EXHIBIT "D"

AMERICAN ARBITRATION ASSOCIATION

PIOTR NOWAK, Claimant/Counterclaim Respondent vs. PENNSYLVANIA PROFESSIONAL SOCCER LLC and KEYSTONE SPORTS ENTERTAINMENT LLC, Respondent/Counterclaim Claimant vs. PINO SPORTS LLC, Counterclaim Respondent	Case No. 14 166 01589 12

POST-HEARING BRIEF OF PIOTR NOWAK AND PINO SPORTS LLC

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Piotr Nowak ("Claimant" or "Mr. Nowak") and Pino Sports LLC, by and through their undersigned counsel, submit this post-hearing brief in support of their claims and in response to the counterclaims asserted by Respondents, Pennsylvania Professional Soccer LLC and Keystone Sports and Entertainment LLC ("Respondents" or the "Team" or the "Club" or the "Philadelphia Union").

I. INTRODUCTION

Claimant's principal position in this matter is that Respondents acted in bad faith contrary to the terms of their employment agreement with Mr. Nowak by terminating him and alleging that his conduct was so egregious that it was incapable of being remediated. The claims in whole and in part were mere pretext to avoid honoring the terms of Mr. Nowak's contract.

In 2009, Claimant Piotr Nowak, a world-renowned professional soccer player and coach, left his job as head coach of the U23/U.S. Men's Olympic Team with U.S. Soccer and moved his

family from Florida to Pennsylvania for the promise of long-term job security as the head coach and manager of the Philadelphia Union. Despite the execution of an employment agreement that secured the compensation associated with this position through December of 2015, on June 13, 2012, the Philadelphia Union terminated Mr. Nowak and refused to make the remaining payments – in excess of $1.4 million - due to Mr. Nowak under the agreement. The Team terminated Mr. Nowak for "cause" in a fundamentally unfair manner: (1) without first discussing with him the allegations against him; (2) without first providing him with a copy of the Major League Soccer Report that served as the basis for Mr. Nowak's termination; (3) without notice; (4) without any prior written discipline; and (5) without providing Mr. Nowak the opportunity to cure any issues the Team had with him as was required by the contract. According to the MLS Report and the initial notice to Mr. Nowak, the alleged bases for the termination concerned a training run on May 31, 2012; alleged mis-treatment of concussion issues; alleged hazing activities; and alleged interference by Mr. Nowak with the MLS Players Union. After the actual "firing" Mr. Nowak received a termination letter adding a number of other bases for termination about which Mr. Nowak had no notice at all and that were of little consequence to the Team.

Mr. Nowak does not dispute the Team's right to terminate him, but he does dispute the Team's right to terminate him for "cause" and deprive him of the livelihood for which he had contracted. The evidence presented at the hearing suggested a number of reasons for the termination of Mr. Nowak. It remains unclear what the real reason(s) for Mr. Nowak's termination were, but it is clear that Respondents did not act with the requisite good faith in the execution of their responsibilities under the contract. More specifically, Respondents acted in bad faith by: (1) failing to confront Mr. Nowak with their concerns or inquire of Mr. Nowak his

version of the events that the Team maintains were the basis for his termination; (2) by failing to provide him with an opportunity to cure any alleged defects; (3) by refusing to ever identify his accusers (with one exception); and (4) by ultimately deciding his termination would be for "cause" when there was no good faith support for such an assertion.

A hearing was held before Arbitrator Margaret R. Brogan on May 28-30, 2014 and continued on August 19-20, 2014. Both parties presented testimonial and documentary evidence. Respondents Exhibits 1 through 73 and Claimants Exhibits 1 through 16 were admitted into evidence. The Philadelphia Union presented the live testimony of Dave Debusschere, Executive Vice President and CFO of Keystone Sports & Entertainment and its subsidiaries; Todd Durbin, Executive Vice President of Competition, Player and Labor Relations for Major League Soccer; [redacted] Philadelphia Union player [redacted] player for the Philadelphia Union; Nick Sakiewicz, CEO, operating partner and co-founder of the Philadelphia Union; [redacted], a current player for the Philadelphia Union [redacted] a player for the Philadelphia Union; [redacted], a player for the Philadelphia Union; Paul Rushing, the Philadelphia Union's Head Athletic Trainer; and Steve Hudyma, the assistant Athletic Trainer for the Philadelphia Union. The Philadelphia Union also presented video testimony of Shep Messing, former professional soccer player, former sports agent and current sports commentator; Mike Morris, a European sports agent; and Robert "Bob" Foose, Executive Director of the Major League Soccer Players Union.

Mr. Nowak presented his own live testimony as well as the conference call testimony of Diego Guitierrez, a former professional soccer player for 13 years, the former head of scouting and player development for the Philadelphia Union and later the Sporting Director for the Philadelphia Union.

Mr. Nowak respectfully requests the Arbitrator sustain his breach of contract claim and award appropriate damages, including attorneys' fees and costs, pursuant to the employment agreement.

II. STATEMENT OF THE ISSUES

The Parties agreed that the issue should be stated as follows:

Whether any claim or counterclaim should be sustained; and if sustained, the damages will be subject to proof. (May 28, 2014 Tr. at p. 4). Accordingly, the sub-issues are as follow:

1. Claim: Whether the Team breached Mr. Nowak's Employment Contract when they terminated him on June 13, 2012.

   Suggested Answer: Yes.

2. Counterclaim 1: Whether Respondents are entitled to recover loan proceeds, interest, attorney's fees and cost of collection pursuant to Section XXI of the Employment Agreement.

   Suggested Answer: Respondents are entitled to recover only the remaining balance due to them on the Loan.

3. Counterclaim 2: Whether the prevailing party here is entitled to recover attorneys' fees and cost incurred in this matter and/or the matter captioned Piotr Nowak v. Pennsylvania Professional Soccer, LLC, No. 2:12-cv-04165 in the United States District Court for the Eastern District of Pennsylvania.

   Suggested Answer: The parties will address this issue in their fee petition.

4. Counterclaim 3: Whether Respondents are entitled to recover amounts advanced prior to termination under the Pino Agreement with interest.

   Suggested Answer: Respondents are entitled to recover only the remaining balance due on the Advance.

III. STATEMENT OF FACTS

A. Background of Claimant Piotr Nowak

Claimant Piotr Nowak was born in Poland. He began playing professional soccer at the age of 15, ultimately playing for the Polish National Team. (May 28, 2014 Tr. at p. 133-34). In December of 1997 – the early days of Major League Soccer in the United States - Mr. Nowak signed a contract with the Chicago Fire as its first international signing and began playing for them in 1998. He served as the captain of the team and played with them for 5 years. (May 28, 2014 Tr. at p. 134). After completing his fifth year with the Chicago Fire, Mr. Nowak was traded to the New England Revolution but opted to retire as a player and move to Florida with his wife and daughter. (Id.). Mr. Nowak then served as the ambassador for the Chicago Fire in 2003 and was the first member of the Ring of Fire. (May 28, 2014 Tr. at p. 135).

Shortly thereafter, Mr. Nowak was hired as the head coach of another MLS team, D.C. United. In his first year as head coach, D.C. United won the MLS Cup. In 2005, D.C. United made it to the playoffs under Mr. Nowak's leadership but lost in the conference final. In 2006, D.C. United won the Supporter Shield (awarded to the best team in regular season) and also advanced to the Eastern Conference Finals, again while Piotr Nowak was at the helm. (Id. at pp. 136-37). After leaving D.C. United, Mr. Nowak became the interim assistant coach of the U.S. Men's National Team. (Id. p. 138). He later became the head coach of the U.S. U23/Olympic Team. (Id. at p. 139). Most recently, Mr. Nowak served as the head coach/manager of the Philadelphia Union from June 2009 until his termination on June 13, 2013. (See Respondents' Exs. 1 and 36). Mr. Nowak, has never done anything professionally other than coach or play soccer. (May 28, 2014 Tr. at pp. 139-40).

Pino Sports LLC is an entity that owns and controls the marketing rights of Mr. Nowak.

B. History of Major League Soccer and Creation of the Philadelphia Union

After the conclusion of the World Cup in 1994, a small group of people banded together in Los Angeles to create Major League Soccer ("MLS" or the "League"). (May 29, 2014 Tr. at p. 504). Nick Sakiewicz, the current CEO of the Philadelphia Union was part of that group. After two years of getting organized, Major League Soccer was launched in 1996. (May 28, 2014 Tr. at p. 134; May 29, 2014 Tr. at p. 504). Mr. Sakiewicz served as the League's first vice president of sponsor sales. He later became the President of the League-operated Tampa Bay franchise until 1999 when he accepted a position as the President of the New York/New Jersey Metro Stars. (May 29, 2014 Tr. at pp. 504-05).

Thereafter, Mr. Sakiewicz, formed Keystone Sports, and along with Jay Sugarman, decided to form an expansion team. After doing some market research, they decided on Philadelphia. (May 29, 2014 Tr. at pp. 505-06). Mr. Sakiewiecz and Mr. Sugarman closed on the Philadelphia Union franchise in February of 2008 with the plan to have a team ready to play in 2010. (May 29, 2014 Tr. at p. 507).

According to Mr. Sakiewicz, Mr. Nowak was immediately on the short list of candidates for the Philadelphia head coach job. It bears mention that Mr. Nowak's reputation as an aggressive and fiery coach was well known. In fact, Mr. Messing described him as "in the best sense is a driven, killer, maniacal player and he was that way as a manager." (May 30, 2014 Tr. at p. 678). Mr. Sakiewicz and Mr. Nowak spoke a number of times between November 2008 and March of 2009. (May 29, 2014 Tr. at p. 508). Mr. Nowak made very clear that he wanted a long-term contract of 5 or 6 years and that he wanted autonomy over the team. (May 28, 2014

Tr. at pp. 146-47). Mr. Sakiewicz acknowledged that "coaches with Piotr's background and Piotr's profile need long-term commitments." (May 29, 2014 Tr. at p. 511). Because contracts of this length were "unprecedented" in MLS, in the words of Mr. Sakiewicz, they ran into "some challenges" but in the end, the Philadelphia Union committed to Mr. Nowak through the end of 2015. (See Respondents' Ex. 3 and 5). According to Mr. Sakiewicz, "we ended up shaking hands on a deal that made everybody happy at Major League Soccer, made other owners in the League happy, and I think gave Piotr the comfort that he would be with us for a long time." (May 29, 2014 Tr. at p. 512).

C. Mr. Nowak's Time with the Philadelphia Union

In June of 2009, Mr. Nowak and the Philadelphia Union signed the Employment Agreement which contracted Mr. Nowak as the Manager of the Philadelphia Union for the period from June 1, 2009 to December 31, 2012. (May 29, 2014 Tr. at p. 511; Respondents' Ex. 1 hereinafter the "Employment Agreement"). Other than changes in the term of the Employment Agreement, Mr. Nowak's title and compensation, and the addition of a Loan (discussed below), the terms of the Employment Agreement substantially remained in place until Mr. Nowak's termination in June of 2012.

On or about June 1, 2009, the Club also entered into an agreement with Pino Sports LLC, a Florida limited liability company that exclusively owned the marketing rights or Mr. Nowak. (Respondents' Ex. 2; hereinafter, the "Pino Agreement"). Pursuant to the Pino Agreement, the Club was to pay Pino Sports LLC $85,000 per year for Mr. Nowak's marketing rights. (Respondents' Ex. 2).

After the 2010 season, Mr. Nowak and the Team entered into a new agreement dated December 20, 2010 which named Mr. Nowak the Executive Vice President of Soccer Operations and extended his contract through December 31, 2015 but did not change his base compensation during the term. (Respondents' Ex. 3).

In reliance on the expectation that he would be in the Philadelphia area, at least through the end of 2015, Mr. Nowak began the process of finding a suitable home in the area. In connection with the purchase of that home, Mr. Nowak needed additional cash at closing which was provided to him through a Loan and Advance, the details of which are discussed below. (May 29, 2014 Tr. at pp. 882-88).

On or about December 20, 2011, the parties voided the December 20, 2010 agreement and entered into a new agreement which incorporates the Employment Agreement, reaffirms the extension of the term of Mr. Nowak's employment December 31, 2015, and provides for substantial annual increases to Mr. Nowak's Base Salary. (Respondents' Ex. 5, hereinafter the "Amended Employment Agreement"). The Employment Agreement and December 20, 2011 Amended Employment Agreement combined provide Mr. Nowak with a total Base Salary for the period from January 1, 2012 through December 31, 2015 in excess of $1.5 million. (Respondents' Ex. 5).

Pursuant to the Amended Employment Agreement, the Club also provided Mr. Nowak with a $60,000 loan which was to be paid back through payroll deductions during the remainder of the term of the Employment Agreement (hereinafter, the "Loan"). (See Respondents' Ex. 5, ¶XXI). The Loan required that upon Mr. Nowak's termination from the Club, the balance of the loan became immediately due and payable and that any delay in re-payment under those

circumstances would result in interest accruing at a set rate. (See Respondents' Ex. 5). The parties stipulated that no payments were made after Mr. Nowak's termination. (See Exhibit 70). Respondents have filed a counterclaim in connection with the outstanding balance, and interest due on the Loan, as well as a claim for attorneys' fees associated with attempting to collect these amounts.

On or about March 15, 2011, the Club and Mr. Nowak separately executed an Advance and Pledge Consent (the "Advance") through which the Club advanced to Pino Sports the remainder of the 2011 Fee and the entire 2012 Fee due under the Pino Agreement. (Respondents' Ex. 4). Pursuant to the Advance, the payments were due within 30 days of Mr. Nowak's termination, and the parties have stipulated that no such payments were made. (Respondents' Ex. 70). Respondents have filed a counterclaim in connection with the outstanding balance, and interest due on the Advance.

D. Mr. Nowak's Termination

There is no dispute that Mr. Nowak was terminated on June 13, 2012. (Respondents' Ex. 36). There is no dispute that the Club has refused to pay Mr. Nowak the remainder of the compensation due Mr. Nowak under the Employment Agreement and Amended Employment Agreement. Rather, the Club has taken the position that they need not pay Mr. Nowak because he was terminated for "cause." (Respondents' Ex. 36). As a result of having not been paid the remainder of his contract, Mr. Nowak has not repaid the Loan or the Advance.

