

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:

USA GYMNASTICS,¹

Debtor.

Chapter 11

Case No. 18-09180-RLM-11

**DEBTOR'S MOTION FOR AUTHORITY
TO ENTER INTO EMPLOYMENT AGREEMENT**

USA Gymnastics, as debtor and debtor in possession in the above-captioned chapter 11 case (the “**Debtor**” or “**USAG**”), hereby submits this motion (the “**Motion**”) for the entry of an order, substantially in the form attached hereto as Exhibit A, pursuant to section 363(b)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the Debtor to enter into an agreement to employ Li Li Leung as its President and Chief Executive Officer (“**CEO**”), substantially in the form attached hereto as Exhibit B (the “**Employment Agreement**”). In support of the Motion, the Debtor relies upon the Declaration of Katharine Hurley (the “**Hurley Declaration**”), attached hereto as Exhibit C, and respectfully states as follows:

JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, and the Standing Order of Reference from the United States District Court for the Southern District of Indiana, dated July 11, 1984. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (O), and the Court may enter a final order consistent with Article III of the United States

¹ The last four digits of the Debtor’s federal tax identification number are 7871. The location of the Debtor’s principal office is 130 E. Washington Street, Suite 700, Indianapolis, Indiana 46204.

Constitution. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested herein are section 363(b)(1) of the Bankruptcy Code and Bankruptcy Rule 6004.

BACKGROUND

2. On December 5, 2018 (the “**Petition Date**”), USAG filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

3. The Debtor remains in possession of its property and continues to operate and maintain its organization as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner in this case.

4. On December 19, 2018, the United States Trustee appointed the Additional Tort Claimants Committee Of Sexual Abuse Survivors (the “**Survivors Committee**”).

A. USAG’s Search for a Chief Executive Officer.

5. Since early September 2018, USAG has been operating without a chief executive. In the interim, the Debtor’s Board of Directors (the “**Board**”) has been diligently searching for the right person to lead USAG through this critical juncture in its history. To that end, the Debtor retained executive search firm Spencer Stuart to identify and recruit potential candidates. USAG instructed Spencer Stuart to target experienced leaders who have demonstrated the highest levels of business acumen, integrity, and dedication to athlete health and safety. The Board worked collaboratively with Spencer Stuart to review and interview qualified candidates. The Board ultimately determined that Ms. Leung was the best candidate for the position. In support of this Motion, the Debtor submits the Declaration of Katharine Hurley who is a Consultant with Spencer Stuart.

B. Ms. Leung's Qualifications.

6. For the past four years, Ms. Leung has served as the National Basketball Association's Vice President of Global Partnerships. In that capacity, Ms. Leung leads a team tasked with managing and activating the NBA's corporate partnerships around the world. Prior to joining the NBA, she was a managing director at sports marketing firm Helios Partners LLC for nearly nine years. Ms. Leung received her B.A. in Psychology from the University of Michigan in 1995 and her MBA and Master of Science (Sport Management) from the Isenberg School of Management at the University of Massachusetts at Amherst in 2003. While at the University of Michigan, Ms. Leung competed on the varsity women's gymnastics team.

7. USAG believes that Ms. Leung is the right person to lead USAG through its chapter 11 case and beyond. As an accomplished gymnast herself, Ms. Leung possesses a longstanding passion for gymnastics, a sincere commitment to the safety and well-being of USAG's members, including athletes and coaches, and an intimate familiarity with USAG's role in cultivating and maintaining the sport's infrastructure throughout the United States. Additionally, with nearly two decades of sports business experience at the highest levels, Ms. Leung is well-equipped to restore confidence in USAG and rekindle USAG's relationships with its members and corporate sponsors and other key stakeholders. For all of these reasons, the Debtor submits that Ms. Leung is the ideal candidate to lead USAG into the future.

C. Terms of the Employment Agreement.

8. Under the Employment Agreement, the Debtor will hire Ms. Leung as President and Chief Executive Officer effective as of March 8, 2019. In exchange for assuming the duties and responsibilities of President and Chief Executive Officer as set forth in USAG's bylaws, Ms. Leung will receive a base salary of \$450,000 per year and will be eligible to receive discretionary

annual performance bonuses. Both USAG and Ms. Leung's obligations under the Employment Agreement are contingent upon the Court's approval of the Employment Agreement. The initial term of the Employment Agreement will expire upon the final conclusion of USAG's chapter 11 case. Prior to that time, USAG and Ms. Leung will engage in good faith discussions regarding any extension, renewal, or amendment to the Employment Agreement.

