 on November 21, 2011, and therefore  
 4 California law required personal injury claims accrued from her participation in  
 5 youth soccer to have been filed within 2 years of her 18<sup>th</sup> birthday, or by  
 6 November 21, 2013. This suit was not filed until August 27, 2014, nine months after  
 7 that limitations period had expired, and Plaintiffs’ alleged fraudulent concealment  
 8 does not save Mehr’s claims.

- 9 • The claims of both of the California plaintiffs, Mehr and Akka-Seidel, are precluded  
 10 by the express liability releases that their parents signed as a condition of them  
 11 playing for CYSA-affiliated teams.
- 12 • None of the Plaintiffs, including the two California plaintiffs, Mehr and Akka-  
 13 Seidel, actually plead a claim directly against CYSA.

### 14 MEMORANDUM OF POINTS AND AUTHORITIES

#### 15 I. INTRODUCTION

16 As detailed in US Soccer’s Motion and in FIFA’s Motion, this action seeks a fundamental  
 17 change in the rules of youth soccer. However, numerous problems with Plaintiffs’ claims warrant  
 18 dismissal of the Complaint with prejudice. CYSA joins in US Soccer’s Motion and in FIFA’s  
 19 Motion, and asks that any relief ordered by the Court relative to US Soccer’s Motion or FIFA’s  
 20 Motion be ordered also in favor of CYSA. To avoid duplication, CYSA will not repeat US Soccer’s  
 21 and FIFA’s arguments here, except where CYSA’s status as a regional California organization  
 22 overseeing club and league-level youth soccer raises different considerations than addressed in US  
 23 Soccer’s Motion or FIFA’s Motion.

24 In addition to incorporating US Soccer’s and FIFA’s arguments, CYSA will focus in its  
 25 own Motion to Dismiss on defenses particular to its status as the only California-based defendant,  
 26 and on the claims of the only named Plaintiffs, Mehr and Akka-Seidel, who allege that they played  
 27 with CYSA-affiliated teams. Three specific issues are discussed:  
 28

1 First, Mehr's claims are time barred. Given her birthdate of November 21, 1993, she would  
 2 have turned 20 on November 21, 2013, at which time the two-year limitations period for any  
 3 personal injury she might have sustained while playing on a CYSA youth team would have expired  
 4 under California law. This suit was filed August 27, 2014, nine months after the limitations period  
 5 had expired, and Plaintiffs' fraudulent concealment contentions do not toll that period.

6 Second, anyone playing on a CYSA-affiliated team must have a parent or guardian sign on  
 7 their behalf explicit releases of all claims against CYSA or its affiliates arising from participation in  
 8 the sport. Mehr's and Akka-Seidel's parents or guardians needed to sign such releases as a  
 9 condition of Mehr and Akka-Seidel playing soccer for CYSA-affiliated teams. Those releases  
 10 preclude the claims that Mehr and Akka-Seidel have pled.

11 Third, none of the Plaintiffs, including Mehr and Akka-Seidel as the only California  
 12 plaintiffs, actually plead a claim against CYSA. In fact, Mehr specifically states that she is "suing  
 13 FIFA, AYSO, US Youth Soccer Association and US Club Soccer," and Akka-Seidel similarly  
 14 specifies that she is "suing FIFA, USYSA, and USSF Soccer." Compl. ¶¶ 38 and 47. While perhaps  
 15 an oversight, no specific claims have been asserted against CYSA.

## 16 **II. RELEVANT FACTUAL BACKGROUND**

### 17 **A. CYSA's Role as a Regional Organization Affiliated with US Soccer and US** 18 **Youth Soccer Association to Help Organize Youth Soccer Programs in** 19 **Northern California.**

20 CYSA (also known as Cal North) is a non-profit corporation which serves to provide an  
 21 opportunity for youth players of all levels of skill across Northern California to participate in soccer  
 22 programs. It is an affiliated member of US Youth Soccer Association, Inc. (USYSA) which in turn  
 23 is a member of USSF, and thus complies with the authority of USYSA and USSF. CYSA's  
 24 territory extends within California from the Oregon state line south to the southern boundaries of  
 25 Monterey, Kings, Tulare and Inyo counties. That territory is divided into nine geographically based  
 26 districts. Each of those districts is further geographically divided into clubs or leagues of  
 27 registration. There are more than 300 clubs or leagues within CYSA. Each club or league in turn  
 28 oversees a multitude of individual soccer teams. For example, District 1 covers the greater San  
 Francisco region, and is divided into four leagues which, in turn, are further divided into numerous

1 teams. The South San Francisco United Youth Soccer League, for instance, currently has  
 2 approximately thirteen “House Teams” in just its recreational program, including the SSF Chelsea,  
 3 the SSF Arsenal, and the SSF Jedis. Approximately 188,000 youths currently play soccer through  
 4 teams registered with one of CYSA’s community-based soccer leagues. CYSA does not directly  
 5 oversee individual players or games. That level of supervision and control rests with the individual  
 6 teams and coaches.

7 CYSA is a member of USYSA, which, along with American Youth Soccer Organization  
 8 (“AYSO”) and National Association of Competitive Soccer Clubs, Inc. (“US Club Soccer”)  
 9 comprise the “Youth Members” of US Soccer, provides oversight to its under-eighteen age  
 10 members. CYSA does not have authority to make or change the “Laws of the Game” of soccer.  
 11 That authority is held by non-party the International Football Association Board (“IFAB”).