Mr. Nowak does not dispute that the Philadelphia Union had the right to terminate him. However, Mr. Nowak maintains that his termination did not satisfy the Employment

Agreement's definition of "cause," that Respondents acted in bad faith, and that Respondent breached the contract and the obligation to pay him in accordance with the contract terms.

While the testimony presented at hearing indicates some disputed facts, the core issue here is a legal one.

1. The MLS Report

At the heart of the basis for Mr. Nowak's termination for "cause" are the contents of a putative MLS Investigation Report dated June 12, 2012. (Respondents Ex. 27). Yet, no one provided Mr. Nowak with a copy of the MLS Report prior to his termination meeting, during his termination meeting or over the course of the 10-month period following his termination. It was not until April 22, 2013, that counsel for Respondents provided the MLS Report to Mr. Nowak for the first time through current counsel for the Philadelphia Union.[1] The Report identifies only one interviewee by name, Paul Rushing, the Philadelphia Union Head Athletic Trainer. The Report mentions that "various Philadelphia Union players" were interviewed, but they were never identified by name.[2] (Respondents Ex. 27).

[1] Because the MLS Investigation Report was clearly central to Mr. Nowak's termination, Mr. Nowak and his counsel repeatedly requested a copy of the Report. At the time, Respondents were represented by counsel (not Mr. Collins and Mr. Andrisano) who refused to provide the report, yet made representations to the undersigned counsel that Mr. Nowak had engaged in "criminal and fraudulent" conduct. (Respondents Ex. 72, Document 9, Plaintiff's Memorandum of Law in Opposition to Defendants' Motion to Dismiss and to Compel Arbitration at Exhibit A). Despite this fact, brief settlement discussions took place but when it became clear that no resolution could be made, Mr. Nowak filed a breach of contract suit in the United States District Court for the Eastern District of Pennsylvania. (Respondents' Ex. 72).

[2] Throughout the hearing, Mr. Nowak requested that the individuals interviewed by MLS be identified so that Mr. Nowak could cross examine these individuals. Respondents objected to providing this information, asserting that it was confidential information and protected speech under the NLRA. Not only was Mr. Nowak denied the ability to cross examine those who

The MLS investigation that led to the Report, was conducted by Todd Durbin and Brett Lashbrook, counsel to MLS. (May 30, 2014 Tr. at p. 718). Astoundingly, neither of them saw it necessary, appropriate or fair to interview Mr. Nowak about the allegations contained in the Report. (May 30, 2012 Tr. at p. 827). The Report addresses several topics which will be addressed in detail below: (1) the events surrounding the training run on May 31, 2012; (2) the alleged mis-treatment of concussion issues; (3) the alleged hazing activities; and (4) the alleged interference with the MLS Players Union. (Respondents' Ex. 27).

2. The Philadelphia Union's "Investigation"

Mr. Sakiewicz testified that he received a call from MLS on May 24, 2012 regarding the alleged interference by Mr. Nowak between the players and the Players Union but he did not begin an investigation. (May 30, 2014 Tr. at pp. 887-88). Then on May 31, 2014, Mr. Rushing contacted him after a training run that had occurred earlier that day. (August 19, 2014 Tr. at p. 1091). Mr. Rushing explained to Mr. Sakiewicz his version of what happened on the run. (Id.) Earlier that day, Mr. Rushing had written a memo to the Team's doctor, Dr. Hummer summarizing his perception of these events as well. (Respondents' Ex. 13). Mr. Sakiewicz did not order any kind of investigation.

Then, on June 6, 2014, Todd Durbin of MLS called Mr. Sakiewicz and advised him there were "substantial concerns about a training incident." (May 30, 2014 Tr. t pp. 888-89). At this point, Mr. Sakiewicz decided to conduct his own "investigation." (May 30, 2012, Tr. at p. 890).

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accused him, but Respondents also refused to even identify the number of players who were interviewed. Mr. Nowak was prejudiced by this conduct an adverse inference should be drawn against the Respondents.

On that same day, Mr. Durbin sent Mr. Sakiewicz an e-mail informing him that MLS was conducting an investigation into Mr. Nowak's conduct. (Respondents' Ex. 14 at PPS0001136).

The following day, June 7, 2012, Mr. Sakiewicz forwarded this communication to Jay Sugarman with a note saying that "Todd will talk to Peter today." (Id. at PPS0001135).[3] Also on June 7, 2012, a week after having received a letter from Mr. Rushing, Dr. Hummer and Dr. McGlynn forwarded Mr. Rushing's memo to Dr. Hummer on to Mr. Sakiewicz, along with their own comments. (Respondents' Ex. 13 at PPS0001375).

Mr. Sakiewicz's version of an "investigation" that would lead to termination is shameful. He spoke to Dr. Hummer who was not present at the training and had no first-hand knowledge of the alleged events. No evidence of any harm, injury or physicial impact of the training incident is present anywhere. (May 30, 2012 Tr. at p. 892). Mr. Sakiewicz spoke to Dave Debusschere who also was not present at the run and had no first-hand knowledge of the events that transpired. (Id.) There was no testimony that Mr. Sakiewicz spoke directly to any of the players. (See Id. at pp. 892-96). Mr. Sakiewicz did not speak to Mr. Nowak because he had concluded that the run was "punishment" by Mr. Nowak. (Id. at p. 893). The only person with whom Mr. Sakiewicz spoke that had first-hand knowledge of the May 31, 2012 training was Mr. Rushing. (Id. at pp. 890-91).[4]

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[3] Mr. Durbin, however, never spoke with Mr. Nowak or even attempted to speak with him between May 31, 2012 and his termination on June 13, 2012. (May 30, 2012 Tr. at p. 827).

[4] In an effort to present himself as a protector of the players, Mr. Sakiewiecz further asserted that he directed Paul Rushing to begin report to, rather than to Mr. Nowak. (Id. at p. 892). This was a clear overstatement of his conduct as illustrated by the fact that Mr. Rushing testified only that Mr. Sakiewicz "told me that I needed to just do my job and if there was any problems that occur the following day or any other day that were similar to the problems we had on the 31st, that I was to let him know." (August 19, 2014 Tr. at p. 1092).

Mr. Sakiewicz admitted that prior to his meeting with Mr. Nowak on June 13, 2012, he had already decided to terminate him. (Id. at p. 911). He documented as much in his e-mail with Todd Durbin stating that he would fire Mr. Nowak after he speaks with him. (Respondents' Exhibit 26 at PPS0001124). He also admitted his unreasonable position that he did not even consider a suspension pending investigation. (May 30, 2014 Tr. at pp. 910-11).

3. The Termination Meeting

On Wednesday, June 13, 2012 at 7:31 a.m., Mr. Sakiewicz e-mailed Mr. Nowak as follows and demanded a 9:00 a.m. meeting on that day:

> Jay and I received phone calls and a follow up memo from the league concerning a summary of an investigation the league has been conducting. This is very serious and includes:
>
> 1.) You jeopardizing the health and safety of the plyers by restricting access to water during training.
>
> 2.) You jeopardizing the health and safety of injured players by requiring them to participate in training activities against the advice of the team medical staff.
>
> 3.) You jeopardizing the health and safety of the players by creating an atmosphere where concussion symptoms should be kept from the medical staff and not treated.
>
> 4.) You engaging in inappropriate physical contact with rookie players as part of an annual "hazing".
>
> 5.) You interfering with the players rights to contact the MLSPU with concerns.
>
> 6.) You creating an overall "culture of fear" where our players do not believe they have the ability to raise and address concerns regarding their work environment without retribution from you.
>
> . . . .

(Respondent's Ex. 34).

On June 13, 2012, Mr. Nowak received the above-referenced e-mail and received a call that he needed to go to the office for a meeting. (May 28, 2014 Tr. at p. 151). At no time prior to receiving this e-mail had Mr. Nowak been notified that anyone had complained to MLS about his conduct and/or that MLS was conducting an investigation into his conduct.

Mr. Nowak was sleeping at the time the email was sent but arrived for the meeting between 9:10 and 9:15. (May 28, 2014 Tr. at p. 151). He entered a room with Mr. Debusschere and Mr. Sakiewicz who immediately presented Mr. Nowak with an unsigned termination letter and a general release. (Id.) Mr. Debusschere asked him for the keys to his office and the keys to his car. (Id. at p. 152). Mr. Nowak testified – and no one disputes this fact - that he was not presented with the MLS Investigation Report during this meeting. (Id. at p. 237). While Mr. Sakiewicz testified that he would have "sat with Piotr for 24 hours if he wanted to discuss the memo," (May 30, 2014 Tr. at p. 910), this was a pure contradiction to the fact that Mr. Sakiewicz admitted that he had already made the decision to terminate Mr. Nowak before the meeting and that Mr. Sugarman had been part of that decision. (Id. at 911; Claimant's Ex. 12, Sugarman Dep. at pp. 93-94). In addition, as described more fully below, Mr. Nowak was not provided with an opportunity to respond to the allegations set forth in the e-mail calling him to the termination meeting or the termination letter presented to him at the meeting which reiterated these points and piled on several other unfounded reasons for his termination for "cause." (May 28, 2014 Tr. at pp. 240-41, 247-49).

According to Mr. Sakiewicz, the meeting lasted only 25-30 minutes (May 30, 2014 Tr. at p. 913) and was over before 9:56 a.m. (See Respondent's Ex. 35, showing 10:56 e-mail from Mr. Sakiewicz to Mr. Sugarman advising Mr. Sugarman the meeting was over). At 12:46 p.m., Mr. Debusschere e-mailed Mr. Nowak and his counsel at the time, William Daluga, and attached

an unsigned termination letter dated June 13, 2012 and a Separation and General Release agreement. (Respondent's Ex. 63). Mr. Nowak was presented with the ultimatum to either execute the Separation and General Release Agreement which paid him only through December 31, 2012, or he would be deemed to be terminated for "cause" and receive an executed version of the termination letter and no compensation.

4. The Termination Letter

The proposed termination letter presented to Mr. Nowak during this meeting states that Mr. Nowak was terminated "for cause pursuant to paragraph III(A)" but does not specify which of the 8 subparagraphs of Paragraph III(A) on which the Team relied. (Respondents' Ex. 36). The termination letter also enumerates six (6) bases for Mr. Nowak's termination as follows:

1. various material breaches of League Rules (including the League's Collective Bargaining Agreement), including physical confrontations with players and officials during a Team game resulting in a fine and multi-game suspension, interfering with the rights of Team players to contact the player' union with concerns, subjecting Team players to inappropriate hazing activities and engaging in behavior that put the health and safety of Team players at risk.

2. material breaches of the Employment Agreement, including engaging in discussions regarding and otherwise actively seeking, employment by other professional soccer teams in Europe and making disparaging remarks to third parties regarding Club, its management and its ownership.

3. demonstrating gross negligence, including putting the health and safety of Team players at risk by requiring inured players to participate in strenuous training activities, not allowing players to have water during such activities despite temperatures in excess of 80 degrees, ignoring the advice of the head athletic training regarding which players are healthy enough to play in games and participate in the training sessions and creating an atmosphere where medical issues should be hid from medical staff and not treated.

4. committing actions that have reflected in a materially adverse manner on the integrity, reputation and goodwill of Club and the Team (in the eyes of the League, U.S. Soccer, current and potential Team players, sponsors and fans), including the unusually harsh treatment of players described above, actions during Team games that have resulted in fines and suspension, the multiple breaches of League Rules and a discussion (by you and your agent on your behalf) with the head of U.S. Soccer that was in very poor taste and left a very bad impression with U.S. Soccer.

5. multiple incidents of insubordination with respect to the Club's Chief Executive Officer, including claiming at one point (in direct contradiction to the terms of the Employment Agreement) that he does not report to the Club's Chief Executive Officer.

6. various material breaches of Team Rules, including creating a hostile work environment and culture of fear for Team players and other front office employees by orally berating and physically intimidating fellow employees.

(Respondents' Ex. 36). The letter also asserts that the "Club has determined that the above infractions are not capable of being cured and believes your continued employment by Club would continue to cause material harm to Club." (Id. at p. 2). The letter concludes by demanding payment of the Loan and the Advance. (Id.).

IV. ARGUMENT

The Philadelphia Union breached its contract with Mr. Nowak by wrongly asserting that he was terminated for "cause" and thus, depriving him of his rights under the Employment Agreement. With respect to the counterclaims asserted by Respondents regarding the Loan and the Advance, given that Respondents acted in bad faith in breaching the Employment Agreement, thus depriving Mr. Nowak of the ability to pay the outstanding principal on the Loan and Advance, the Arbitrator should not charge Mr. Nowak with the interest due on the Loan and/or Advance.

A. The Philadelphia Union Breached Its Contract With Mr. Nowak

At the heart of this case is whether Mr. Nowak was properly terminated for "cause" under the Employment Agreement or whether the claims of "cause" were merely pretextual. Mr. Nowak submits that he was not terminated for "cause" and thus, is entitled to the unpaid portion of the Base Salary Amount from June 13, 2014 through December 31, 2015 and all bonuses that he had earned. The evidence at hearing does not support a finding of termination for "cause," but rather shows that Respondent materially breached the contract. This was essentially an internal management dispute which overlaid the instability of a new enterprise. Even if the Arbitrator does find that the "cause" standard could be met, the Team materially breached the contract *first* by failing to provide Mr. Nowak with three contractual prerequisites to his lawful termination for cause: (1) reasonable details regarding the reason for his termination; (2) a meaningful opportunity to respond to the accusations; and (3) an opportunity to cure any defects in his performance. Respondents' insistence that the concerns they raised were not curable is not made in good faith.

Respondents' assertion that Mr. Nowak was properly terminated for "cause" is without merit. Paragraph III of the Employment Agreement governs termination and provides as follows:

> (A) This Agreement, and Manager's employment hereunder, will be deemed to be terminated prior to the expiration of the Term upon the death of Manager. In addition, Club may terminate this Agreement, and Manager's employment hereunder, upon written notice by Club to Manager in the event of the occurrence of any of the following:
>
> . . . .
>
> (2) Manager's willful failure, neglect or refusal to render services hereunder, or any material breach of this Agreement or the Pino Agreement (as defined below) by Manager

(3) Manager's gross negligence or willful misconduct in performing duties hereunder

. . . .