RELIEF REQUESTED

9. By this Motion, pursuant to section 363(b)(1) of the Bankruptcy Code, the Debtor seeks authority to hire Ms. Leung as its President and Chief Executive Officer pursuant to the terms of the Employment Agreement.

BASIS FOR RELIEF

10. Although the Debtor does not believe it requires Court approval of its senior leadership hiring decisions, out of an abundance of caution and to provide complete transparency, the Debtor seeks this Court's approval under section 363(b)(1) to enter into the Employment Agreement.

11. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that "(t)he trustee, after notice and a hearing, may use, . . . other than in the ordinary course of business, property of the estate." A court has the statutory authority to authorize a debtor to use property of the estate pursuant to section 363(b)(1) of the Bankruptcy Code when such use is an exercise of the debtor's sound business judgment and when the use of the property is proposed in good faith. *See Fulton State Ban v. Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (a debtor's decision must be supported by "some articulated business justification"); *see also Stephen Indus., Inc. v. McClung*, 789 F.2d 386,390 (6th Cir. 1986) (adopting the "sound business purpose" standard for sales proposed pursuant to section 363(b)); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In*

re Adelpia Comm'cns Corp., Case No. 02-41729 (REG), 2003 WL 22316543, at *30 (Bankr. S.D.N.Y. Mar. 4, 2003); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999).

12. Under section 363(b) of the Bankruptcy Code, a debtor has the burden to establish that it has a valid business purpose for using estate property outside the ordinary course of business. *See In re Montgomery Ward Holding Corp.*, 242 B.R. at 153; *see also In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991); *In re Lionel Corp.*, 722 F.2d at 1070–71. Once the debtor has articulated such a valid business purpose, however, a presumption arises that the debtor's decision was made on an informed basis, in good faith, and in the honest belief that the action was in the debtor's best interest. *See Adelpia*, 2003 WL 22316543, at *30 (quoting *In re Integrated Res. Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992)).

13. Bankruptcy courts frequently authorize debtors to employ high-ranking executives to guide their restructuring process pursuant to section 363. *See, e.g., In re Adelpia Comms. Corp.*, Case No. 02-41729 (REG) (Bankr. S.D.N.Y. Mar. 7, 2003) (approving under section 363 the employment of the debtors' chairman and chief executive officer); *In re WorldCom. Inc.*, Case No. 02-13533 (AJG) (Bankr. S.D.N.Y. Dec. 16, 2002) (same); *In re Collins & Aikman Corp.*, Case No. 05-55927 (SWR) (Bankr. E.D. Mich. Sept. 12, 2005) (same); *In re Mirant Corp.*, Case No. 03-46591 (DML) (Bankr. N.D. Tex. Nov. 23, 2005) (same).

14. USAG submits that employing Ms. Leung on the terms of the Employment Agreement constitutes a sound exercise of USAG's reasonable business judgment and is in the best interest of USAG's estate and creditors. USAG urgently needs a permanent CEO to provide day-to-day leadership to USAG, and to carry out USAG's commitment to athlete safety, educational empowerment, and competitive excellence going forward.

15. After an extensive search process, USAG based its decision to hire Ms. Leung on her significant experience as a sports executive, her familiarity as an accomplished gymnast with USAG and the needs of its athletes, coaches, and other members, and her clear passion to see gymnastics thrive in the United States. As set forth in the Hurley Declaration, the terms of Ms. Leung's employment, including her compensation package, are the result of substantial arms' length negotiations between USAG and Ms. Leung and are commensurate with Ms. Leung's qualifications and the responsibilities she will assume as President and CEO of USAG.

16. For these reasons, USAG submits its employment of Ms. Leung as President and CEO constitutes a sound exercise of its reasonable business judgment, and should therefore be approved by the Court. *See* 11 U.S.C. § 363(b).

NOTICE

17. The Debtor will provide notice of this Motion in accordance with the *Order Granting Debtor's Motion For Order Establishing Certain Notice, Case Management, And Administrative Procedures* [Dkt. 213]. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

WHEREFORE, the Debtor respectfully requests that the Court enter the order substantially in the form annexed hereto as Exhibit A, granting the relief requested herein and such further relief as is just and proper.