#### 12 **B. Background on Plaintiffs and the CYSA Release**

13 Plaintiffs are one current and six *former* youth soccer players who played on teams  
 14 affiliated with one of US Soccer’s Youth Council members, and who together seek to represent a  
 15 class of all individuals who played for a team affiliated with one of US Soccer’s Youth Council  
 16 members since 2002 – a class that will likely exceed 15 million individuals.<sup>1</sup>

17 Only two of the named Plaintiffs, Mehr and Akka-Seidel, allegedly played with CYSA-  
 18 affiliated teams. Registration information shows Mehr’s birthdate as November 21, 1993. RJN Ex.  
 19 A; Zopfi Decl. Ex. A. Both are now over 18, and therefore ineligible to play on CYSA-affiliated  
 20 teams. *Id.*

21 As a condition of playing on any CYSA-affiliated team, players’ parents or guardians,  
 22 including the parents or guardians of Mehr and Akka-Seidel, had to have signed broad liability  
 23 releases agreeing to release and to hold harmless CYSA and affiliated organizations from and  
 24 against any and all claims arising out of or related in any way to the player’s participation in the  
 25 program. One release is included in the CYSA Membership Forms. *See* RJN Ex. B; Zopfi Decl.  
 26 Ex. B. In addition, another release must be filled out and affixed to the Member Pass in order for a

27 \_\_\_\_\_  
 28 <sup>1</sup> As noted in both FIFA’s Motion and US Soccer’s Motion, read literally, Plaintiffs’ proposed class is even more broadly defined, as it purports to include *all* individuals who played soccer at any level in each of FIFA’s 209 member countries over the last 12 years – not just those who played for youth members associated with US Soccer.



1 player to participate in any game. *See* RJN Ex. C; Zopfi Decl. Ex. C. By this release, the players’  
 2 parents, on behalf of themselves and the player, agree to “release and agree to hold harmless and to  
 3 indemnify the CYSA Parties . . . from and against any and all claims, liabilities, suits, damages,  
 4 causes of action, and demands of any kind, including attorney’s fees, costs, and expenses, arising  
 5 out of or related in any way to player’s participation in any of the programs of the CYSA Parties.”  
 6 *Id.* Neither Mehr nor Akka-Seidel could have played soccer on a CYSA-affiliated team unless her  
 7 parents signed those releases.

8 **III. PLAINTIFFS LACK STANDING TO OBTAIN THE RELIEF SOUGHT IN**  
 9 **COUNTS 1 (NEGLIGENCE) AND 2 (VOLUNTARY UNDERTAKING)**

10 **A. None of the Plaintiffs Alleges an Injury That Would Give Rise to a Right to**  
 11 **Medical Monitoring Relief from Defendants.**

12 CYSA joins and incorporates by reference US Soccer’s and FIFA’s arguments seeking  
 13 dismissal of Counts 1 and 2 based on Plaintiffs’ lack of standing, as set out in Section II of US  
 14 Soccer’s Motion and in Section I.C of FIFA’s Motion. Specific to CYSA, neither of the California  
 15 plaintiffs, Mehr or Akka-Seidel, can establish standing to bring claims against CYSA because  
 16 neither has pled an injury fairly traceable to their play on CYSA-affiliated teams.

17 To establish standing, a plaintiff must show “(1) she has suffered an ‘injury in fact’ that is  
 18 (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the  
 19 injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to  
 20 merely speculative, that the injury will be redressed by a favorable decision.” *Bernhardt v. County*  
 21 *of Los Angeles*, 279 F.3d 862, 868–69 (9th Cir. 2002).

22 Here, neither Mehr nor Akka-Seidel pled that she suffered a concussion or other harm while  
 23 playing for a team affiliated with CYSA or any of the US Defendants. Therefore, neither can claim  
 24 an injury arising from CYSA’s alleged lack of sufficient concussion management protocols. *See*  
 25 *also* US Soccer’s Motion, Section II.A.1; FIFA’s Motion, Section I.C.1. Absent an injury, neither  
 26 has standing and their claims should be dismissed. *See White v. Lee*, 227 F.3d 1214, 1242 (9th Cir.  
 27 2000) (standing is properly the subject of a Rule 12(b)(1) motion to dismiss).  
 28

1 Likewise, neither Mehr nor Akka-Seidel pled that she headed a soccer ball or engaged in  
 2 repetitive heading.<sup>2</sup> Therefore, neither is entitled to retrospective relief in the form of medical  
 3 monitoring as a result of CYSA's alleged failure to adopt rules addressing the issue of brain injuries  
 4 caused by repetitive heading by players under the age of 17. *See also* US Soccer's Motion, Section  
 5 II.A.2; FIFA's Motion, Section I.C.3. In short, the claims for retrospective relief as to CYSA  
 6 should be dismissed for Plaintiffs' lack of standing.

7 **B. Plaintiffs Lack Standing to Seek Prospective Injunctive Relief with Respect to**  
 8 **CYSA.**

9 Similarly, Plaintiffs' claims for prospective injunctive relief should be dismissed with  
 10 respect to CYSA. CYSA joins and incorporates by reference US Soccer's arguments seeking  
 11 dismissal of the claims for prospective injunctive relief. *See* US Soccer's Motion, Section II.B;  
 12 FIFA's Motion, Section I.C.