(5) Manager's commission of any action or involvement in any occurrence that . . . reflects in a *materially adverse* manner on the integrity, reputation or goodwill of Club or the Team;

. . . .

(7) Manager's failure to comply in all material respects with Team Rules (consistently applied to the coaching staff of the Team) or League Rules;

or

. . . .

(B) Club may also terminate this Agreement upon written notice to Manager for any reason other than as set forth in Paragraph III(A) above or for no reason. . . . .

(C) Upon termination of this Agreement pursuant to Paragraph III(A) or (B) above, all of the rights and obligations of the parties hereunder . . ., shall forever cease, including, without limitation the rights and obligations of the parties under Paragraphs IV [Compensation] and V [Additional Benefits], except that (1) Club shall remain obligated to pay Manager any portion of the applicable Base Salary Amount and all bonuses that have been earned by Manager pursuant to Paragraph IV(A) or IV(C), as applicable, below but have not yet been paid as of the date of termination and (2) in the event of Manager's termination by Club pursuant to Paragraph III(B) above . . ., Club shall remain obligated to pay Manger, in accordance with the payment schedule set forth in Paragraph IV(B) below and subject to the terms of Paragraph III(D) below, the applicable Base Salary Amount provide for in Paragraph IV(A) below through December 31, 2012 (the "Severance Payments"). Whether Club has terminated this Agreement pursuant to Paragraph III(A) or (B) shall be determined *in good faith* by Club *at its reasonable discretion; provided that (i) prior to terminating Manager pursuant to Paragraph III(A), Club shall specify in reasonable detail the reason Manager is being so terminated and give Manager an opportunity to respond thereto*, (ii) such determination shall be subject to Paragraph XIII [Governing Law, Arbitration and Attorneys' Fees] *and* (iii) *prior to terminating Manager pursuant to clause (2), (3), or (7) of Paragraph III(A), Club shall allow Manager fifteen (15) days to cure the occurrence, except that Club shall have no obligation to provide Manager such opportunity to cure if Club determines, in its good faith judgment, that the occurrence is of a nature that is not curable or that*

> *Manager's continued employment during a cure period could be (sic) reasonably be expected to result in material harm to Club.*

(Respondent's Exhibit 1, ¶ III (A) (emphasis added).[5]

Mr. Nowak was not properly terminated for cause pursuant to paragraph III(A) of the employment agreement. Respondents neither provided Mr. Nowak with reasonable details as to the reasons for his termination, nor did they provide him a meaningful opportunity to respond, nor did they provide him with an opportunity to cure his conduct as required by the Employment Agreement. These material breaches, along with the failure to provide Mr. Nowak with a copy of the MLS Report and failure to provide Mr. Nowak with an opportunity to confront his accusers resounds in fundamentally unfairness.

1. Respondents Did Not Provide Mr. Nowak With Reasonable Detail As To The Reasons For His Termination Or An Opportunity To Respond

The Employment Agreement requires that "prior to terminating Manager pursuant to Paragraph III(A), Club shall specify in reasonable detail the reason Manager is being so

[5] Paragraph III(A)(1) is inapplicable because it relates to termination due to disability. Paragraph III(A)(4) is inapplicable because it relates to commission of a felony or misdemeanor involving a crime of moral turpitude, neither of which are alleged here. Paragraph III(A)(6) is inapplicable because it cross references with Paragraph I(C). Paragraphs I(C)(i)-(iv) relate to fixing or throwing games, bribery, and/or use of alcohol or drugs in a manner that interferes with performance, none of which are alleged here. Paragraph I(C)(v) relates to conduct that is "*materially prejudicial* to the interest of the League or the Team or *materially detrimental* to the public image and/or reputation of the league, the Club and/or the game of soccer." (emphasis added). Nowhere in the termination letter or elsewhere did Respondents assert such material prejudice or material detriment. Even so, Respondent has not shown material prejudice, which requires proof that the party was unable to exercise rights that it otherwise would be able to exercise but-for the prejudicial action or event. *First Commonwealth Bank v. Heller*, 863 A.2d 1153 (Pa. Super. 2004); *Vanderhoff v. Harleysville Insurance Company*, 78 A.3d 1060 (Pa. 2013). Lastly, Paragraph III(A)(8) regarding direction by the Commissioner of the League to terminate the Agreement is inapplicable because the Team accepted full responsibility for the decision to terminate Mr. Nowak. (May 30, 2014 Tr. at p. 911; Claimant's Ex. 12, Sugarman Dep. at pp. 93-94).

terminated, [and] give Manager an opportunity to respond." (Respondents' Ex. 1 at ¶ III (C)). While the Termination Letter asserts 6 broadly worded claims, there is no specificity with respect to which allegations relate to which termination clause in the contract.

Equally as important, Mr. Nowak was not provided with a meaningful opportunity to respond to the allegations prior to the decision to terminate him. The testimony was clear that Mr. Nowak was not even made aware of the MLS investigation into his conduct until the investigation was referenced in an e-mail to him less than two hours prior to his termination. The testimony also was clear that Mr. Nowak was never interviewed by anyone at MLS in connection with the allegations set forth in the MLS Report. (May 30, 2012 Tr. at p. 827). In addition, Mr. Sakiewicz testified that he conducted his own investigation. (Id. at p. 890). Yet, even he was forced to admit that he did not interview or otherwise inquire with Mr. Nowak regarding the allegations contained in the MLS Report. (Id. at p. 893).

Mr. Sakiewicz attempted to take the position that Mr. Nowak had the opportunity to respond during his termination meeting, but this testimony did not ring true. Mr. Debusschere testified that he did not recall Mr. Nowak's specific words but stated that Mr. Nowak denied and deflected. (May 28, 2014 Tr. at pp. 114-18). Mr. Nowak's testimony, however, was both clear and credible:

> Q: Okay. Now in the letter that was dated June 13th, 2012, I want you to look at paragraph 1 and the first portion of that where it says here's why you're being fired: "various material breaches of League Rules (including the League's Collective Bargaining Agreement), including physical confrontations with players and officials during a Team game resulting in a fine and multi-game suspension . . ." Let me just stop there.
>
> Was that ever discussed with you on the 13th as a reason you were being terminated?

A. No. There was only the folder, this folders (sic). There was the two papers. They were both handed to me. There was not discussed any of these points.

Q. Okay. Now, it says: "material breaches of the Employment Agreement, including engaging in discussions regarding, and otherwise actively seeking, employment by other professional soccer teams in Europe and making disparaging remarks to third parties regarding Club, its management and its ownership."

. . . .

Q. Was that discussed with you as a reason you were being terminated?

A. No.

(May 28, 2014 Tr. at pp. 241-41).

Q. All right. I want to take you down to 4, where it refers to ". . . multiple breaches of League Rules and a discussion (by you or your agent on your behalf) with the head of U.S. Soccer that was in very poor taste and left a very bad impression with U.S. Soccer."

Hold on a second. Was that issue raised with you when you were terminated?

A. No.

. . . .

Q. Okay. "multiple incidents of insubordination with respect to the Club's Chief Executive Officer, including claiming at one point ... that he does not report to the Club's Chief Executive Officer

. . . .

Any discussion with you about this insubordination with respect to the Club's Chief Executive Officer?

A. No.

(May 28, 2014 Tr. at p. 247).

Q. Look at Paragraph 6.

. . . "various material breaches of Team Rules, including creating a hostile work environment and culture of fear for Team players and other front office employees by orally berating and physically intimidating fellow employees." . . .

> Okay. Was that subject brought up when you were terminated?
>
> A. No.
>
> Q. There's a statement here: "Club has determined that the above infractions are not capable of being cured and believes your continued employment by Club would continue to cause material harm to Club." Do you see that?
>
> A. Yes.
>
> Q. Okay. Was the subject of cure raised with you –
>
> A. No.
>
> Q. – when you met on the morning of your termination?
>
> A. No.

(May 28, 2014 Tr. at p. 248-49).

Mr. Sakiewicz went so far as to suggest that if Mr. Nowak had said the "right things" (whatever those might have been) during his termination meeting, Mr. Sakiewicz would have changed his mind and would not have terminated Mr. Nowak. (May 30, 2014 Tr. at pp. 911-12). But in the end, Mr. Sakiewicz admitted that the decision to terminate Mr. Nowak had been made a day or two earlier. (May 30, 2014 Tr. at p. 911).

Perhaps from a technical standpoint, Mr. Nowak could be said to have had an opportunity to respond to the allegations set forth in the e-mail, but he certainly did not have any opportunity to respond to the additional issues raised in his termination later. Moreover, given only two hours of notice of the termination meeting, any opportunity to respond was certainly not a meaningful one (like being given a chance to absorb the charges and develop cogent responses to the allegations made against him), as any reasonable person would expect. Therefore, the Club failed to satisfy any of the contract's prerequisites to termination under Paragraph III(A), thus failing to act in good faith and materially breaching the Employment Agreement.

2. Respondents Did Not Act In Good Faith As Required By The Contract.

Paragraph III(C) also requires that the Club act in "good faith" when determining whether Mr. Nowak is being terminated for "cause" under Paragraph III(A) or not for cause under Paragraph III(B), the latter of which entitles him to continued Base Salary and earned Bonus. More specifically, the Employment Agreement provides:

> Whether Club has terminated this Agreement pursuant to Paragraph III(A) or (B) shall be determined in *good faith* by Club at its *reasonable discretion*; provided that (i) prior to terminating Manager pursuant to Paragraph III(A), Club shall specify in reasonable detail the reason Manager is being so terminated and give Manager an opportunity to respond thereto, (ii) such determination shall be subject to Paragraph XIII [Governing Law; Arbitration and Attorneys' Fees] and (iii) prior to terminating Manager pursuant to clause (2), (3), or (7) of Paragraph III(A), Club shall allow Manager fifteen (15) days to cure the occurrence, except that Club shall have no obligation to provide Manager such opportunity to cure if Club determines, in its *good faith judgment*, that the occurrence is of a nature that is not curable or that Manager's continued employment during a cure period could be (sic) reasonably be expected to result in material harm to Club.

(Respondents' Ex. 1 ¶ III(C)) (emphasis added).

"Good faith" is defined as "a total absence of any intention to seek an unfair advantage or to defraud another party; an honest and sincere intention to fulfill one's obligations." BARRON'S LAW DICTIONARY 208 (3rd ed. 1991). "Good faith . . . encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage." BLACK'S LAW DICTIONARY 623 (5th ed. 1979). Good faith may also be defined as: "[a] state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage." *Hartman v. Baker*, 766 A.2d 347, 355 n.3 (Pa. Super. Ct. 2000). The duty of "good faith" has been defined further as "[h]onesty in fact in the conduct or

transaction concerned." *Id.* (citing 13 Pa. C.S. § 1201); *Creeger Brick & Building Supply Inc. v. Mid-State Bank & Trust Co.*, 385 Pa. Super. 30, 560 A.2d 151, 153 (1989).

Examples of bad faith conduct include "*evasion of the spirit of the bargain*, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance." *Kaplan v. Cablevision of Pa, Inc.*, 448 Pa. Super. 306, 318, 671 A.2d 71, 722 (1996).

In addition to the express "good faith" requirement in Mr. Nowak's Employment Agreement, Pennsylvania law also imposes in every contract "a duty of good faith and fair dealing in its performance and its enforcement." *Somers v. Somers*, 613 A.2d 1211, 1213 (Pa. Super. Ct. 1992) (citing Restatement (Second) of Contracts § 205). The implied duty of good faith and fair dealing "certainly requires both parties to act consistent with the justified expectations of the other party." *Herzog v. Herzog*, 887 A.2d 313, 317 (Pa. Super. Ct. 2005).

Moreover, in making its good faith determination, the Employment Agreement required the Club to exercise "reasonable discretion." (Respondents' Ex. 1 ¶ III(C)); See *USX, Corp. v. Prime Leasing*, 988 F.2d 433, 438 (3d Cir.1993) (Duty of good faith implies a "duty to bring about a condition or to exercise discretion in a reasonable way.").

The evidence presented during the hearing shows that Respondents conduct was inconsistent with the reasonable expectations of any employee accused of wrongdoing and it evaded the spirit of the bargain. The testimony from both parties was that Mr. Nowak wanted a long-term contract. The terms of the contract further established very limited circumstances in which Mr. Nowak would not receive the full economic value of his employment contract. The contract went so far as to provide that in nearly all termination circumstances, Mr. Nowak would

first be notified of any issues with his conduct and then would be provided with an opportunity to cure. The Club's failure to even advise Mr. Nowak that allegations had been made against him to MLS is evidence of the Team's interference with Mr. Nowak's attempt to perform his obligations under the contract. Moreover, the Club's failure to either insist that MLS interview Mr. Nowak for his perspective on the allegations or to interview him themselves is illustrative of the Team's intention to seek unfair advantage over Mr. Nowak. Lastly, the Club's failure to provide Mr. Nowak with opportunity to cure easily curable issues which were in every case, single incidents which did not repeat themselves, proves the Team acted inconsistently with Mr. Nowak's justified expectations and breached the contract by failing to act in good faith. This is particularly true given the prior course of dealing. (See discussion infra regarding insubordination at section IV(A)(3)(a)(iii)).

3. Respondents Did Not Provide Mr. Nowak With An Opportunity To Cure Conduct That Was Easily Curable And Not Reasonably Likely To Cause Material Harm To The Club

Termination pursuant to III(A)(2), III(A)(3), or III(A)(7) requires that prior to termination under these provisions, the Club must "allow Manager fifteen (15) days to cure the occurrence, except that Club shall have no obligation to provide Manager such opportunity to cure if Club determines, in its *good faith judgment*, that the occurrence is of a nature that is not curable or that Manager's continued employment during a cure period could be reasonably be (sic) expected to result in *material harm to Club*." (Respondents' Ex. 1 ¶ III(C) (emphasis added). Respondents failed entirely to provide Mr. Nowak with an opportunity to cure any of the concerns raised at the time of firing or thereafter. Moreover, the circumstances were not such that continued employment could reasonably be expected to result in "material harm" to the Club (however that is defined).