Dated: March 5, 2019

Respectfully submitted,

JENNER & BLOCK LLP

By: /s/ Catherine Steege

Catherine L. Steege (admitted *pro hac vice*)

Dean N. Panos (admitted *pro hac vice*)

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Counsel for the Debtor

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:

USA GYMNASTICS,¹

Debtor.

Chapter 11

Case No. 18-09180-RLM-11

**ORDER GRANTING DEBTOR'S MOTION FOR AUTHORITY
TO ENTER INTO EMPLOYMENT AGREEMENT**

This matter came before the Court on the *Debtor's Motion For Authority To Enter Into Employment Agreement* (the "**Motion**"),² filed by USA Gymnastics as debtor and debtor in possession (the "**Debtor**"), for the entry of an order, pursuant to section 363(b)(1) of title 11 of the

¹The last four digits of the Debtor's federal tax identification number are 7871. The location of the Debtor's principal office is 130 E. Washington Street, Suite 700, Indianapolis, Indiana 46204.

²All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), and Rule 6004 of the Federal Rules of Bankruptcy Procedure, authorizing the Debtor to enter into an agreement (the “**Employment Agreement**”) to employ Li Li Leung as its President and CEO; the Court having reviewed the Motion, the Employment Agreement, and the Hurley Declaration; and the Court finding that (i) it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion constitutes a sound exercise of the Debtor’s reasonable business judgment and is in the best interests of the Debtor, its estate, and creditors; and after due deliberation, and good and sufficient cause appearing therefore, the Court hereby determines the Motion should be GRANTED.

IT IS HEREBY ORDERED:

1. The Motion is granted as set forth herein.
2. The Debtor is authorized to enter into the Employment Agreement, and to hire Ms. Leung as President and CEO in accordance with the terms thereof, pursuant to section 363(b)(1) of the Bankruptcy Code.
3. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
4. The Court shall retain jurisdiction to hear and determine all matters arising from, or related to, the implementation of this Order.

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EXHIBIT B

Employment Agreement

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (“Agreement”) is made and entered into as of the 7th day of February, 2019 (Effective Date), by and between the USA GYMNASTICS, Debtor-in-Possession, a Texas nonprofit corporation, with its national office located in Indianapolis, Indiana (“Employer”), and Li Li Leung (“Employee”).

In consideration of the mutual promises and covenants set forth below, and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, Employer and Employee agree as follows:

1. Employment. Employer agrees to employ Employee as its President and Chief Executive Officer (“CEO”) for the Term of this Agreement specified below, and Employee accepts such employment and agrees to perform the services specified herein, on the terms and conditions set forth in this Agreement.

2. Term. The term of this Agreement (the “Term”) will commence on March 8, 2019 and expire upon final conclusion of Employer’s voluntary proceeding under Chapter 11 of the United States Bankruptcy Code, case number 18-09108, which is currently pending in the United States Bankruptcy Court for the Southern District of Indiana (the “Bankruptcy Case”), unless sooner terminated under paragraph 8 of this Agreement or extended or renewed by mutual written agreement of the parties. As soon as the parties have a reasonable indication of when the Chapter 11 proceeding will conclude, or at such other time as they mutually deem appropriate, they will promptly commence good faith discussions regarding any extension, renewal, or amendment of this Agreement. Each twelve (12) month period from January 1 to December 31 of the next succeeding year during the Term of this Agreement is referred to in this Agreement as an “employment year.”

3. Duties and Responsibilities.

a. Description and Scope. Employee shall have such duties and responsibilities for the position of the President and CEO of Employer as set forth in Employer’s Bylaws, as amended from time to time. Employee shall perform such other duties, not inconsistent with the position of the President and CEO of Employer, as shall from time to time be assigned to her by Employer.

b. Efforts. Employee agrees to fulfill all of her duties and responsibilities diligently, faithfully and with her best efforts. Employee shall devote her full business time and effort to the performance of her duties hereunder, unless otherwise expressly authorized by Employer.

c. Supervision and Reporting. Employee shall be responsible to Employer’s Board of Directors, which shall exercise supervisory authority over Employee. However, in the conduct of her day-to-day activities, Employee shall report directly to the Chair of the Employer’s Board of Directors (hereafter “Chair”).