13 Plaintiffs seek three forms of prospective injunctive relief: 1) modification of the FIFA rule  
 14 limiting player substitutions; 2) implementation of system-wide concussion management and return-  
 15 to-play guidelines; and 3) restrictions on heading for players under age 17. Compl. ¶¶ 432, 443.

16 In addition to the Article III standing requirements discussed above, a plaintiff seeking  
 17 injunctive relief has the burden of showing an imminent threat of irreparable harm. *See Los Angeles*  
 18 *v. Lyons*, 461 U.S. 95, 111 (1983); *see also Gest v. Bradbury*, 443 F.3d 1177, 1181 (9th Cir. 2006)  
 19 (plaintiffs must be "realistically threatened by a repetition of the violation"). In the context of this  
 20 suit, this means that the California plaintiffs, Mehr and Akka-Seidel, must plead facts showing an  
 21 immediate threat of an injury-in-fact that is traceable to CYSA conduct and that would be redressed  
 22 by the relief sought. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Given that both  
 23 Mehr and Akka-Seidel are now too old to play with CYSA-affiliated teams, they could not possibly  
 24 meet that burden, as Mehr and Akka-Seidel have aged out of facing any alleged threat from CYSA.

25 Moreover, with regard to the "FIFA substitution rule," as Plaintiffs concede, the rule is not  
 26 followed at the youth soccer level. Complaint ¶ 383. Therefore, there is no imminent threat of harm

27 \_\_\_\_\_  
 28 <sup>2</sup> And, this is not surprising since Mehr and Akka-Seidel were goalkeepers who do not, as a regular matter, head the ball.

1 and no basis to grant an injunction prohibiting CYSA from enforcing the rule, as CYSA already  
 2 does not enforce that rule. *See also* US Soccer’s Motion, Section II.B.1; FIFA Motion, Section  
 3 I.C.2.

4 With respect to adoption of the Consensus Statement or imposing limits on heading, neither  
 5 Mehr nor Akka- Seidel can show an imminent threat of harm warranting injunctive relief to force  
 6 rule changes. Both are now too old to play on CYSA-affiliated teams, so neither faces any threat of  
 7 future harm if CYSA does not make these rule changes.

8 In short, Counts 1 and 2 should be dismissed with respect to CYSA because of Plaintiffs’  
 9 lack of standing.

10 **C. Plaintiff Mehr’s Claims Are Time-Barred.**

11 An additional reason exists to dismiss Mehr’s claims with respect to CYSA.

12 Plaintiff Mehr lacks standing because all of her claims against CYSA are time-barred.  
 13 Mehr’s birthdate is November 21, 1993, and the last season she played on a CYSA-affiliated team  
 14 was the Fall 2008-2009. *See* RJN Ex. A; Zopfi Decl. Ex. A. Thus, she was required to bring any  
 15 claim for personal injury sustained during this play within 2 years of turning 18, or by November  
 16 21, 2013. California Code of Civil Procedure §335.1 (2-year limitations period for personal injury  
 17 claims) and §352 (tolling limitations period until 2 years after minor reaches age 18). This  
 18 Complaint was filed August 27, 2014, which is nine months after Mehr had turned 20, so Mehr’s  
 19 claims are time-barred.

20 Plaintiffs will claim that the limitations period was tolled because Defendants fraudulently  
 21 concealed the risks of concussions. They have asserted that “FIFA and the other defendants  
 22 continues [sic] to ignore and actively conceal the repeated warning and patterns of injury of which  
 23 FIFA has actual knowledge,” and that before a concussion at the World Cup occurred in 2014,  
 24 “Plaintiffs and the Class were unaware that the conduct of FIFA may have caused them to be at an  
 25 increased risk for developing chronic brain injury symptoms[.]” Compl. ¶¶408, 410. These  
 26 allegations are insufficient to establish fraudulent concealment for at least two reasons. First,  
 27 Plaintiffs, and Mehr in particular, fail to allege fraudulent concealment with sufficient particularity.  
 28 Second, Plaintiffs’ own Complaint makes clear that the information about concussion-related risks

1 of soccer has been available to the public for over a decade.

2 Federal Rules of Civil Procedure, Rule 9(b) requires that “[i]n alleging fraud or mistake, a  
3 party must state with particularity the circumstances constituting fraud or mistake.” Particularity in  
4 pleading requires that the Plaintiff provide the “who, what, when, where, and how of the  
5 misconduct alleged.” *Settle v. World Sav. Bank, F.S.B.*, 2012 U.S. Dist. LEXIS 4215, at \*23 (C.D.  
6 Cal. Jan. 11, 2012) (internal citations omitted). While Plaintiffs provide the barest of facts related to  
7 the “who” (“FIFA and the other defendants” [Compl. ¶411]), and a general statement of the what  
8 (that soccer players may be at risk of concussion [Compl. ¶408]), they, and Mehr in particular,  
9 provide no facts identifying the when, where and how of the alleged concealment. None of the  
10 allegations are specific to Mehr or to CYSA (or any of the US Defendants for that matter). Given  
11 this failure to allege active concealment with the particularity required by Fed. R. Civ. P. 9(b),  
12 Mehr may not rely on the allegations of fraudulent concealment to toll the statute of limitations.