We have already discussed the evidence of Respondents lack of good faith. In addition, Respondents cannot show that the circumstances were such that continued employment could reasonably be expected to result in "material harm." For harm to be "material," it must be quantifiable and concrete. *Humbertson et us v. Alright*, 40 Pa. D.&C. 456, 458 (Pa. Com. Pl. 1940)(material harm must be capable of being measured); *Agriss v. Roadway Express, Inc.* 483 A.2d 456 (Pa. Super. Ct. 1984)(using the terms "material harm" and "special harm" interchangeably and defining special harm as being "harm of a material and generally pecuniary nature" or that caused "concrete economic loss computable in dollars"). Respondents submitted no evidence of pecuniary harm.

Moreover, Respondents presented no evidence to suggest that even if we accepted that alleged conduct as true, that the conduct could not be cured and/or that some measurable and/or economic harm would have befallen the Team if Mr. Nowak was not terminated. In fact, even Mr. Sakiewicz acknowledged that with one exception (the alleged hazing - the facts about which there is some dispute), Mr. Nowak always corrected any troublesome behavior:

> Q. All right. And the investigative report focused on the events of the 31st; is that right?
>
> A. And the interference issue, which was prior to that.
>
> Q. And am I correct that subsequent to that putative interference issue you have no evidence that Piotr ever did that again; right?
>
> A. No. I don't have any evidence that he did that again.
>
> Q. And after this single running event of the 31st you have no evidence that Piotr never did anything during training that was inappropriate or improper; correct?
>
> A. Correct.
>
> Q. So to the best you can tell me, every time Piotr did something that you found wrong or offensive and he was told about it, he stopped doing it.

A. With one exception, which was the hazing issues.

(May 30, 2014 Tr. at p. 903-04).

The Team had a variety of obvious and reasonable options at their fingertips so to suggest that it exercised good faith judgment in concluding no cure was possible is ridiculous. The Team could have simply directed Mr. Nowak not to refuse or limit water again or he would be terminated. The Team provided no such admonition verbally or in writing. The Team could have directed Mr. Nowak not to use the trail at YSC again, but they did not. The Team could have sat down with Mr. Nowak and discussed who had authority over the health and well-being of the players, in a similar manner in which they had addressed a previous issue regarding who had what authority. But there was no such conversation. The Team could have sat Mr. Rushing and Mr. Nowak in a room and had them work out their differences. Given that the Team claims it had already told Mr. Nowak to cease the allegedly inappropriate aspects of hazing – notice which Mr. Nowak vehemently denies – the Team could have directed Mr. Nowak in writing to cease the activity. The Team could have suspended Mr. Nowak pending a thorough investigation. The Team could have terminated Mr. Nowak and paid out the remainder of his contract. Nonetheless, despite all these reasonable options, the Team took the most Draconian approach available to them, which suggests a complete a lack of good faith.

Having discussed the ways in which Respondent materially breached the contract by failing to act in in good faith, failing to provide Mr. Nowak with the opportunity to respond to the allegations against him, and failing to provide Mr. Nowak with the opportunity to cure any defects, all of which were required by the Employment Agreement, we now turn to the more specific allegations set forth in Mr. Nowak's termination letter and their applicability to specific provisions of the Employment Agreement.

a. Termination Pursuant to III(A)(2)

Paragraph III(A)(2) of the Employment Agreement permits termination for "Manager's willful failure, neglect or refusal to render services hereunder, or any material breach of this Agreement or the Pino Agreement (as defined below) by Manager." (Respondents' Ex. 1 ¶ III(A)(2)). There are no allegations of willful failure, neglect or refusal *to render services*. Thus, Club's only argument under this provision is that Mr. Nowak's conduct resulted in a "material breach" of the Employment Agreement. In order for a breach to be material, it must be important or necessary as related to a given matter. BARRON'S LAW DICTIONARY (3d ed. 1991) at p. 294.[6] Even assuming as true the allegations surrounding Mr. Nowak allegedly seeking other employment, allegedly making disparaging remarks and allegedly engaging insubordination, this conduct does not constitute a material breach.

Paragraph 2 of the Termination Letter alleges the following reasons for termination:

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[6] Pennsylvania courts have adopted the Restatement (Second) of Contracts to determine "materiality" for purposes of breaching a contract. Thus, the following factors are considered:

a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
b) the extent to which the injured party can be adequately compensated for that part of the benefit of which he will be deprived;
c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
d) the *likelihood that the party failing to perform or offer to perform will cure his failure*, taking account of all the circumstances including any reasonable assurances;
e) the extent to which the behavior of the party failing to perform or offer to perform comports with standards of *good faith and fair dealing*.

Widmer Eng'g, Inc. v. Dufalla, 837 A.2d 459, 467 (Pa. Super. 2003). (citing Restatement (Second) of Contracts § 241 (1981)) (emphasis added). As discussed throughout, Respondents have shown no evidence that these issues could not have been cured and in failing to provide Mr. Nowak with opportunity to do so, Respondents acted in bad faith to the extreme detriment of Mr. Nowak.

> material breaches of the Employment Agreement, including engaging in discussions regarding and otherwise actively seeking, employment by other professional soccer teams in Europe and making disparaging remarks to third parties regarding Club, its management and its ownership.

(Respondents' Ex. 36 ¶ 2).

We note first that this allegation is a mere "pile on" insofar as it was included in the termination letter, but not in the notice to Mr. Nowak regarding what became his termination meeting on June 13, 2012. Thus, to begin, Respondents breached Paragraph III(C) of the Employment Agreement by failing to provide notice to Mr. Nowak of these particular alleged offenses prior to his termination, as was required. Moreover, substantively, even assuming the facts as presented by Respondents were true here, Mr. Nowak could not be considered to have engaged in material breaches of the Employment Agreement.

i. Seeking Other Employment

Mr. Nowak did not breach any material term of the Employment Agreement by speaking with Messrs. Messing and/or Morris. The Employment Agreement provides that "during the Term, Manager shall not (1) engage in discussions with any **other professional soccer team** regarding employment by such team". (Respondents' Ex. 1 ¶ VII). Respondents offered the testimony of Shep Messing and Mike Morris, neither of which were compelling on this issue.

By way of background, Mr. Messing testified by videoconference that he had played a role in Mr. Nowak coming to play in the U.S. and further asserted that he has been in "constant contact" with Mr. Nowak during his time as a player, manager of D.C. United, and then as an assistant with the U.S. National Team. (May 30, 2014 Tr. at p. 661). While Mr. Messing did not represent Mr. Nowak when he was with D.C. United, he said he was considered by himself and

Mr. Nowak to be Mr. Nowak's "advisor." (Id. at p. 662). Mr. Messing then claimed that he recommended Mr. Nowak to Mr. Sakiewicz for the job with the Philadelphia Union. (Id. at p. 663). Mr. Messing later described himself as "continuing to be [Mr. Nowak's] agent/representative/advisor" yet he was unable to produce any contract with Mr. Nowak and acknowledged that he had never been paid by Mr. Nowak. (Id. at 679). Mr. Messing also testified that he is not "registered with the League as an agent." (Id. at 684).

Mr. Messing went on to testify that Mr. Nowak had contacted him in the April/May time-frame of 2010 before the World Cup and had advised him that if the U.S. did not do well, he would be interested in taking over as the U.S. National Team head coach. Mr. Messing testified that this "bothered me a little bit" and he found it "pretty disturbing." (Id. at 664). He said that Mr. Nowak contacted him after the U.S. lost to South Africa and asked him to speak to Sunil [Gulati], the head of U.S. Soccer as well, but there was not testimony that either Mr. Messing, or anyone else arranged such a conversation. (Id. at p. 665).

Mr. Messing also testified about an alleged conversation he had with Mr. Nowak after the U.S. Open Cup game at Red Bull Arena in 2011, during which the "gist" of the conversation, according to Mr. Messing was that Piotr told him "I have to get the hell out of Philadelphia. These guys are stupid. They don't know what they're doing and they're broke. They have no money." (Id at p. 666). Mr. Messing later testified that he was "disgusted" that Mr. Nowak was seeking Mr. Bradley's job, given that Mr. Bradley had been part of bringing Mr. Nowak to the U.S. (Id. at 667). He also testified that in 2012, he failed to return a number of Mr. Nowak's calls and ultimately referred him to Mike Morris, a European agent. (Id. at 667-68).

Even assuming all of this was true, this was not a breach at all – let alone a material breach - of the Employment Agreement. The Employment Agreement only prohibits Mr. Nowak from actually "engaging in discussions" with other professional soccer teams. Mr. Nowak had no discussions himself, nor did he direct any authorized representative have such a discussion with another professional soccer team on his behalf. At the time of the alleged discussion, Mr. Messing was not Mr. Nowak's agent, nor was he even a registered agent with MLS. While he alleged several conversations with Mr. Nowak regarding other opportunities, Mr. Messing was clear that he "did not get involved in the process." (Id at p. 671). The fact that Mr. Nowak may have had what he thought was a "private" discussion with an old friend about his frustrations does not amount to a material breach of the Employment Agreement that would justify Mr. Nowak's termination for cause.

Lastly, Mr. Messing testified that he shared this information with Mr. Sakiewicz both after the World Cup in 2010 and again in May of 2012. (Id. at 673). If Mr. Sakiewicz thought this was a material breach, he could have – and in fact had a *contractual duty* to – discuss the issue with Mr. Nowak at that time. This situation was easily curable and the Club failed to provide Mr. Nowak with either notice or the opportunity to cure as required by the Employment Agreement.

Mr. Morris testified via videoconference that he is a football agent in England and Monaco. He testified that Mr. Nowak contacted him three or four times "to source a football coach, first of all, in the Emirates and also in Europe." (May 30, 2014, Tr. at pp. 646-47). He further testified that Mr. Nowak sent him his CV. He then said that he "reached out to the U.K. and America; to a friend of mine in Dubai, a club in Dubai; and then Europe. I randomly gave out or spoke of his name to certain clubs." (Id. at p. 647). He testified that he sent Mr. Nowak's

CV several places but no one had heard of him and nothing else ever happened. (Id. at 647-48). Even if the Arbitrator concluded these events were true, Mr. Nowak making a general inquiry to an agent, without having any contract with an agent does not equate with Mr. Nowak "engaging in discussions" with another professional soccer team. Again, by Mr. Morris' own testimony, no such discussions ever took place, so there was no material breach by Mr. Nowak.

It bears mention that the owner of the Team, Jay Sugarman, denied that he had any knowledge of Mr. Nowak looking for another job in Europe. When asked "why that was listed as a reason for his termination," Mr. Sugarman replied, "I think there was a belief that he had. . . . That was not my major issue." (Claimant's Ex. 12, Sugarman Dep at p. 88). Mr. Sugarman went on to say that his decision to terminate Mr. Nowak was not based on the reasons set forth in the termination letter, but rather, solely because of the MLS report:

> Q. But you made a decision between the time you got that document [the MLS Report] on the 12th and the morning of the 13th to fire Piotr; correct?
>
> A. To terminate him, yes.
>
> Q. And it was not predicated on the reasons that are in the termination notice, it was predicated on this report; correct?
>
> A. My decision was based on this report.

(Claimant's Ex. 12, Sugarman Dep. at pp. 93-94).

ii. Disparaging Remarks

In their termination letter, Respondents also assert that Mr. Nowak's "disparaging remarks" about the Club, its management and ownership constitute a material breach for which Mr. Nowak could be terminated for "cause." (Respondents Ex. 26 ¶ 2). There is nothing in the Employment Agreement to suggest that such a conclusion is true. Moreover, the only testimony

regarding disparaging remarks by Mr. Nowak was that "in confidence" he told Mr. Messing "I have to get the hell out of Philadelphia. These guys are stupid. They don't know what they're doing and they're broke. They have no money." (May 30, 2014 Tr. at p. 666). If Mr. Nowak actually said this, while this was undoubtedly not Mr. Nowak's wisest moment, the suggestion that it constitutes a material breach for which he can be terminated for cause without notice or the opportunity to cure is unreasonable, if not laughable. Furthermore, the concerns were, at the time, justified. The team had not – and could not – pay its required franchise fee. (See August 20, 2014 Tr. at pp. 1187-88 and pp. 1228-29). It was reasonable for any employee to be concerned about their security and their future.

iii. Insubordination

Respondents urge the Arbitrator to conclude that certain alleged "insubordination" is a justifiable reason to terminate Mr. Nowak for cause, despite the fact that there is no language in the Employment Agreement to support such a conclusion, nor do the facts suggest that Mr. Nowak was insubordinate. Any attempt by Respondents to characterize the allegations of insubordination set forth in Paragraph 5 of the Termination Letter as some kind of "material breach" of the Employment Agreement should be met with failure. Paragraph 5 of the Termination letter alleges the following reasons for termination:

> multiple incidents of insubordination with respect to the Club's Chief Executive Officer, including claiming at one point (in direct contradiction to the terms of the Employment Agreement) that he does not report to the Club's Chief Executive Officer.

(Respondents' Ex. 36 ¶ 5).

Again, this allegation is a "pile on" issue that was not raised with Mr. Nowak when he received the email demanding he appear for what became his termination meeting. Thus, Mr. Nowak was not given any notice of this allegation as required by the Employment Agreement. In addition, Respondents seem to misunderstand the meaning of "insubordination." To be "insubordinate" means "not obeying orders." WEBSTER'S NEW RIVERSIDE DICTIONARY, (1984) at p.365. Mr. Nowak did no such thing.

While the termination letter mentions "multiple" incidents of insubordination, the only specific instance of alleged insubordination related to an incident that occurred in August of 2011.[7] The incident involved Mr. Nowak learning about and taking offense to having not been copied on an e-mail sent by Rick Jacobs, Vice President of Operations for the Philadelphia Union to Mr. Sakiewicz, Mr. Graham (an investor), John Hackworth and Alecko Eskandarian. The email proposed a Philadelphia Union Academy & High School Coaches Open Forum. Unfortunately, both Mr. Nowak and Mr. Sakiewicz – overreacted, as evidenced by the e-mail train associated with this incident. (Respondents' Ex. 46). Mr. Sugarman testified that he was unhappy with Mr. Sakiewicz over this incident.[8] The reality is, however, that Mr. Nowak was not insubordinate – meaning he did not refuse to obey orders. He simply questioned the chain of command.