d. Policies and Procedures. Employee shall be subject to such written personnel policies and procedures as Employer may establish from time to time. If the

terms of Employer's written personnel policies and procedures conflict with the terms of this Agreement, the terms of this Agreement shall control.

e. Performance Goals and Objectives. Within a reasonable period of time prior to commencement of each employment year during the Term of this Agreement, the Chair, in collaboration with Employer's Officers and Employer's Finance, Compensation and Audit Committee, will meet with Employee and mutually establish, in writing, performance goals and objectives for Employee for the upcoming employment year, which shall take into consideration, among other things, Employer's strategic plan (the "Performance Goals and Objectives"); provided, however, that the Performance Goals and Objectives for the 2019 employment year will be communicated to Employee at the earliest possible date after the Chair, the Employer's Officers, Employee and Employer's Finance, Compensation and Audit Committee have had a reasonable opportunity to discuss and formulate the same.

4. Compensation.

a. Base Salary. As compensation for services encompassed by this Agreement, Employee shall receive an annual base salary of four hundred and fifty thousand United States dollars (\$450,000), which shall be pro-rated for any employment year that is less than a full calendar year. Salary is payable in accordance with Employer's compensation policies in effect from time to time and subject to all required withholdings. Upward adjustments or modifications to compensation (whether for cost of living, merit or otherwise), if any, shall be in the sole discretion of Employer. Employee's annual base salary shall not be subject to reduction, except as part of and to the same degree as a general reduction in the compensation of Employer's senior management staff.

b. Bonus. Commencing at the end of 2019, and including the 2019 employment year, and continuing for every full employment year thereafter, Employee shall be eligible to receive an annual performance bonus, estimated to be in the range of ten to twenty percent (10-20%) of annual base salary. The determination of the amount of the bonus, if any, shall be in the sole discretion of Employer. In its discretion, Employer may consider the progress that Employee has achieved in meeting the Performance Goals and Objectives as referred to in paragraphs 3(e) and 7 of this Agreement, Employer's financial condition, and other considerations deemed relevant by Employer in its sole discretion. Employee's entitlement to the payment of the bonus, if any, shall vest at the end of every calendar year and the bonus shall be paid no later than sixty days after the end of the year.

5. Benefits. During the term of this Agreement, Employee shall be entitled to all standard benefits provided by Employer to its full-time employees, in accordance with applicable plans, programs, policies and procedures as Employer may maintain in force from time to time. Except as provided in this paragraph of this Agreement, Employer shall have no other obligation to provide benefits of any other kind to Employee. Benefit plans and programs of Employer are subject to change from time to time in the sole discretion of Employer without prior notice, and nothing in this Agreement shall entitle Employee to any guaranteed benefits other than those provided to full-time employees.

6. Expenses.

a. Business Expenses. In accordance with guidelines established by Employer from time to time, Employer shall reimburse Employee for ordinary, reasonable and necessary expenses incurred by her directly in connection with the business of Employer, including mileage at the approved IRS rate, travel and entertainment, but Employer shall have the right to review the reasonableness of such expenses and to deny reimbursement for unreasonable or unnecessary expenses. Employee shall maintain and timely submit to Employer records and written receipts in order to substantiate expenses for which reimbursement is requested. Airline tickets must be booked according to established policies of Employer. Any spousal or family travel expenses are the responsibility of Employee.

b. Relocation Expenses. Upon the receipt of appropriate documentation, Employer will reimburse Employee for Employee's reasonable moving expenses in connection with relocating to Indianapolis, Indiana, up to a maximum of \$15,000. Additionally, Employer will pay for a mutually agreeable, reasonable, furnished, short-term residence for Employee for up to six months. Employee is responsible for any and all taxes associated with the receipt of such reimbursement and residence.

7. Review of Employee's Performance. No later than December 1 of each employment year during the Term of this Agreement, the Employer's Finance, Compensation and Audit Committee, in collaboration with the Chair and the Board of Directors, will conduct an annual review of Employee's performance and reduce the review to written form. The review will evaluate the performance by Employee of her duties and responsibilities as President and CEO of Employer, her conduct of the business of Employer, her progress toward the achievement of the Performance Goals and Objectives, and any other factors that Employer deems relevant in its discretion. The review and evaluation will include feedback from such persons as the Finance, Compensation and Audit Committee, and the Chair believe are appropriate. The review and evaluation will include a compensation analysis and recommendations to the Board of Directors for any adjustment in Employee's base salary and the amount of an annual performance bonus, if any. The review and evaluation will be presented to the Board of Directors for such action as the Board deems reasonable and appropriate and will be shared with Employee. In addition to the annual performance review, Employer may conduct more frequent and periodic evaluations of Employee's performance as Employer deems necessary and appropriate.