13 Mehr also cannot show fraudulent concealment because, by Plaintiffs’ admission in the  
14 Complaint, the information allegedly concealed has been publicly available for at least ten years.  
15 Plaintiffs cite numerous consensus statements and alleged best practices on concussion  
16 management and return to play protocols developed and made publicly available more than two  
17 years before the filing of their Complaint, including by way of example only:

- 18 • The “Concussion in Sports Group” Vienna Protocol published in 2002, the Prague  
19 Protocol” published in 2005 and the “Zurich Protocol” published in 2008  
20 (Complaint ¶¶ 133-141, ¶¶ 155-165 fns. 51-53);
- 21 • The 2004 National Athletic Trainer s’ Association Position Statement: Management  
22 of Sports-Related Concussion (Complaint ¶¶142-145 and fn. 54); and
- 23 • The 2006 American College of Sports Medicine Concussion Consensus Statement  
24 and the 2011 Update. Compl. ¶¶146-148, 173-175 and fn. 55, 64 and 65.

25 They also cite to no less than 35 *publicly available* journal studies, news articles, and press releases  
26 that detail the concussion-related risks associated with sports in general and soccer specifically.

27 Compl., *passim*. Plaintiffs also admit that CYSA published information about concussion treatment  
28 and management on its website as early as September 30, 2013, (Compl. ¶ 350), and that both FIFA

1 and US Soccer included concussion information on their websites. Compl. ¶¶134, 229-234, 261-  
2 263.

3 These facts, asserted by the Plaintiffs themselves, contradict any claim of fraudulent  
4 concealment. Plaintiffs' allegations of fraudulent concealment are insufficient to toll any otherwise  
5 applicable statute of limitations. *See, e.g., Johnson v. Mitsubishi Electronics America, Inc.*, 578 F.  
6 Supp. 2d 1229 (C.D. Cal. 2008) (where the information was admittedly publicly available,  
7 allegation of fraudulent concealment insufficient to toll statute of limitations).

8 **IV. PLAINTIFFS HAVE NOT, AND CANNOT, ALLEGE VIABLE CLAIMS FOR**  
9 **NEGLIGENCE IN COUNTS 1 AND 2 BECAUSE CYSA HAD NO DUTY TO**  
10 **IMPLEMENT THE CONSENSUS STATEMENT OR TO CHANGE THE RULES**  
11 **OF SOCCER TO PROHIBIT HEADING**

12 CYSA joins and incorporates by reference US Soccer's and FIFA's arguments that seek  
13 dismissal of Counts 1 and 2 based on Plaintiffs' inability to plead facts showing a duty owed by any  
14 of the Defendants, as set out in Section III of US Soccer's Motion and in Section II of FIFA's  
15 Motion.

16 Specific to CYSA, Plaintiffs allege that CYSA either owed a duty (Count 1) or voluntarily  
17 assumed a duty (Count 2) towards Plaintiffs "to supervise, regulate, monitor, and provide  
18 reasonable and appropriate rules to minimize the risk of injury to the players" by adopting and  
19 enforcing Laws of the Game that "would reduce the risk of preventable injuries resulting from  
20 concussions and repetitive heading." Compl. ¶¶ 28, 424, 435. Dismissal is proper because Plaintiffs  
21 have not pled facts giving rise to any such duty on the part of CYSA.

22 **A. CYSA Has No Legal Duty to Implement the Consensus Statement**  
23 **Recommendations for Concussion Management.**

24 Plaintiffs assert that CYSA breached a duty to implement and to enforce the  
25 recommendations for concussion management contained in the Consensus Statement, including,  
26 among other things:

- 27 • A mandatory, 24 hour stepwise return to play guideline
- 28 • Formal baseline testing regardless of age or level of performance of the player

- Requiring that a player with a concussion or suspected concussion be evaluated, managed, and cleared by medical personnel with specific expertise in concussion diagnosis, treatment, and management.

Compl. ¶¶ 349-374.

However, as detailed in US Soccer's Motion (*see* Section III.A), the Consensus Statement is not intended as a standard of care, but was developed for use by healthcare professionals. Its suggestions regarding the evaluation of players' symptoms and implementation of the multi-step return-to-play guidelines require the participation of those who have direct contact with the injured player. The document neither suggests nor requires that organizations that lack direct involvement in the events leading to the injury, like CYSA, have responsibility for the evaluation of symptoms or the resulting diagnosis and treatment. In fact, it makes no sense to impose on CYSA a duty to intervene in the diagnosis and treatment of individual players, because CYSA has no practical ability to enforce these recommendations. The information needed for such enforcement is protected by HIPAA, doctor/patient privilege and other privacy laws.

1. CYSA has no legal obligation to enforce the recommendations contained in the Consensus Statement.

Plaintiffs have not pled that CYSA has a legal obligation to rewrite the "Laws of the Game" to reduce the risk of concussions. To the contrary, Plaintiffs allege that FIFA makes the Laws of the Game and serves as the "international governing body for soccer." Compl. ¶ 93.<sup>3</sup> As a regional organization member of USYSA, which is a member of US Soccer, which is a member of FIFA, CYSA lacks the power to do so. *Id.* Under this structure, the rule changes envisioned by Plaintiffs should come from governing bodies like IFAB, rather than through the unilateral and ad hoc adoption by regional bodies. Plaintiffs do not identify any authority that would impose on CYSA an obligation unilaterally to adopt the Consensus Statement.