Equally as important, the entire incident is illustrative of the reasonable expectations of the parties with respect to how disputes would be handled. Mr. Nowak raised an issue first on

[7] Given Respondents failure to identify other specific incidents prior to Mr. Nowak's termination meeting, Mr. Nowak was given neither notice of the offense nor an opportunity to cure the offense as required by the Employment Agreement.

[8] In fact, even Mr. Sugarman acknowledged that both men were "hot heads" with a "temper." (Claimants Ex. 12 at p. 55).

his own and then with the assistance of counsel. (Respondents' Ex. 47). The Club responded in writing, and Mr. Nowak respected that decision going forward. (Respondents' Ex. 48). The issue was resolved and put to bed, as evidenced by the fact that just a few months later, Mr. Nowak's Employment Agreement was extended through 2015. For the Club to turn around nearly a year after the incident took place and six months after they renewed Mr. Nowak's contract, and assert this incident as a reason for termination for cause is disingenuous at best. There is simply no evidence that Mr. Nowak was ever insubordinate. The evidence suggests he felt strongly about certain things but not that he defied his superiors.

b. Termination Pursuant to III(A)(3)

Paragraph III(A)(3) permits termination for "Manager's gross negligence or willful misconduct in performing his duties hereunder." These allegations pertain to a training run that took place on May 31, 2012 and to allegations surrounding the treatment of concussions, both of which became the primary focus of the MLS Report. Even if we accept as true the Club's factual allegations, we are left with only a partial handful of isolated incidents – any of which could have been easily cured with notice to Mr. Nowak – and in fact – none of which were ever repeated, despite the fact that no notice was given to Mr. Nowak.

In order to prove "gross negligence," Respondents must prove that Mr. Nowak "failed to use even slight care." BARRON'S LAW DICTIONARY (3 ed. 1991) at p. 316. In order to prove "willful misconduct," Respondents must prove that Mr. Nowak engaged in misconduct that was "intentional, knowing or voluntary, as distinguished from accidental." (Id. at p. 530). Respondents cannot satisfy either of these high threshholds.

Paragraph 3 of the Termination Letter asserts the following reason for termination:

> demonstrating gross negligence, including putting the health and safety of Team players at risk by requiring injured players to participate in strenuous training activities, not allowing players to have water during such activities despite temperatures in excess of 80 degrees, ignoring the advice of the head athletic training regarding which players are healthy enough to play in games and participate in the training sessions and creating an atmosphere where medical issues should be hid from medical staff and not treated.

(Respondents' Ex. 36 ¶ 3).

On May 31, 2012, Mr. Nowak held a practice at the Youth Soccer Center ("YSC"), which is a large indoor training facility with a running trail outside the facility. (May 29, 2014 Tr. at p. 329-32). After the training run, Paul Rushing, the Head Athletic Trainer, wrote a letter to Dr. Hummer detailing his concerns. (Respondents' Ex. 13 at PPS0001373). He also contacted John Gallucci, one of the medical coordinators for the League. (August 19, 2014 Tr. at p. 1084). Several hours later, he spoke with Mr. Sakiewicz. (Id. at p. 1094). These communications set the ball rolling for Mr. Nowak's termination. In fact, based on the testimony at the hearing, the alleged events surrounding this training run are the primary reason for Mr. Nowak's termination for cause. As set forth in Respondents' termination letter, they have three issues with the events of May 31, 2012: (1) the overall conditions of the run (length, location, heat and humidity), (2) the treatment of injured players, and (3) the denial of water to the players during the run.

i. General Conditions of the Run

With respect to the first issue – overall conditions for training, Mr. Nowak testified that he knew it was going to be sunny, so he wanted to have the run in the "shadow" of the trail around the YSC. (May 28, 2014 Tr. at p. 202; May 29, 2014 Tr. at p. 333). He further testified

that he had both John Hackworth and Rob Vartughian check the trail, and they reported to him that it was "doable." [9] (May 29, 2014 Tr. at p. 333).

Respondents could not quite agree on what time the run occurred. [redacted] testified for Respondents that the run took place between 11:00 and 1:00-ish. (May 29, 2014 Tr. p.483). [redacted], however, testified that there was a 10:00 a.m. start. (August 19, 2014 Tr. at p. 959).

While Respondents griped endlessly about the heat and humidity during the run,[10] the reality is that it was a morning run, in the shade, on a nice, low humidity day – far less heat and humidity than at the World Cup in Brazil this year. In fact, Claimant submitted Quality Controlled Local Climatological Data for the Philadelphia area that shows a temperature of 78 degrees with 44% humidity at 9:54 a.m.; a temperature of 81 degrees with 34% humidity at 10:54 a.m.; 81 degrees with 33.% humidity at 11:54 a.m.; and 80 degrees with 33% humidity at 12:54 p.m. (Claimant's Exhibit 13).

As to the length of the run, according to Respondents, it was somewhere between 7 and 12 miles.[11] To give this some context, [redacted] testified that a defender would typically

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[9] The Philadelphia Union did not present either Mr. Hackworth, Mr. Nowak's successor, or Mr. Vartughian to contest this fact.

[10] Respondents asserted that the risk of injury and dehydration were tied to the "hot and sunny" conditions. ([redacted] testimony, May 29, 2014 Tr. at p. 462). [redacted], who participated in the run described the conditions as "Probably around 80 degrees, sunny, a little bit humid." (August 19, 2014 Tr. at p. 962). Yet, Bob Foose, who was not present at the run, described conditions as "extremely humid" that day. (May 30, 2014 Tr. at p. 713).

[11] [redacted] testified that he calculated the length of the run to be 11 or 12 miles. (May 29, 2014 Tr. at p. 458-63). [redacted] testified that the run was done in two segments, each about 5 miles long with a break in between. (August 19 Tr. at pp. 962-63). [redacted]

run 2 ½ to 3 miles in each half of a game, while an offensive player would run about 8 miles in a half. (May 29, 2014 Tr. at p. 482). Thus, the total distance was less than a full game for offensive players and only slightly more than a full game for defensive players. Moreover, Mr. [redacted] acknowledged that no one instructed the players that they could not walk or jog. (August 19, 2014 Tr. at p. 998). Even Mr. Rushing acknowledged that it was not his role or responsibility – rather it was Mr. Nowak's - to establish the amount of running that would be done during routine training and how long a training session would go. (August 19, 2014 Tr. at p.1113).

ii. Treatment of Injured Players

With respect to the second issue – treatment of injured players, prior to the run, players were placed into 3 groups based on their running ability. The third group was for injured players. (May 29, 2014 Tr. at p. 333). Mr. Nowak and Mr. Rushing disagreed with respect to the training for three individuals: [redacted] and [redacted] While there is some dispute as to whether this was a "heated argument," as Mr. Rushing described it, (August 19, 2014 Tr. at p. 1075) or a "hushed conversation," as [redacted] described it, (May 29, 2014 Tr. at p. 465-66), the tone is largely immaterial. Mr. Rushing wanted these three players to ride the bike. (August 19, 2014 Tr. at p. 1082). He testified that he "was upset because he [Mr. Nowak] wanted those players to run and I didn't want them to run. I wanted to do what I wanted to do with them." (August 19, 2014 Tr. at p. 1075). Mr. Nowak, however, wanted the entire team to be together. (May 28, 2014 Tr. at p. 207). Accordingly, Mr. Nowak directed all three players to walk the trail. (Id.).

[redacted] testified that the run was somewhere between 7-10 miles. (August 19, 2014 Tr. at p. 1042).

Of these three players, only [redacted] presented any testimony. He testified that while he technically participated in the "run," when he informed Mr. Nowak that his foot was injured, Mr. Nowak told him to walk the trail, which Mr. [redacted] did. (August 19, 2014 Tr. at p. 1035). Mr. [redacted] further testified that at the time of the May 31, 2012 run, he had an undiagnosed fractured right big toe. (Id. at p. 1031). Despite this injury, and despite participating in the May 31, 2012 training session, Mr. [redacted] played in a game on June 16th. (Id. at p. 1039).

For whatever reason – partially because Mr. Rushing got disgusted and left the trail before the training was over, (Id. at p. 1080), until the hearing, Mr. Rushing wrongfully assumed that the injured players were forced to run, and he was not even aware that Mr. Nowak had told the injured players they could walk. (Id. at 1130). He undoubtedly shared this misinformation with Mr. Sakiewicz and others. This critical piece of misinformation may be what precipitated the wrongful termination of Mr. Nowak for "cause."

iii. Hydration

With respect to the third issue, hydration, the actual events that took place are largely undisputed but just how confrontational the situation became and the intent behind those events is hotly contested.

It is undisputed that the players were permitted water before and after the run. Even Mr. Nowak acknowledges that at some point before the first segment of the run concluded, he began to deny water to the players. [redacted] testified that he was one of the first to complete the first segment and that he grabbed a water bottle and "rehydrate[d]." (August 19, 2014 Tr. at p. 962). He then saw Mr. Nowak "go off the trail with some of those carrying packs." (Id. at 963).

He saw some other players complete their runs, and they were not permitted water. It is undisputed that this action by Mr. Nowak either prompted or was in the midst of a dialogue he was having with Paul Rushing.

At the end of the run, Mr. Rushing wrote a May 31, 2012 letter to Dr. Hummer expressing his concern that "the players' health was put at risk when they were not allowed to have water by the team's manager during an 8-10 mile interval run in 80-82 degree heat." (Respondents' Ex. 13 at PPS0001373). Yet, Mr. Rushing acknowledged during the hearing that there was no reason to believe the players were denied hydration in the hours or days before or after the run. (August 19, 2014 Tr. at p. 1124-25). In addition he acknowledged that no one suffered any heat stroke, falling out, fainting, passing out, or nausea. He also acknowledged that no one was treated by a doctor for dehydration, nor were they medically determined to have damage as a result of dehydration. (Id. at pp. 1126, 1129). Mr. [redacted] also testified that no one collapsed on the course during the run; no one was removed in an ambulance; and no doctor was called. (August 19, 2014 Tr. at pp. 998-1000). He further testified that after the run, the players went immediately to the locker room where they had access to water. (August 29, 2014 Tr. at p. 999). All of this hysteria was an overreaction to an training exercise that happened to take place after an unsatisfactory performance during the team's previous game. It is simply unacceptable to terminate Mr. Nowak for "cause" based on the mere possibility of what could have happened but did not.

With respect to the intent behind Mr. Nowak's denial of water, Mr. Nowak maintains that one of his players, [redacted], had been out very ill with the flu. He had been cleared by the doctors to practice and decided to do so for the first time on May 31st. (May 29, 2014 Tr. at p. 344). Mr. Nowak was concerned Mr. [redacted] might spread his illness if someone else drank out

of the same water bottle. Mr. Nowak testified that he had previously directed Mr. Rushing to provide each player with his own bottle with his player number on it. He further testified that Mr. Rushing had refused to provide individual, labeled bottles as directed. (May 29, 2014 Tr. at p. 344-45). As a result, when the players were out on the trail, because Mr. Nowak did not want players sharing water bottles and germs, he withheld water for the remainder of the run.[12]

Mr. Rushing denies that Mr. Nowak requested individual bottles with each players' name on them. (August 19, 2014 Tr. at p. 1136). Mr. Hudyma, the Assistant Athletic Trainer testified that June 1st was the first day that Mr. Nowak requested that each player have his own water bottle with his number on it. While he denies that Mr. Nowak told him it was because of [redacted] having a contagious stomach bug, he acknowledges that it was in that same time frame. (Id. at 1160-61).

Of course, Mr. Sakiewicz, having largely heard the story second hand, hastily came to the conclusion that the entire training run was a form of punishment. (May 30, 2012 Tr. at p. 893). Mr. Nowak vehemently denied that the run was punishment, saying, "You're never going to hurt your players. The players are most valuable asset to your teams." (August 20, 2014 Tr. at pp. 1270-71). Moreover, extra practices or increased training is hardly uncommon in the sports world when a team is not performing well. While Mr. Sakiewicz stands behind his own investigation as the basis for Mr. Nowak's termination, his lack of understanding of the facts was evident when he admitted he had no idea whether the refusal of water was before, during, or after

[12] Mr. Guitierrez recalled that another purpose of the training was to "replicate the 45-minute half" when you seldom get to stop and drink water. (August 20, 2014 Tr. at p. 1211, 1207).

the run. (Id. at p. 894). He even contradicted the testimony of every other witness by asserting that water was denied *after* the run. (Id. at p. 895).

iv. Subsequent Training and Games

It is undisputed that a similar training exercise took place the following day. Mr. Rushing acknowledged that the training on the second day was "done the way it should have been" and that no one was denied water. (August 19, 2014 Tr. at p. 1134). Mr. [redacted] also testified that there was a run the following day during which players were permitted to hydrate before, during and after the run. (August 29, 2014 Tr. at p. 1016). In fact, Mr. Sakiewicz admits that the regime of May 31st was not repeated. (May 30, 2014 Tr. at p. 903-04).

The events of May 31, 2012 do not constitute "gross negligence or willful misconduct" such that Mr. Nowak could be terminated for cause pursuant to Paragraph III(A)(3). The facts presented cannot be interpreted to suggest that Mr. Nowak "failed to use even the slightest care." Nor is there any proof that Mr. Nowak intended to harm his players. And that is not to mention the fact that he did not harm anyone.

Even setting aside Respondents inability to prove gross negligence or willful misconduct, prior to the June 13, 2012 termination meeting, no one contacted Mr. Nowak to give him notice that his conduct was unacceptable and he needed to stop it. In fact, no one from MLS or the Club even questioned Mr. Nowak directly about that practice and/or provided him an opportunity to be heard prior to deciding to terminate him. These were contractual prerequisites for terminating Mr. Nowak for "cause" under this provision. And again, even without being provided the notice to which Mr. Nowak was entitled, the alleged offending conduct was never repeated.

v. Concussion

Respondents accuse Mr. Nowak of "creating an atmosphere where medical issues should be hid from medical staff and not treated." (Respondents' Ex. 36 ¶ 3). We anticipate this language refers to the evidence relating to concussions. Among other things, the MLS Report accuses Mr. Nowak of calling players "pussies" for saying they have a concussion, denying concussions exist, and accusing players of faking concussions. Of course, neither the names or even quantity of players who made these accusations were ever provided so no cross-examination was available to Mr. Nowak. Even the MLS Report cautioned that many of the things the players reported about were just things they had heard, but had not seen directly. (Respondents' Ex. 27).