8. Termination.

a. By Employee. This Agreement and all of Employee's obligations may be terminated by Employee: (i) upon sixty (60) days' advance written notice to Employer or (ii) upon a material breach of this Agreement by Employer, provided that Employee shall provide Employer with reasonable notice of the alleged breach and the opportunity for such period of time as is reasonable under the circumstances to rectify or cure the alleged breach.

b. By Employer.

i. With Cause. This Agreement and all of Employer's obligations under this Agreement (except its obligation to pay the amount of any compensation and benefits earned and unpaid through the date of termination and COBRA benefits, if any) may be immediately terminated by Employer in the event that Employee: (1) breaches her duty of loyalty to Employer; (2) engages in any activity that brings disrepute or discredit on Employer; (3) violates any material applicable policies, procedures or rules of Employer, including Employer's Safe Sport policy; (4) fails to observe or perform Employee's duties under this Agreement; (5) commits any act that is unlawful or materially detrimental to the business and affairs of Employer; (6) commits any act of dishonesty, fraud, theft, embezzlement or other abuse of the property, information or funds of Employer; or (7) is convicted of any felony, arrested for any felony which results in a requirement that Employee be away from the job in excess of two (2) weeks, or is convicted of a misdemeanor involving dishonesty or which requires the service of jail time.

ii. Without Cause. Employer may terminate this Agreement without cause at any time upon giving Employee written notice of termination. In the event of such termination by Employer on or before December 31 of the year prior to the final year of the contract term, Employee shall receive, in addition to any accrued but unpaid salary and benefits at the effective date of termination, a severance payment equal to twelve (12) months' base salary. If such termination occurs during the final calendar year of contract term, the amount of the severance payment will be the amount of Employee's base salary for the remaining Term of this Agreement. The severance payment will be made in a single lump sum on the first normally scheduled payday falling at least seven days after Employee returns an executed release of claims agreement to Employer. In addition, if Employee wishes to exercise Employee's right to continued health insurance coverage under COBRA, Employer shall pay the cost of Employee's health insurance premiums for twelve months or until the end of the final calendar year of the contract Term, whichever is shorter. Any severance payment provided under this section is conditioned upon Employer and Employee agreeing upon and executing a mutually agreeable release of claims. Any severance payment will be subject to appropriate withholdings.

c. Termination Upon Death or Disability. In the event that Employee becomes disabled during the term of this Agreement such that she is entitled to receive disability benefits, Employee shall not be entitled to receive any salary payments under this Agreement while she is receiving such benefits. If Employee is permanently disabled and unable to perform the essential functions of the job of CEO with or without reasonable accommodation, this Agreement shall terminate. Upon termination of this Agreement for disability, neither party shall have any further obligation to the other under the terms of this Agreement. Should Employee die during the Term of this Agreement, this Agreement shall terminate upon the date of Employee's death. If this Agreement is terminated for death or disability, the Employer shall have no further obligations under this Agreement.

9. Confidentiality; Information, Materials and Equipment.

a. Employee acknowledges that she will receive sensitive and/or confidential information of Employer as a result of her employment with Employer, which will include knowledge and information about athletes, programs, events, financial matters, marketing matters, safe sport matters, legal matters, and sponsorship matters. Employee agrees to honor the sensitivity and confidentiality of all such information, and that any such information received as a result of her employment with Employer shall not be shared or disseminated with any third persons and will be maintained as confidential even upon the termination of her employment with Employer, whether voluntarily or involuntarily and with or without cause. After termination of employment, Employee agrees that confidential information may not be shared with third parties except upon written authorization from Employer. Employee agrees that upon termination of her employment with Employer, she shall not take any papers, documents or other tangible items that belong to or have been generated on behalf of or for Employer. Employee acknowledges and agrees that the restriction and covenants contained in this paragraph 9 are required for the reasonable protection of Employer and survive any termination or expiration of this Agreement.