Tellingly, the California legislature, which has adopted legislation regarding concussion management, has declined to impose such a legal duty on organizations, like CYSA, which lack direct contact with the players. For example, California Education Code section 49475 requires that

<sup>3</sup> As set forth in FIFA's Motion (Section I.B), only IFAB has the authority to make changes to the Laws of the Game, a fact Plaintiffs concede in the Complaint. Compl. ¶ 214.

1 schools offering athletic programs remove athletes suspected of sustaining a concussion or head  
 2 injury from play, and provide annual concussion and head injury information sheets. West’s Ann.  
 3 Cal. Educ. Code § 49475. No similar requirement has been passed with respect to non-scholastic  
 4 organizations (such as private associations and leagues), much less regional governing bodies  
 5 several steps removed from the events that give rise to the injury.

6 Where, as here, a legislature has specifically addressed an issue and declined to impose  
 7 certain duties on an organization, “the public interest has been declared in terms well-nigh  
 8 conclusive. In such cases the legislature, not the judiciary, is the main guardian of the public needs  
 9 to be served by social legislation . . . .” *Berman v. Parker*, 348 U.S. 26, 32 (1954). In such  
 10 circumstances, the Court should not substitute its judgment and impose greater duties on CYSA  
 11 than those already imposed by the legislature.

- 12 2. CYSA does not have a “relationship” with Plaintiffs that gives rise  
 13 to a duty to enforce the recommendations in the Consensus Statement.

14 CYSA is an intermediate layer in a hierarchy of United States soccer organizations. At the  
 15 top are rule-making bodies like IFAB and US Soccer. Below are regional organizations, like  
 16 CYSA, and below that lie districts, which oversee clubs and leagues, which in turn oversee  
 17 individual teams. Although players are members of it, CYSA does not directly oversee individual  
 18 youth players or their play. With leagues and clubs in between, there are multiple levels of  
 19 organization between CYSA and the youth players.

20 Because CYSA does not directly monitor the play of individual youth players, CYSA has  
 21 no ability to “enforce” the recommendations in the Consensus Statement regarding concussion  
 22 management. Among other things, those recommendations include a 5 to 7 day step-wise return-to-  
 23 play protocol that requires daily monitoring of activity and symptoms. As a practical matter, CYSA  
 24 cannot enforce guidelines for which it has no method of confirming compliance, nor can it be  
 25 responsible for dictating the appropriate course of medical treatment for an injury. As  
 26 acknowledged by the Consensus Statement, *that is and should be a matter addressed by the*  
 27 *child’s parents and doctor.* CYSA lacks a mechanism to enforce the recommendations in the  
 28 Consensus Statement once a youth player leaves the soccer field and goes home, particularly given

1 that the information needed for such enforcement is protected by HIPAA, doctor/patient privilege,  
2 and other privacy laws.

3 California courts have reached the same conclusion regarding the lack of liability of a  
4 governing organization in similar circumstances. For example, applying California law, the District  
5 Court for the Southern District of California dismissed a negligence claim against the Boy Scouts  
6 of America that arose out of a participant's injury and was based on the Boy Scouts' alleged failure  
7 adequately to train the adult leaders who lead the various local Boy Scout troops, on the ground that  
8 the allegations were too attenuated and not plausible. *Kormylo v. Forever Resorts, LLC*, 2015 U.S.  
9 Dist. LEXIS 1630 (S.D. Cal. Jan. 6, 2015); *see also Collins v. Schweitzer, Inc.*, 21 F.3d 1491, 1495  
10 (9th Cir. 1994) (applying Idaho law, the Ninth Circuit concluded that a governing organization  
11 owed no duty to an individual injured in a skiing accident, because it did not "construct, supervise,  
12 direct or control [the] ski racing courses at any ski area."). Although the governing organization  
13 "provides written guidelines for placement of race courses[,] the location and placement of the  
14 course is the responsibility of the ski area. [The organization] does not send representatives to  
15 supervise the preparation, or conduct of, any ski race." *Id.* In *Kormylo*, the defendant was only a  
16 single level above the entity with which the plaintiff was involved, yet the court found that such an  
17 indirect relationship between the governing entity and the plaintiff was too attenuated to impose a  
18 duty on the governing entity. Here, CYSA is *even further removed* from the allegedly injured  
19 individuals and, therefore, cannot be found to owe a duty to Plaintiffs on the basis of an alleged  
20 "relationship" between the parties.

21 3. CYSA did not assume a duty to enforce the recommendations contained in  
22 the Consensus Statement.

23 CYSA joins and incorporates by reference US Soccer's and FIFA's arguments that seek  
24 dismissal of Count 2 based on Plaintiffs' inability to plead facts showing that Defendants assumed  
25 a duty to enforce the Consensus Statement recommendations, as set out in Section III.A.3 of US  
26 Soccer's Motion and in Section II.B of FIFA's Motion.

27 Plaintiffs claim CYSA and the other Defendants "voluntarily assumed a duty toward  
28 Plaintiffs and the Class to supervise, regulate, monitor, and provide reasonable and appropriate



1 rules to minimize the risk of injury to the players.” Compl. ¶ 435. However, CYSA follows the  
 2 rules set by international and national organizations, *e.g.*, IFAB and US Soccer. Moreover, as a  
 3 regional organization, it does not supervise, regulate or monitor the play of youth players like  
 4 Plaintiffs.