In contrast to the accusations levied in the MLS Report, Mr. Nowak testified that he specifically recalled two particular concussion issues in 2012 – one related to [redacted] and the other to [redacted] In fact, Mr. Nowak was so concerned by the issue that he ordered protective helmets:

> So after those two incidents I went to Mr. Rushing and ask him to get protective helmets. Mr. Rushing not disregard but basically didn't care about that.
>
> So I went to our team equipment manager, Mr. Tim Cook and Dan Nolan, and order on line five protective helmets for anybody who will have any kind of problems with the concussions.
>
> [redacted] were trained in the protective helmets, which it does not look good but is very effective.

(May 28, 2014 Tr. at p. 224.). Mr. Nowak further testified that television commentators criticized him, calling him "insane" for ordering helmets. (Id. at p. 225). Shortly after his termination, Mr. Nowak was watching a game and saw an interview with Assistant

Coach/Technical Director Rob Vartughian, who was asked why one of the [redacted] was no longer wearing a helmet, Mr. Vartughian explained that it is a "comfort issue." (Id.)

In the MLS Report, Mr. Rushing is attributed with saying that Mr. Nowak did not understand the concussion protocol. (Respondents' Ex. 27 at p. 3). Mr. Nowak acknowledged as much: "So, as I said, I might not understand protocol, which I know what is the protocol, but it was not that I disobeyed any kind of regulations and rules of Major League Soccer concerning concussions." (May 28, 2014 Tr. at p. 225-26). In the end, Mr. Rushing testified that he knew of no incident when Mr. Nowak insisted that somebody play who had been diagnosed with a concussion. (August 19, 2014 Tr. at p. 1144). Respondents also presented the hearsay testimony of Bob Foose regarding statements to him from players he would neither quantify nor identify. (May 30, 2014 Tr. at p. 759-60).

This evidence is insufficient to establish gross negligence or willful misconduct under Paragraph III(A)(3). Again, even if the Arbitrator were to find this high standard is met, Respondents breached the contract by failing to provide Mr. Nowak with notice and an opportunity to cure prior to terminating him for cause.

c. Termination Pursuant to III(A)(7)

Paragraph III(A)(7) permits termination for "Manager's failure to comply in all material respects with Team Rules (consistently applied to the coaching staff or the Team) or League Rules." Once again, Respondents failed to satisfy the prerequisites of providing notice and an opportunity to cure as per the Employment Agreement.

Paragraph 1 of the Termination Letter alleges termination for material breaches of **League** rules as follows:

> various material breaches of *League* Rules (including the League's Collective Bargaining Agreement), including physical confrontations with players and officials during a Team game resulting in a fine and multi-game suspension, interfering with the rights of Team players to contact the player' union with concerns, subjecting Team players to inappropriate hazing activities and engaging in behavior that put the health and safety of Team players at risk.

(Respondents' Ex. 36 ¶ 1)(emphasis added).

i. Fines and Suspensions

With respect to physical confrontation with players and officials during a game, fine and multi-game suspension, there is no dispute that certain fines and suspensions were levied against Mr. Nowak and/or the Philadelphia Union. Again, this is a "pile on" issue that was added to the termination letter but not contained in the notice requiring Mr. Nowak to come to the office on June 13, 2012. It is hardly unique that coaches and players are ejected from games and fined for either aggressive behavior during the heat of the game or confrontations with officials. It is folly to suggest that coaches or players are ever fired over this. Coaches and teams get fined all the time in professional sports. Coaches also get suspended from games. To suggest that this everyday conduct rises to the level of a material breach of League rules sufficient to warrant termination is unreasonable and impractical. In addition, no one ever sat down Mr. Nowak and told him that if he got one more fine or one more suspension, he would be terminated. Again, there is a lack of notice and lack of opportunity to cure as required by the Employment Agreement that cannot be overlooked.

ii. Interference with MLS Players Union

There was a single allegation regarding alleged interference by Mr. Nowak with the Player's Union at the end of training camp in 2012. The issue centered around a player and/or

[redacted] raised the issue of whether the Team had complied with the "[redacted]" policy. Diego Guitierrez testified that he learned from Dave Debusschere that [redacted] complained to the front office about [redacted]. (August 20, 2014 Tr. at p. 1221). Mr. Guitierrez participated in a meeting with Mr. Nowak, [redacted], and [redacted] where Mr. Nowak told the three of them to [redacted]" (Id. at 1224). Mr. Guitierrez also testified that he was invited to a *team* meeting during which Mr. Nowak addressed the issue of time off as follows:

> In this meeting he basically told the players, "Look, if there are concerns, [redacted], come to us, we'll work it out, we'll work with you." That was basically it. It basically was a meeting where he just said, "look, there's an open door here, come and see us if you have concerns."

(August 20, 2014 Tr. at p. 1205). Mr. Guitierrez was emphatic that Mr. Nowak did not tell the players they should not contact the Players Union, and he further insisted that Mr. Nowak did nothing to interfere with the players contacting the Players Union. (Id.).

Even the witnesses presented by Respondents were weak on this issue. [redacted] testified that he had a meeting with Mr. Nowak, Diego Gutierrez and [redacted] during which Mr. Nowak "basically just said: Look, if you have an issue, you should raise it with us before. You know, we can handle everything internally. You know, he didn't involve the Players Union." (May 29, 2014 Tr. at p. 434). Mr. [redacted] further testified that Mr. Nowak later called him and asked him who went to the Players Union about the '[redacted] issue." (Id. at 435).[13] He

[13] [redacted] also testified that Mr. Nowak called him and inquired who had raised the "[redacted]" issue and he responded: "And I basically just said that I didn't, I didn't know who did, and he just reiterated the point of we can work together, you don't need to use your Players Union for any issues that arise." (August 19, 2014 Tr. at p. 951).

later re-characterized the first meeting, saying that Mr. Nowak said "we needed to keep everything in house and we don't need to be going anywhere with anything else other than going straight to Coach Nowak or Diego and everything should be resolved within those two people. We could resolve it by going to them." (Id. at 437).

[redacted] also testified on the interference issue and said only: "I recall them calling a meeting in the players locker room in which I believe both Piotr and Diego addressed the group about contacting the Players Union and that it would be better if we didn't go to the Players Union and went to them instead if we had a grievance." (May 29, 2014 Tr. at p. 477). Later, on cross-examination, Mr. [redacted] confirmed there was no interference:

> Q. You described this meeting where there was a discussion about contacting the Players Union and somebody said it would be better, if you have a problem, to come to us.
>
> A. Yes.
>
> Q. Is that what you were told, the extent of what you were told?
>
> A. Yes.

(May 29, 2014 Tr. at p. 485).

[redacted] testified that Mr. Nowak "asked if we had any issues, that we come forth to him and try and work out some sort of an agreement or handle the situation without going to the Players Union." (August 19, 2014 Tr. at p. 949). He also characterized Mr. Nowak's request as saying, "if there's anything that comes up that you guys have an issue with, please come to us and we'll work it out, you don't need to go and bring up any issues with your Players Union." (Id. at 950).

[redacted] testified similarly that Mr. Nowak said "[t]hat when we had complaints, that we didn't need to *immediately* go to the Players Union and to seek out himself and one of the other people on the staff and to bring the complaints to them *first* before we had gone to the Union, Players Union." (Id. at p. 1038)(emphasis added). Mr. [redacted] testimony was perhaps the clearest in illustrating that Mr. Nowak was simply promoting an open door policy where efforts to resolve issues could first be made between coaches/staff and players before elevating them to the Players Union.

Mr. Sakiewicz testified that in May of 2012, several days after [redacted] was traded on [redacted], Mr. Sakiewicz received a call from Bob Foose telling him that the Players Union has filed a grievance with the League alleging that Mr. Nowak told the players not to communicate with the Union and that an investigation would be conducted. (May 29, 2014 Tr. at pp. 562-65). While the Union urges the Arbitrator to conclude that Mr. [redacted] trade to [redacted] was a retaliatory action for Mr. [redacted] having raised the [redacted] issue, Mr. Guitierrez emphatically denied that had anything to do with the trade. Rather, Mr. Gutierrez stated that Mr. [redacted] "had lost his step, he was not good enough anymore." He went on to say that Mr. [redacted] had a good year in [redacted], but after the off season "came back a different player where he was a lot slower." (August 20, 2014 at 1225). Mr. Nowak echoed these reasons for Mr. [redacted] trade, saying, "I'm going to say he didn't play bad, he got bad season, and I received a text message from Mr. Sakiewicz, after one of the games, that he cost us the game and we have to do something about it." (May 28, 2014 Tr. at p. 234).

Respondents overplayed the significance of the alleged interference. Even their own witness, Todd Durbin, testified that while MLS was going to investigate the interference allegations, the interference allegations did not raise "major alarm bells." He testified that it was

not until the allegations related to the May 31, 2012 training "that the stuff really started to crank up and we then sort of moved from an issue that was important but wouldn't necessarily have rose to the level of major alarm bells and seriousness to we now may be potentially looking at something that's very different than just simply a situation where a coach has told his players not to contact the Players Union." (May 30, 2014 Tr. at p. 780-81). The alleged interference issue was not significant enough to warrant termination for cause. Moreover, there was no evidence presented that it ever happened again. In fact, Mr. Sakiewicz admitted this. (May 30, 2014 Tr. at p. 903-04). Ultimately, the suggestion that the players attempt to resolve matters within the organization first is hardly "interfering" with the relationship between the players and their bargaining agent.

iii. Hazing

With respect to alleged hazing activities, Respondents have failed to identify any League Rule on this issue. Mr. Nowak did not deny that rookie hazing took place during his tenure as manager of the Philadelphia Union, including joking, singing, dancing and paddling of rookie players. (May 28, 2014 Tr. at p. 187-190, 226-229). Mr. Nowak also testified that prior to engaging in this activity, he received pre-approval from former Philadelphia Union President, Tom Veit and from Nick Sakiewicz. (August 20, 2014 Tr. at p. 1241). He did not deny sticking his hand in an ice bucket in between paddling. (May 28, 2014 Tr. at p. 382). In fact, he indicated that a videotape was taken each year by his assistant coaches, Rob Vartughian and John Hackworth, in 2010, 2011 and 2012. He further testified that he was present when those videotapes were shown to Mr. Sakiewicz and others (May 28, 2014 Tr. at p 222-27) and that Mr. Sakiewicz loved it and never instructed him after to stop the rituals:

> Q. Okay. And your testimony is that Nick Sakiewicz did not instruct you after 2010 not to conduct the slapping.
>
> A. Absolutely not. He saw it with Richie Graham in the lobby in the hotel in Costa Rica. He love it, like every year he did, with some sponsors. Like in Crete in Greece, the sponsors were there from Colonial Marble. His wife was there with his son Nicholas, the youngest son. As I said there was an investor, new investor, Rich Graham in the lobby. John Hackworth or Rob Vartughian showed the videotape or whatever the recording. That was every year he was with us and he saw it, what was happening.

(May 29, 2014 Tr. at pp. 383-84; see also August 20, 2014 Tr. at p. 1241). Former Philadelphia Union Sporting Director, Diego Gutierrez, confirmed these facts, stating that he saw Nick Sakiewicz watch the video on a telephone and laughed. (August 20, 2014 Tr. at p. 1202, 1215-16). He further confirmed that Mr. Sakiewicz did not criticize anyone about the hazing. (Id. at 1202).

Mr. Sakiewicz testified that in the 2011 pre-season he travelled to Greece with the Team and that he was shown a video of the hazing. When asked about his reaction, he testified that while he was internally upset, because there were a lot of people around, he just "absorbed it." (May 29, 2014 Tr. at p. 526-27). He further testified that he "told Piotr that this wasn't something that we should do as a team; that I didn't want it to be done again; that it's not exemplary of the team that aspires to be at one time America's most admired soccer brand. And we agreed to disagree." (Id. at p. 527).

It is difficult to comprehend how Mr. Sakiewicz, who clearly was Mr. Nowak's boss, allegedly knew that Mr. Nowak disagreed with him, yet took no further action to ensure that the conduct was not repeated in 2012. Even Mr. Debusschere testified that to his knowledge, no written communication directing Mr. Nowak to cease this activity going forward, nor disciplining him for doing so. (May 28, 2014 Tr. at pp. 102-03). If Mr. Sakiewicz really wanted

the hazing – or some portion of it stopped – he could have and should have provided Mr. Nowak with written direction and/or discipline on this issue. It seems likely that the sensitivity to the hazing issue only came into play when MLS, the Players Union or the Team realized that [redacted] had been subjected to the hazing.

Hazing has been, from college fraternities to sports teams at any level, a bonding ritual engaged in with new members and rookies. While some forms of hazing can be dangerous (e.g. excessive drinking) the ritual followed by the Philadelphia Union was hardly in that category. To terminate Mr. Nowak for cause when no one in management made any real effort to enforce this non-existent "League rule" is a breach of the Employment Agreement.

iv. Jeopardizing Health and Safety of Players

With respect to the allegation that Mr. Nowak engaged "in behavior that put the health and safety of Team players at risk," Mr. Debusschere was asked what this language referred to and responded as follows:

> A. I know specifically the lion's share of it definitely was in the report. I don't recall if there was anything outside of that. But certainly it was the run issues.
>
> Q. The run issues?
>
> A. The runs, concussions, and all that stuff.

(May 28, 2014 Tr. at pp. 79-80).

The substance of these issues has already been discussed in detail. In addition, no League rules have been identified to warrant re-visiting this issue in connection with section III(A)(7).

Even if the Arbitrator found that all of this was true, under the Employment Agreement, the Club was obligated to notify Mr. Nowak of any and all issues, allow him an opportunity to respond to those issues, and allow him an opportunity to cure any defect. None of these obligations were met.

Paragraph 6 of the Termination Letter alleges termination for material breaches of **Team** rules as follows:

> various material breaches of *Team* Rules, including creating a hostile work environment and culture of fear for Team players and other front office employees by orally berating and physically intimidating fellow employees.

(Respondents' Ex. 36 ¶ 6) (emphasis added).