b. All records, files, memoranda, reports, financial information, member information, sponsor information, and the like (together with all copies thereof) relating to the business of Employer, which Employee uses, prepares, or comes in contact with in the course of, or as a result of, her employment will be returned by Employee upon demand by Employer. Employee acknowledges that materials and equipment which she receives from or are purchased for her by Employer shall remain the property of Employer unless otherwise agreed to in writing by Employer. Employee further acknowledges that any materials, including, but not limited to, all intellectual property, which she creates or develops while acting as the CEO of Employer is the sole property of Employer.

c. Employee further acknowledges and agrees that any breach of this paragraph 9 will result in irreparable and continuing damage to Employer for which Employer will have no adequate remedy at law. Employee therefore agrees that in the event of any breach or threatened breach of this paragraph 9, Employer, in addition to any other remedies which may be available at law or in equity, shall be entitled to temporary and/or permanent injunctive relief, without bond or security, prohibiting Employee from breaching this paragraph 9, as well as damages and the award of Employer's attorney fees and costs incurred in enforcing the provisions of this paragraph 9.

10. General Provisions.

a. Bankruptcy Court Approval. This Agreement is subject to review and approval by the United States Bankruptcy Court for the Southern District of Indiana (the "Bankruptcy Court"), where the Bankruptcy Case is pending. The Bankruptcy Court's approval of this Agreement is an express condition precedent to both Employer's and Employee's obligations under this Agreement. If the Bankruptcy Court rejects or modifies any portion of this Agreement, then neither Employer nor Employee is obligated to perform under this Agreement, unless both Employer and Employee agree in writing to the

Agreement as modified by the Bankruptcy Court. Employer shall seek approval of this Agreement in the Bankruptcy Court.

b. Enforcement and Dispute Resolution. To the extent either Employer or Employee intend to enforce or challenge any provision of this Agreement, such must be done through binding arbitration with the American Arbitration Association (“AAA”). Such arbitration shall be conducted in accordance with the then-existing rules for AAA employment arbitration and must be submitted to the AAA office in Indianapolis. All provisions of this Agreement, with the exception of enforcement of the provisions of paragraph 9, shall be subject to mandatory, binding arbitration with the AAA. Any disputes with regard to the provisions of paragraph 9 of this Agreement shall be submitted to a court of competent jurisdiction in the State of Indiana, County of Marion. In the event of any arbitration or litigation enforcing or challenging any provisions of this Agreement, the losing party shall pay the reasonable costs and attorney fees of the prevailing party.

c. Assignment. This Agreement is not assignable by either party hereto.

d. Binding Nature; Inurement. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, personal representatives, successors and assigns.

e. Severability. If any provision of this Agreement shall be held, declared or pronounced void, voidable, invalid, unenforceable or inoperative for any reason by any court of competent jurisdiction, government authority or otherwise, such holding, declaration or pronouncement shall not adversely affect any other provision of this Agreement, which shall otherwise remain in full force and effect and be enforced in accordance with its terms.

f. Waiver. All rights and remedies of either party under this Agreement are cumulative and not exclusive of any other rights and remedies provided by law. No delay or failure on the part of either party in the exercise of any right or remedy arising from a breach of this Agreement shall operate as a waiver of any subsequent right or remedy arising from a subsequent breach of this Agreement. The consent of any party where required for any act or occurrence shall not be deemed to be a consent to any other act or occurrence.

g. Notices. All notices, requests, demands and other communications shall be in writing and shall be deemed to have been duly given and received if personally delivered or if mailed by the United States mail, postage prepaid, to the parties at the following addresses:

To Employer:	USA Gymnastics 130 E. Washington Street, Suite 700 Indianapolis, IN 46204 Attn: Chair
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With a copy to: Christopher J. Schneider
Miller Johnson
45 Ottawa Ave SW, Suite 1100
Grand Rapids, MI 49503

To Employee: Li Li Leung
230 Central Park South, Apt. 4F
New York, NY 10019

With a copy to: Andrew Baran
Giarmarco, Mullins & Horton, P.C.
Tenth Floor Columbia Center
101 West Big Beaver Road
Troy, MI 48084-5280

Any party may change its address by providing written notice to the other party.

h. Entire Agreement. This Agreement constitutes and embodies the entire understanding and agreement of the parties hereto. Any waiver, alteration or modification of any of the provisions of this Agreement shall be valid only if made in writing and signed by the parties.