5 Establishing a voluntary undertaking requires Plaintiffs to allege facts sufficient to show  
 6 that CYSA specifically assumed an obligation to reduce the risk of injury that can result from  
 7 improper concussion management. *See, e.g., Artiglio v. Corning Inc.*, 18 Cal.4th 604, 614-18  
 8 (1998) (the actor “must specifically have undertaken to perform the task that he is charged with  
 9 having performed negligently, for without the actual assumption of the undertaking there can be no  
 10 correlative duty to perform that undertaking carefully.”). The Complaint lacks such facts.

11 Plaintiffs allege that CYSA adopted a concussion protocol which is almost a verbatim  
 12 replica of the USYSA protocol. Compl. ¶ 351. However, that alone does not mean CYSA is  
 13 obligated to adopt the Consensus Statement. Given the lack of harmony on what constitutes a  
 14 standard of care, there is no legal or factual basis on which to impose a duty on CYSA to  
 15 implement and to enforce the recommendations in the Consensus Statement regarding concussion  
 16 management (which, by its own terms, is *not* a standard of care but a set of suggested guidelines for  
 17 *physicians* to follow in treating concussed players). Count 2 should be dismissed without leave to  
 18 amend to the extent it alleges breach of such a duty on the part of CYSA.

19 **B. CYSA Has No Legal Obligation To Change The Rules Of The Game Of Soccer**  
 20 **To Prohibit Or Restrict “Heading”.**

21 CYSA joins and incorporates by reference US Soccer’s arguments that seek dismissal of  
 22 Count 2 based on Plaintiffs’ inability to plead facts showing that Defendants assumed a duty to  
 23 prohibit or restrict heading, as set out in Section III.B of US Soccer’s Motion.

24 As discussed in US Soccer’s Motion, even if Plaintiffs could establish that repetitive  
 25 heading is associated with a risk of injury, CYSA cannot be held liable for injuries arising from  
 26 such risk under California’s primary assumption of risk doctrine. When a plaintiff voluntarily elects  
 27 to participate in a sport, “the defendant is relieved of his or her duty to use due care to avoid the  
 28 plaintiff suffering an injury as a result of those inherently risky aspects of the sport.” *Knight v.*

1 *Jewett*, 3 Cal.4th 296, 308-09 (1992).<sup>4</sup> The **only** duty ascribed to a sponsoring or other  
 2 organizational defendant such as CYSA is not to take any act that would **increase** the risk of injury  
 3 beyond that inherent in the sport. *See, e.g., Avila v. Citrus Community College Dist.*, 38 Cal.4th  
 4 148, 162 (2006) (defendant only owed a duty not to increase the inherent risks, not a duty to  
 5 decrease them); *Knight v. Jewett*, 3 Cal.4th 296, 315 (1992) (no duty to remove moguls, but a duty  
 6 to maintain ski lift machinery in safe, working condition). In other words, CYSA is **not** under any  
 7 obligation to **reduce** those risks inherent in the sport, even if there are steps that could be taken to  
 8 minimize such risks. *See, e.g., West v. Sundown Little League of Stockton*, 96 Cal.App.4th 351,  
 9 358 (2002) (league’s decision not to provide additional safety equipment recommended by its  
 10 safety officer did not increase the risk); *Fortier v. Los Rios Community College Dist.*, 45  
 11 Cal.App.4th 430, 439 (1996) (failure to provide certain safety equipment did not increase the  
 12 inherent risks of the game); *Bushnell v. Japanese-American Religious & Cultural Center*, 43  
 13 Cal.App.4th 525, 531 (1996) (assumption of the risk applies “even if the defendant was in some  
 14 manner in control of the situation and thus in a better position than the plaintiff to prevent the  
 15 Plaintiffs’ injury”); *Connelly v. Mammoth Mountain Ski Area*, 39 Cal.App.4th 8, 13 (1995) (a duty  
 16 is not created because safer materials are available to remedy the danger).

17 Yet that is precisely the obligation that Plaintiffs seek to impose on Defendants in this case.  
 18 Plaintiffs acknowledge that “[p]urposefully heading the ball is a legal and encouraged maneuver,”  
 19 and then ask this Court to impose liability on “soccer’s governing authorities” for failing to “**reduce**  
 20 **the risk** of preventable injuries resulting from . . . repetitive heading” by “failing to regulate heading  
 21 by players under 17.” Compl. ¶¶ 2, 12, 28, 375, 432 (emphasis added). As a matter of law, CYSA  
 22 cannot be held liable for failing to “take steps to reduce injuries” resulting from risks inherent in the  
 23 sport. *Id.* ¶ 2.

24 The rationale for this rule is clear, because allowing voluntary sports participants to sue over  
 25 the sport’s inherent risks threatens “the activity’s very existence and nature.” *Nalwa v. Cedar Fair*,

26 <sup>4</sup> *See also Kahn v. East Side Union High School Dist.*, 31 Cal. 4th 990, 1011 (2003) (the object of the assumption of the  
 27 risk doctrine is to “avoid recognizing a duty of care when to do so would tend to alter the nature of an active sport . . .  
 28 .”); *Levinson v. Owens*, 176 Cal. App. 4th 1534, 1545 (2009) (horseback riding owner/operator “does not owe a duty to  
 protect the rider from injury by discouraging the rider’s vigorous participation in the sport or by requiring that an  
 integral part of horseback riding be abandoned.”).