Nick Sakiewicz testified that in late 2011 he heard that Rick Jacobs, Vice President of Operations, had been "assaulted" by Mr. Nowak earlier that year. (May 29, 2014 Tr. at p. 531). While Mr. Sakiewicz claims to have been alerted about this in 2011- "quite a time after the incident"- he never raised the issue with Mr. Nowak, nor did he even bother to have Mr. Jacobs document the incident. While Mr. Sakiewicz insisted that Mr. Jacobs wrote a memo regarding the incident in 2011, the evidence demonstrated that he did not draft a memo until May 29, 2012, nearly a year after the incident which allegedly took place on May 16, 2011. (See Respondents' Exhibit 49). Because Respondents did not present Mr. Jacobs to authenticate the document or withstand cross-examination on the document and underlying contents, the memo and the testimony surrounding this incident should be excluded as inadmissible hearsay.

The suggestion that Mr. Nowak created a "culture of fear" is not supportable. But for the run issue, there is no evidence that Mr. Nowak was an abusive coach or even one that was disliked by his players. Clearly, Mr. Sakiewicz and Mr. Nowak did not get along. Once can

easily argue that Mr. Sakiewicz was as much at fault as Mr. Nowak in fueling this fire. The claim that a "culture of fear" existed is nothing more than that: an unsubstantiated claim. The evidence showed that Mr. Nowak was a popular coach among the fans and that there was real concern about fan reaction to his firing. (Respondents' Ex. 26). Mr. Guitierrez, who has known and worked with Mr. Nowak for years testified that no one ever told him that they were afraid of Mr. Nowak:

> Q. Did any player, to your knowledge, ever complaint to you that they were afraid of Piotr and/or concerned about Piotr's treatment of them?
>
> A. No. Listen, I'll say this: I've known guys that have played for Piotr in D.C. and that have played for Piotr with the National Team, and I mean, they've always spoken really well. Look, the guy wins, right? So he was successful with the National Team, he was successful with D.C. United. And for a short period of time we were successful with the Union. *Nobody that I know of has ever complained or expressed fear in playing for Piotr.*

(August 20, 2014 Tr. at p. 1206)(emphasis added).

Until the morning when Mr. Nowak was provided with a termination letter, he was not provided with notice that he had allegedly violated any Team Rules or League Rules pursuant to this provision of the agreement, nor was he provided with an opportunity to respond to the allegations or to cure the alleged conduct – which he clearly could have done. Any contention that these allegations were not curable or "could reasonably be expected to result in material harm to the Club" is belied by the evidence.

4. Respondents Cannot Lawfully Terminate Mr. Nowak For "Cause" Pursuant To Paragraph III(A)(5)

In a desperate attempt to rectify their failure to abide by the Employment Agreement and permit Mr. Nowak an opportunity to cure any issues prior to his termination for cause,

Respondents attempt to justify Mr. Nowak's termination based on Paragraph III(A)(5) of the Employment Agreement. While its applicability is a stretch, Paragraph III(A)(5) is the only clause of the Employment Agreement apparently invoked by Respondents that permits termination for cause *without first providing Mr. Nowak with an opportunity to cure*. More specifically, Paragraph III(A)(5) permits termination if "Manager's commission of any action or involvement in any occurrence that . . . reflects in a *materially* adverse manner on the integrity, reputation or goodwill of Club or the Team." (Respondent's Ex. 1, ¶ III(A)(5)) (emphasis added).

While "materially adverse" is not a defined term, in order for an issue to be "material" it must be important or necessary as related to a given matter. BARRON'S LAW DICTIONARY (3d ed. 1991) at p. 294. Respondents did not present sufficient evidence to prove material adversity to the integrity, reputation or goodwill of the Club.

Apparently relying on this clause, Paragraph 4 of the Termination Letter alleges termination for the following reasons:

> committing actions that *have reflected* in a *materially adverse* manner on the integrity, reputation and goodwill of Club and the Team (in the eyes of the League, U.S. Soccer, current and potential Team players, sponsors and fans), including the unusually harsh treatment of players described above, actions during Team games that have resulted in fines and suspension, the multiple breaches of League Rules and a discussion (by you and your agent on your behalf) with the head of U.S. Soccer that was in very poor taste and left a very bad impression with U.S. Soccer.

(Respondents' Ex. 36 ¶ 4) (emphasis added).

Respondents cannot justify Mr. Nowak's termination for cause based on Paragraph III(A)(5) because they have not introduced sufficient evidence to prove that Mr. Nowak's conduct reflected in a *materially* adverse manner on the integrity, reputation or goodwill of the

Club or the Team. In fact, Respondents have barely introduced evidence that reflects in *any* adverse manner at all, let alone a material one.

Respondents begin by attempting to broaden the clause in the Employment Agreement to be linked to "the eyes of the League, U.S. Soccer, current and potential Team players, sponsors and fans." The Employment Agreement simply does not say this and it cannot be implied into the Employment Agreement. Respondents then refer to the "unusually harsh" treatment of players, which is a clear overstatement of the events that took place on May 31, 2012 or otherwise – and which has nothing to do with damage to the Club's reputation because it was not public.

Respondents then complain about fines and suspensions which are an obvious part of any professional sport, including soccer. If being issued a fine or suspension can result in a materially adverse reflection on the integrity, reputation, or goodwill of a team, then most, if not every, professional sports team has suffered from this at one time or another. Similarly, with respect to breaches of League rules, the suggestion that breaching League rules on one or more occasions reflects in a materially adverse manner on the integrity, reputation, or goodwill of a team is ludicrous. Rules and their breaches are a part of professional sports.

Lastly, Respondents refer to a conversation in "poor taste" that left a "bad impression" with U.S. Soccer. Mr. Debusschere testified that this was a reference to the alleged conversation between Mr. Nowak and Mr. Messing during which Mr. Nowak allegedly inquired about the head coaching position of the U.S. Men's National Team. (May 28, 2014 Tr. at p. 98). Again, the suggestion that this inquiry created a materially adverse reflection on the Club is without merit.

Respondents provided no evidence regarding impact on the reputation of the Club, other than Dave Debusscheres' *speculation* that it *could be* problematic if the MLS Report became public and his hearsay testimony of what others allegedly said:

> Q. Okay. So I want to know what got out to the public that Piotr did that affected the brand.
>
> A. We didn't want it out in the public. It was that that report was so bad that *if* it got out in the public, it *could have* a significant negative impact on us.
>
> Q. But my question is not what would happen if it got out. You said that they have reflected in an adverse manner on the integrity, reputation and goodwill. I want to know who told you that the reputation of the Union was damaged because of something Piotr Nowak did. . .
>
> A. No, no. I'm thinking back. I mean, there was internal discussions of feedback individuals were having with others. There was the general sentiment. I mean it wasn't just those items. There was the fines. There was other items involved from a League perspective. In this case there was, you know, from U.S. Soccer, Mr. Sakiewicz had conversations with them saying what's this guy doing, why is he looking for another job, this is what he's saying, its' not reflecting very good on you.
>
> There's comments from the agent, Mr. Shep Messing, back to Mr. Sakiewicz, this is what's being said out there about you guys, that you have no idea what you're doing, you know, you have no idea how to run, you don't have any money, all that kind of stuff.

(May 28, 2014 Tr. at p. 92-95)(emphasis added).

Accordingly, Respondents failed to present sufficient evidence at hearing to demonstrate that Mr. Nowak's conduct reflects in a *materially* adverse manner on the integrity, reputation or goodwill of the Philadelphia Union. Even if the Arbitrator disagrees, the Club still breached the Employment Agreement when it failed to act in good faith and to give Manager an opportunity to respond to the allegations against him. (Respondents' Ex. 1 ¶ III(C)).

Much of the evidence exposes a testosterone-fueled event. The Players Union, in its advocacy role fuels the fire by complaining to the League. The League, to appease the protestation of the Players Union, concluded that Mr. Nowak should be thrown to the wolves, giving Mr. Sakiewicz putative cover to assert his authority over a coach with whom he clashes. Mr. Nowak, who by all accounts was a brilliant coach with an unblemished record going into his job with the Philadelphia Union has had the rug pulled out from under him by what amounted to a power play. Fire him if you will, but honor his contract when you do that. Professional athletes and their coaches fall out of favor with their employers all the time. Even novice sports enthusiasts recognize that the separation of a player or coach from a team is often dictated or impeded by an existing contract. Buy him out if need be, but you cannot ignore either the terms or the spirit of a contract.

B. Mr. Nowak is Owed Damages By Respondents

As a result of breaching their contract with Mr. Nowak, Respondents owe Mr. Nowak the remainder of his Base Salary under the Employment Agreement and Amended Employment Agreement, his unpaid bonuses, and consequential damages.

Where one party to a contract breaches that contract, the other party may recover for those injuries that have been proved with reasonable certainty. Any compensation awarded for injury is termed "damages." Generally, the measure of damages is the sum that will compensate the Claimant for the loss sustained. Pennsylvania Suggested Standard Civil Jury Instructions 19.260.

1. Base Salary Owed to Mr. Nowak

With respect to Base Salary, the Employment Agreement provides for a Base Salary of $373,050 for calendar year 2012. (Respondent's Ex. 1 at IV(A)(4)). Accordingly, Mr. Nowak is owed $1,022.05 per day for each of the 202 remaining days from June 13, 2012 through December 31, 2012 which amounts to $206,454.10. The December 20, 2011 Amended Employment Agreement provides that Mr. Nowak's Base Salary shall be as follows: for the 2013 calendar year: $385,000; for the 2014 calendar year: $396,550; and for the 2015 calendar year: $408,446. (Respondents' Ex. 5). Thus, for 2013, 2014, and 2015, Mr. Nowak is owed his full Base Salary which totals $1,189,996. In total, Mr. Nowak is owed $1,396,450.01 in Base Salary.

2. Bonus Owed to Mr. Nowak

With respect to bonuses, the Employment Agreement provides that Mr. Nowak is entitled to a bonus of $15,000 if "Manager is selected as head Coach for the League's All-Star Game." (Respondents' Ex. 1, Schedule A, last line). On April 11, 2012, the Philadelphia Union announced that Mr. Nowak had been selected as the Head Coach for the League's All-Star Game, and we ask the Arbitrator to take judicial notice of this fact. (See Philadelphia Union Press Release attached hereto as Exhibit A). The Bonus schedule did not require Mr. Nowak to coach that game, but rather to simply be selected. The Team's decision to terminate him so that he was not permitted to actually coach the game is immaterial to Mr. Nowak's entitlement to the bonus money.

3. Compensatory Damages Owed to Mr. Nowak

In addition to the loss of Base Salary and Bonus, Mr. Nowak has sustained additional consequential damages as a result of the breach of the Employment Agreement. As set forth

above, in connection with Mr. Nowak's purchase of a home in the Philadelphia area, he agreed to the previously discussed Loan and Advance. But for his termination for cause, Mr. Nowak would either still be working for the Union and paying off those debts as scheduled, or if he had been terminated and paid out his contract as he should have been, he would not have accrued and be continuing to accrue interest on the Loan and the Advance. Rather, he simply could have immediately paid those obligations. Given Respondents' material breach of the Employment Agreement and lack of good faith, Mr. Nowak should not be obligated to pay the interest associated with the Loan and Advance.

In addition, whether there has been an overt effort to blackball Mr. Nowak or not, Mr. Nowak has been unable to a secure a position in Major League Soccer even as an assistant coach, technical director or sporting director.

4. Attorneys' Fees and Costs Owed to Mr. Nowak

The parties will submit fee petitions and any associated arguments once the Award is made. Mr. Nowak expressly reserves the right to assert such damages based on the Employment Agreement, as well as the Pennsylvania Wage Payment and Collection Law.

C. The Remaining Counter Claims

Respondents filed counterclaims associated with the Loan and Advance made to Mr. Nowak and seeking amounts allegedly due to them with interest and/or attorneys' fees.

1. The Loan

Paragraph XXI of the Amended Employment Agreement (Loan) provides as follows:

> (A) Club hereby agrees to provide to Manager an unsecured recourse loan in the aggregate principal amount of $60,000 (the "Loan"), which Loan

> shall accrue interest at a fixed rate of 5.00% per annum and be immediately due and payable upon the earlier of (i) December 31, 2015 and (ii) the date that Manager is no longer employed by Club for any reason (i.e. termination of this Agreement pursuant to Paragraph III) (in either case, the "Maturity Date"). . . (x) all amounts then outstanding under the Loan including all accrued by unpaid interest thereon) shall be paid in full by Manager to Club upon the Maturity Date. . . .
>
> (B) If Manager does not repay all amounts then outstanding under the Loan (including all accrued but unpaid interest) on or before the Maturity Date . . . , then (i) interest shall accrue on such unpaid amount at a rate of 7.00% per annum.

(Respondents' Ex. 5 ¶ XXI).

As set forth above, in connection with Mr. Nowak's need to purchase a home in the Philadelphia area, the Club loaned him $60,000 which was to be paid back to the Club through payroll deduction. Thus, the Loan required that upon Mr. Nowak's termination from the Club, the balance of the loan became immediately due and payable and that any delay in re-payment under those circumstances would result interest accruing at a set rate. Because Mr. Nowak was unlawfully not paid the remainder of his contract upon termination, he made no payments after his termination. The parties have stipulated that the principal due on the Loan is $53,717 and that interest would be due on the balance at 7%. (See Respondents' Ex. 70). That said, should the Arbitrator find that Mr. Nowak's for "cause" termination was a breach of the Employment Agreement and/or made in bad faith, any interest that has been accrued since the date of termination is a consequential damage of the breach; and thus, should not be charged to Mr. Nowak.

2. The Advance

As set forth above, in connection with Mr. Nowak's need to purchase a home in the Philadelphia area, the Club also advanced to Pino Sports, payments that were to be made under

the Pino Sports Agreement for 2011 and 2012. This Advance was made pursuant to a March 15, 2011 Advance and Pledge Agreement. (Respondents' Ex. 4). The Club maintains that they are owed reimbursement for the 2012 payments that had not yet been earned prior to Mr. Nowak's termination. Pursuant to the Advance and Pledge Consent, the payments were due within 30 days of Mr. Nowak's termination. Because Mr. Nowak was unlawfully not paid the remainder of his contract upon termination, he made no payments after his termination. The parties have stipulated that the principal due on the Advance is $46,680.33 and that interest would be due on the balance at 8%. (See Respondents' Ex. 70).