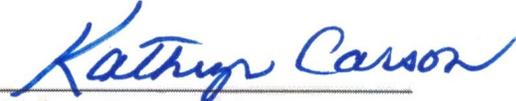
i. Governing Law. This Agreement shall be governed by and be construed in accordance with the laws of the State of Indiana.

j. Construction of Agreement. Both parties have had an opportunity to consult attorneys and tax advisors of their own choice. The parties agree that this Agreement was drafted with significant input from each party such that it shall not be construed more favorably for or against either party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

EMPLOYER:

USA GYMNASTICS, Debtor-in-Possession

By: 
Kathryn Carson, Chair

EMPLOYEE:

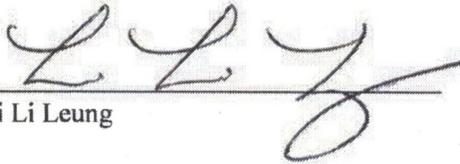

Li Li Leung

EXHIBIT C

Declaration of Katharine Hurley

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

In re:

USA GYMNASTICS,¹

Debtor.

Chapter 11

Case No. 18-09180-RLM-11

**DECLARATION OF KATHARINE HURLEY IN SUPPORT OF DEBTOR'S MOTION
FOR AUTHORITY TO ENTER INTO EMPLOYMENT AGREEMENT**

I, Katharine Hurley, hereby declare:

1. I am a Consultant, and have held that position for 9 years. In that position, I have worked on over 200 engagements as a core member of our CEO and TMT practices. Along with others at Spencer Stuart, I co-led the team responsible for the executive search for a Chief Executive Officer for USA Gymnastics (“USAG”).

2. I submit this Declaration in support of the *Debtor's Motion For Authority To Enter Into Employment Agreement* (the “**Employment Agreement Motion**”) in which USAG seeks authority to employ Li Li Leung as its President and Chief Executive Officer subject to the terms and conditions of the employment agreement attached to the Employment Agreement Motion as Exhibit B (the “**Employment Agreement**”).

3. Spencer Stuart worked closely with USAG's Board of Directors to conduct a search to identify qualified candidates with the requisite experience and credentials to lead USAG. The result of this search is the executed Employment Agreement with Ms. Leung.

¹ The last four digits of the Debtor's federal tax identification number are 7871. The location of the Debtor's principal office is 130 E. Washington Street, Suite 700, Indianapolis, Indiana 46204.

4. With nearly two decades of sports business experience at the highest levels, Ms. Leung is well-equipped to serve as Chief Executive Officer of USA Gymnastics. As an accomplished gymnast herself, Ms. Leung possesses a longstanding passion for gymnastics, a sincere commitment to the safety and well-being of USAG's members, including athletes and coaches, and an intimate familiarity with USAG's role in cultivating and maintaining the sport's infrastructure throughout the United States.

5. I worked with USAG's Board of Directors to negotiate Ms. Leung's Employment Agreement. The negotiations over the terms of the Employment Agreement were arms' length. Ms. Leung was represented in the negotiations over the terms and conditions of the Employment Agreement by her own counsel and USAG was represented by Spencer Stuart and USAG's counsel.

6. As set forth below, I believe each of the terms and conditions of the Employment Agreement, and specifically Ms. Leung's employment term and compensation package, are fair and reasonable under the circumstances, and consistent with market compensation for comparable positions at comparable entities.

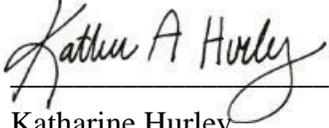
- a. Term: The initial term of Ms. Leung's employment, which expires upon the conclusion of the bankruptcy case, is reasonable and consistent with what Spencer Stuart has seen in comparable agreements executed during the pendency of a corporate reorganization. In light of the uncertainties in any bankruptcy case, it is not unusual for an executive to request, and a debtor-in-possession to agree, that the initial term be limited to the duration of the bankruptcy case. This also protects the bankruptcy estate as it avoids claims

being made under the employment agreement if the bankruptcy case terminates before the expiration date of the employment agreement.

- b. Compensation: Ms. Leung's base salary of \$450,000 and the parameters of her annual performance bonus are consistent with market rates for comparable professionals leading large not-for-profit organizations, in or out of a chapter 11 bankruptcy.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Dated: March 5, 2019



Katharine Hurley
Consultant