1 *L.P.*, 55 Cal. 4th 1148, 1157 (2012). Indeed, as detailed in US Soccer’s Motion, there are numerous  
 2 known risks in playing contact sports, including the risk of injury from running, but no one would  
 3 expect CYSA to restrict running in soccer because of those risks. Plaintiffs’ claims regarding  
 4 heading are no different.

5 It is for this reason that courts have declined to impose liability where a finding of duty  
 6 would require the court to rewrite how a sport is played. *See, e.g., Nemarnik v. Los Angeles Kings*,  
 7 103 Cal. App. 4th 631, 641 (2002) (holding that National Hockey League, among others, had no  
 8 legal duty to eliminate or protect spectator against the inherent risk of a flying puck in a hockey  
 9 game).

10 Because Plaintiffs have not alleged and cannot allege facts sufficient to establish a legal  
 11 duty on the part of CYSA to “reduce the risk of preventable injuries resulting from concussions and  
 12 repetitive heading,” by implementing “best practices for concussion management” or “regulating”  
 13 heading by players under the age of 17, Counts 1 and 2 should be dismissed without leave to  
 14 amend. Compl. ¶¶ 28, 29, 31.

15 **C. CYSA Has No Duty Because the California Plaintiffs Signed Express Liability**  
 16 **Waivers.**

17 The claims of Plaintiffs Mehr and Akka-Seidel are barred, as a matter of law, by the  
 18 releases their parents were required to sign as a condition of membership in CYSA and of  
 19 participation in playing on any CYSA-affiliated team. In those releases, the parents, on behalf of  
 20 themselves and their children, waived any and all claims for injuries arising out of their  
 21 participation in the sport.

22 A pre-injury, written assumption of risk contract eliminates a claim of tortious conduct by a  
 23 potential defendant if: (1) the contract is not contrary to public policy, and (2) the risk encountered  
 24 is inherent in the activity in which the plaintiff was engaged. *Coates v. Newhall Land & Farming,*  
 25 *Inc.*, 191 Cal.App.3d 1, 4 (1987). For example, in *Coates*, the decedent signed a release assuming  
 26 all risks before he entered a dirt bike park. 191 Cal.App.3d at 8-9. The release expressly warned  
 27 that motorcycling was dangerous. *Id.* at 8. The court concluded that, by contractually agreeing to  
 28 assume all the risks of riding on the defendants’ premises, the decedent had consented to acts or

1 omissions of defendants that might otherwise be negligent, so that his contractual consent destroyed  
2 the wrongful death action. *Id.* at 10.

3 Here, any youth player seeking to play on a CYSA-affiliated team is required to have his or  
4 her parent or guardian sign at least two releases of liability. RJN Exs. B and C; Zopfi Decl. Exs. B  
5 and C. The first, in the Membership Forms under a bold print heading titled “IMPORTANT  
6 MEDICAL AND LIABILITY RELEASE – MUST BE SIGNED”, requires the parent/legal  
7 guardian of the player to agree, on behalf of his or herself and the player, that “intending to be  
8 legally bound, hereby release and indemnify the USYS and CYSA Parties ... from and against all  
9 claims, liabilities, damages or causes of action arising out of or in connection with the player’s  
10 participation in the Programs.” RJN Ex. B; Zopfi Decl. Ex. B. A second signed release is required  
11 to be affixed to the back of the Member Pass, without which no player can participate in a game.  
12 Again, under the bold heading “IMPORTANT MEDICAL & LIABILITY RELEASE – MUST BE  
13 SIGNED”, the players’ parents, on behalf of themselves and the player, agree to “release and agree  
14 to hold harmless and to indemnify the CYSA Parties . . . from and against any and all claims,  
15 liabilities, suits, damages, causes of action, and demands of any kind, including attorney’s fees,  
16 costs, and expenses, arising out of or related in any way to player’s participation in any of the  
17 programs of the CYSA Parties.” RJN Ex. C; Zopfi Decl. Ex. C.

18 The releases are enforceable because they do not implicate the public interest and so are not  
19 void as against public policy. *Eriksson v. Nunnink*, \_\_ Cal.App.4th \_\_ (January 27, 2015 Slip Op.)  
20 (minor’s prospective release of liability for participation in horse event, signed by parent, would  
21 have been effective to bar the minor’s claim for wrongful death and was effective to bar the claims  
22 of the parents); *Benedek v. PLC Santa Monica, LLC*, 104 Cal.App.4th 1351, 1356-57 (2002)  
23 (exculpatory agreements in the recreational sports context do not implicate the public interest). The  
24 risk of concussion or other head injury is an inherent risk in soccer that arises from the player’s  
25 participation in the sport. Therefore, these releases are enforceable and bar Plaintiffs Mehr’s and  
26 Akka-Seidel’s claims.

1 **V. PLAINTIFFS' INDEPENDENT CLAIM FOR MEDICAL MONITORING (COUNT**  
 2 **3) SHOULD BE DISMISSED WITH PREJUDICE**

3 CYSA joins and incorporates by reference US Soccer's and FIFA's arguments seeking  
 4 dismissal of Count 3 based on the fact that California does not recognize claims for medical  
 5 monitoring, as set out in Section IV of US Soccer's Motion and in Section II.C of FIFA's Motion.

6 The California Supreme Court has expressly considered and rejected the viability of an  
 7 independent claim for medical monitoring, holding that "[r]ecognition that a defendant's conduct  
 8 has created the need for future medical monitoring does not create a new tort. It is simply a  
 9 compensable item of damage when liability is established under traditional tort theories of  
 10 recovery." *See Potter v. Firestone Tire & Rubber Co.*, 6 Cal.4th 965, 1006-07 (1993). Accordingly,  
 11 Count 3 must be dismissed with prejudice as to the California Plaintiffs Mehr and Akka-Seidel.

12 **VI. PLAINTIFFS DID NOT PLEAD ANY CLAIMS AGAINST CYSA**

13 A further basis for dismissal is Plaintiffs' failure to plead any claims against CYSA.  
 14 Plaintiff Mehr "seeks class-wide injunctive or equitable relief in the form of changes to FIFA,  
 15 USYSA, and US Club Soccer rules and practices." Complaint ¶ 40. Plaintiff Akka-Seidel "seeks  
 16 class-wide injunctive or equitable relief in the form of changes to FIFA, USSF, USYSA, rules and  
 17 practices." Complaint ¶ 49. Mehr specifically states that she is "suing FIFA, AYSO, US Youth  
 18 Soccer Association and US Club Soccer," and Akka-Seidel similarly specifies that she is "suing  
 19 FIFA, USYSA, and USSF Soccer." Compl. ¶¶ 38 and 47. By their own pleading, neither of the  
 20 California Plaintiffs stated a claim against CYSA, nor are there specific allegations pertaining to  
 21 CYSA under the counts that were pled. Compl. ¶¶ 423-451. Therefore, as to CYSA, the Complaint  
 22 contains no specific claims and should be dismissed.

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**VII. CONCLUSION**

For all of the foregoing reasons, CYSA respectfully requests that the Court dismiss each of Plaintiffs' claims for relief with prejudice.

DATED: January 30, 2015

LYNCH, GILARDI & GRUMMER, APC

By: /s/ Wallace M. Tice

Wallace M. Tice

Attorneys for Defendant  
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1 *Mehr, Rachel v. Federation Internationale de Football Assoc., et al.*  
2 United States District Court, Action No. 4:14-CV-03879 PJH

3 PROOF OF SERVICE

4 I am over the age of eighteen years and am not a party to the within action. I am employed  
5 in the County of San Francisco, State of California, at the law offices of LYNCH, GILARDI &  
6 GRUMMER, members of the bar of this Court. My business address is 170 Columbus Ave., 5<sup>th</sup>  
7 Floor, San Francisco, CA 94133.

8 On January 30, 2015, I served a true copy of the following document described as:

9  
10 **DEFENDANT CALIFORNIA YOUTH SOCCER ASSOCIATION, INC.'S (1)**  
11 **NOTICE OF JOINDER AND JOINDER TO DEFENDANTS UNITED STATES**  
12 **SOCCER FEDERATION'S and FÉDÉRATION INTERNATIONALE DE**  
13 **FOOTBALL ASSOCIATION'S MOTIONS TO DISMISS COMPLAINT PURSUANT**  
14 **TO FRCP 12(b)(1), 12(b)(6) and 12(b)(7); (2) NOTICE OF JOINDER AND JOINDER**  
15 **TO DEFENDANT FÉDÉRATION INTERNATIONALE DE FOOTBALL**  
16 **ASSOCIATION'S MOTION TO COMPEL ARBITRATION and (3) NOTICE OF**  
17 **MOTION AND MOTION TO DISMISS COMPLAINT PURSUANT TO FRCP**  
18 **12(b)(1) AND 12(b)(6); MEMORANDUM OF POINTS AND AUTHORITIES**

19 **DECLARATION OF J. PETER ZOPFI IN SUPPORT OF DEFENDANT**  
20 **CALIFORNIA YOUTH SOCCER ASSOCIATION, INC.'S MOTION TO DISMISS**  
21 **COMPLAINT PURSUANT TO FRCP 12(b)(1) AND 12(b)(6)**

22 **DEFENDANT CALIFORNIA YOUTH SOCCER ASSOCIATION'S REQUEST**  
23 **FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS COMPLAINT**  
24 **PURSUANT TO FRCP 12(b)(1) AND 12(b)(6)**

25 **[PROPOSED] ORDER GRANTING CALIFORNIA YOUTH SOCCER**  
26 **ASSOCIATION, INC.'S MOTION TO DISMISS COMPLAINT PURSUANT**  
27 **TO FRCP 12(b)(1) AND 12(b)(6)**

28  By CM/ECF Notice of Electronic Filing ("NEF"): Pursuant to controlling General  
Orders, a true copy will be served by the Court via Notice of Electronic Filing and hyperlink to the  
document. I checked the CM/ECF docket for this case and determined that the parties on the  
attached Service List are on the Electronic Mail Notice List to receive NEF transmission at the e-  
mail addresses noted.

I declare under penalty of perjury under the laws of the United States of America that the  
foregoing is true and correct. Executed this 30<sup>th</sup> day of January 2015 at San Francisco, California.

  
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1 *Mehr v. FIFA, et al.*

United States District Court, Northern District of California, Action No. 4:14-cv-03879 PJH

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