That said, should the Arbitrator find that Mr. Nowak's for "cause" termination was a breach of the Employment Agreement and/or made in bad faith, any interest that has been accrued since the date of termination is a consequential damage of the breach; and thus, should not be charged to Mr. Nowak.

V. CONCLUSION

For all the foregoing reasons, Claimant, Piotr Nowak, respectfully requests the Arbitrator to sustain his claims for breach of contract and award him the following:

1). $1,396,450.01 in lost Base Salary, plus interest

2.) $15,000 plus interest for his Bonus for having been selected as the Head Coach for the League's All-Star Game.

With respect to the counterclaims, Mr. Nowak respectfully requests that an offset be made to his Award in the amount of $100,397.33, which is derived from a $53,717 balance due on the Loan and a $46,680.33 balance due on the Advance. Mr. Nowak further requests that because he was wrongfully terminated for "cause," he shall not be obligated to pay outstanding interest due on either the Loan or Advance.

Mr. Nowak requests thirty (30) days from the issuance of the Award to file his fee petition.

Mr. Nowak also requests the opportunity to re-visit the scope of the confidentiality agreement entered in this matter after the Award is issued.

Respectfully Submitted

HAINES & ASSOCIATES

Date: December 5, 2014

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Philadelphia, PA 19103
(215) 246-2200

EXHIBIT "F"

AMERICAN ARBITRATION ASSOCIATION

PIOTR NOWAK, Claimant/Counterclaim Respondent	:	
vs.	:	Case No. 14 166 01589 12
PENNSYLVANIA PROFESSIONAL SOCCER LLC and KEYSTONE SPORTS ENTERTAINMENT LLC, Respondent/Counterclaim Claimant	:	
vs.	:	
PINO SPORTS LLC, Counterclaim Respondent	:	

POST-HEARING REPLY BRIEF OF PIOTR NOWAK AND PINO SPORTS LLC

Piotr Nowak ("Claimant" or "Mr. Nowak") and Pino Sports LLC, by and through their undersigned counsel, submit this post-hearing reply brief in further support of their claims and in response to the Proposed Statement of Undisputed Material Facts and Post-Hearing Brief submitted by Respondents, Pennsylvania Professional Soccer LLC and Keystone Sports and Entertainment LLC ("Respondents" or the "Team" or the "Club" or the "Philadelphia Union"). Mr. Nowak and Pino Sports incorporate by reference each and every argument previously made in their Post-Hearing Brief and supplement it as follows:

I. ARGUMENT ON REPLY

A. The Philadelphia Union Has Been Inconsistent In Its Explanation Of The Reasons For Mr. Nowak's Termination

Despite the fact that we are now more than two and a half years after Mr. Nowak's termination date, Respondents still haven't taken a firm position – other than their throw in the kitchen sink approach - as to why it is they terminated Mr. Nowak. Early in the morning on June

13, 2012, they sent Mr. Nowak an e-mail setting forth six reasons that necessitated an immediate meeting (which turned into Mr. Nowak's termination meeting), the details of which were tied to an MLS Report. (Claimant's Ex. 1). Later that day, Mr. Nowak was provided with a termination letter that referenced the six items about which he had been given notice earlier that day, but that also referenced a series of "other reasons" for which Mr. Nowak was being terminated (e.g., alleged Team and League Rule violations; suspensions and fines; allegations that he had sought other employment while employed by the Club; allegations that he had made disparaging remarks about the Club and its management; and allegations of insubordination). (Respondents' Ex. 36). Now, after several more months have passed, Respondents again tack on new reasons for which they claim they terminated Mr. Nowak.

Respondents now claim they terminated Mr. Nowak for having caused "irreparable harm" to the Club in violation of Paragraph VIII of the Agreement.[1] Respondents have even extended their Monday morning quarterbacking to absurdly assert that Mr. Nowak was properly terminated for cause because *after* he was terminated, he allegedly violated a confidentiality provision in Paragraph IX of the Employment Agreement when he filed a lawsuit in the Eastern District of Pennsylvania.[2]

---

[1] Paragraph VIII of the Employment Agreement provides that "any breach by Manager of this Agreement will cause irreparable harm." This contractual language is out of context. The language cited by Respondents pertains to "Equitable Relief." Respondents conveniently fail to reference the subsequent sentence which relays the purpose of this entire section, namely, to grant Respondents the "right to obtain a decree enjoining any further breach of this Agreement." Raising the "irreparable harm" language out of context is misleading. If Respondents thought there was a breach for which they could enjoin Mr. Nowak from some conduct, they should have sought such relief.

[2] Paragraphs 283-286 of Respondents' SMF relate to their contention that Mr. Nowak's filing a Complaint Seeking Expedited Declaratory Judgment in the Eastern District of Pennsylvania is a breach of Paragraph IX of the Employment Agreement relating to

In support of this "pile on" strategy, Respondents attempt to confuse and distract the reader by repeating things time after time that clearly had no true tie to the decision to terminate Mr. Nowak. The Club renewed and extended Mr. Nowak's contract in December of 2011. In fact, they expanded his role at that time and increased his pay. It is unreasonable for the Club to take the position now that anything that took place prior to this renewal (prior to 2012) had any true bearing on their decision to terminate him. For that reason, the Club's repeated references to the July 2011 playing of Academy Player [redacted] in the Everton Game; the August 2011 playing of Trialist Player, [redacted] in a gated exhibition game;[3] the email fiasco that ensued after Mr. Jacobs failed to copy Mr. Nowak on an e-mail proposing a Philadelphia

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confidentiality. This is yet another "pile on" tactic by Respondents, who are desperately seeking to legitimize Mr. Nowak's termination. The suggestion that Paragraph IX prohibits Mr. Nowak from seeking to enforce his rights under the Employment Agreement is without merit. Moreover, the filing of the Complaint in the Eastern District of Pennsylvania took place *after* Respondent terminated Mr. Nowak, and thus, has no bearing in this proceeding.

Respondents then tie paragraphs VIII and IX(D) (which prohibits the parties from making disparaging remarks during the Term and for 12 months thereafter) together. They assert that the statements made in the E.D.P.A. Complaint constitute disparaging remarks that result in a material breach of paragraph IX(D) which, in turn, results in irreparable harm pursuant to VIII. Even, assuming *arguendo,* the Arbitrator found this was a material breach, the breach would have occurred only because Respondents breached first. They did so by failing to provide Mr. Nowak with notice and an opportunity to cure as required by the Employment Agreement, in addition to terminating Mr. Nowak based on allegations contained in the MLS Report, a copy of which they refused to provide to Mr. Nowak at the time of his termination, and in addition to presenting Mr. Nowak with an ultimatum to sign a release and accept minimal severance or accept the "for cause" termination letter. Not to mention, this series of events was compounded by outrageous statements from the Philadelphia Union's former counsel that Mr. Nowak had engaged in "criminal and fraudulent conduct." (See Claimants' Post-Hearing Br. at p. 11, fn. 1).

[3] The Club does all it can to try to push this act into 2012 by pointing out that while they were actually fined in September of 2011, the fine was not applied until February of 2012.

Union Academy & High School Coaches Open Forum;[4] and the reference to Mr. Nowak receiving a red card in a reserve game in April of 2011 are nothing but red herrings.

Whatever the real reasons for Mr. Nowak's termination, Mr. Nowak has never disputed the right of the Club to terminate his employment. What he disputes is the Club's right to terminate him under Paragraph III(A), rather than III(B) of the Employment Agreement and thus, deprive him of his contractually guaranteed income. Despite the absence of the precise words "for cause" in Paragraph III(A), there can be no doubt that the provisions of Paragraph III(A) are exactly that – very limited and provide descreet reasons that would allow the Club to terminate Mr. Nowak and not continue to pay him.

B. The Philadelphia Union Breached The Contract By Failing To Provide Mr. Nowak With An Opportunity to Cure

As expected, Respondents barely acknowledge their affirmative duty to both provide Mr. Nowak with notice in all circumstances, and to allow Mr. Nowak an opportunity to cure in nearly all circumstances. Rather, Respondents insist that their issues with Mr. Nowak's conduct were "not curable." (Respondents' Post-Hearing Br. at p. 91). More specifically, they insist that notifying Mr. Nowak that particular conduct is unacceptable and receiving a promise from Mr. Nowak not to do it again does not make something "curable." If this is the case, then when would anything be curable and why would such language be included? The answer is that providing someone a right to cure is exactly that – it is a commitment to specifically identify in a formal way to the employee that he has done something unacceptable so that he, in effect, gets a second chance and an opportunity to amend his conduct. Mr. Nowak negotiated for this right and the Club denied it to him, thus breaching the Employment Agreement.

[4] The Club maintains that Mr. Nowak was insubordinate by allegedly refusing to meet with Mr. Sakiewicz when requested to discuss this issue.

In addition, "cure" language is particularly meaningful in the professional sports context where disputes between coaches and management often run deep, with large egos and bad tempers at play. It is because disputes are contemplated in this setting that the cure provision are included. These provisions ensure that both parties recognize that they must take the bad with the good. There can be no doubt that Mr. Sakiewicz knew when he hired Mr. Nowak that he would have his hands full. He hired Mr. Nowak for his notorious fire and passion both on and off the field. Mr. Nowak produced, just missing the playoffs in his first season with the Philadelphia Union, as well as being selected as the Head Coach for the MLS All-Star Game in 2012 (which he was not permitted to Coach because he was terminated). The Club's attempt to exaggerate and overstate the events that transpired in order to deprive Mr. Nowak of his livelihood is just disingenuous.

C. Respondents Did Not Act In Good Faith

In addition to attempting to deflect their duty to provide Mr. Nowak with an opportunity to cure, Respondents take the position that in choosing to terminate Mr. Nowak under Paragraph III(A) rather than III(B), the language requiring that such a determination be made "in good faith by Club at its reasonable discretion" was in effect meaningless. In the eyes of the Club, there were no restrictions at all. Mr. Sakiewicz speaks out of both sides of his mouth, one minute supporting Mr. Nowak as a coach with "undisputed coaching capabilities" while the next minute he fails to support his coach by even listening to Mr. Nowaks version of the events that lead to the accusations against him. Mr. Sakiewicz ultimately claims to have cracked under the pressure from MLS and its Players Union to keep Mr. Nowak away from the players. (Respondents' SMF at ¶ 227).

Respondents argue that both MLSPU and the League "took positions that left the Philadelphia Union with no choice but to exercise its discretionary right to terminate the Employment Agreement." (Respondents' Brief at p. 64).[5] Even if we assumed, *arguendo,* that it were true that the position of the League and MLSPU was such that Mr. Nowak could not continue *coaching* the Team at that time, this did not necessitate that Mr. Nowak be terminated Pursuant to Paragraph III(A) – essentially "for cause." After all, the fact that the League employs the players, does not allow the Team to deflect onto the League (or the MLSPU) the Team's responsibility for breaching the Employment Agreement when they terminated Mr. Nowak "for cause".

The Club takes the wholly unreasonable position that because there wasn't express language in the Employment Agreement requiring that Mr. Nowak be heard and/or permitted to confront his accusers, then they need not do so. (Respondents Br. at p. 36). Even more disingenuously, the Club takes this position when they had a myriad of simple, practical and common options before them. Given their preoccupation with confidentiality and protecting the image of the Team, the Team could have put Mr. Nowak on paid administrative leave, asked Mr. Hackworth to step in, and taken all the time in the world to thoroughly examine the facts. They could merely have suspended him. They simply could have terminated Mr. Nowak and paid him out. In fact, under the express terms of the Employment Agreement, the Club could have

[5] Respondents also argue that because Mr. Nowak asserted in a separate lawsuit against MLSPU and the League that his termination "was precipitated and directly caused" by those defendants, Respondents here were permitted to terminate Mr. Nowak pursuant to Paragraph III(A)(8) which addresses termination if "directed by the Commissioner of the League." (Respondents' Post-Hearing Brief at pp. 88-89). This is nonsense, particularly in light of Mr. Sakiewicz's clear testimony that it was *he and Mr. Sugarman's* decision to terminate Mr. Nowak. (May 30, 2014 Tr. at p. 910; Claimant's Ex. 12, Sugarman Dep. at pp. 93-94). Mr. Nowak is certainly allowed to pursue alternative theories of recovery against other parties.

temporarily or permanently placed Mr. Nowak in another position.[6] Respondents failure to give Mr. Nowak notice of all of the reasons for which they were terminating him, their failure to hear his side of the story, their failure to offer him an opportunity to cure, and their failure to even consider options other than termination under Paragraph III(A) manifest clear bad faith.

D. Respondents Have Overstated Their Case and Overblown the Facts

In the June 12, 2012 e-mail from Mr. Durbin to Mr. Sakiewicz attaching the MLS Report, Mr. Durbin expressly states that he was attaching a "memo that set out a series of *complaints/allegations* by the Players Union," and he shares his opinion that "some of the information is very concerning *if true*." (Respondents Ex. 32 at PPS0000827) (emphasis added). The MLS Report contains nothing more than a set of complaints and allegations. While the information might have been concerning "if true," without hearing the other side of the story from Mr. Nowak, allegations should not have been presumed true, as they were, by the Team.

Respondents' propensity for drama and overstatement is rampant throughout their brief and evidences their desperation to justify their improper conduct. For example, in discussing the paddling of rookie players admitted to by Mr. Nowak, the Team goes so far as to attempt to analogize Mr. Nowak's paddling with hazing that has resulted in death. (Respondents Post-Hearing Br. at p. 75). Unless Respondents can identify some "death by paddling" incident, what relevance deaths in other hazing scenarios has to the alleged "hazing" at the Philadelphia Union is inconceivable, particularly given that there was no suggestion at all that the paddling had

[6] Paragraph III(B) provides: "instead of terminating this Agreement and Manager's employment hereunder, Club may assign Manager a different job, with a different (but not demeaning) title and different (but not demeaning) duties and responsibilities." (Respondents Ex. 1, ¶ III(B)).

changed or escalated to some dangerous level over the three years in which it had been done at the Philadelphia Union. Moreover, there is no evidence that any player had even complained about the paddling.

Further, while Respondents portray Mr. Nowak as a retaliatory evil villain in connection with the May 31st training run, they fail to show what "up side" there could have been for Mr. Nowak to intentionally harm his players. On the one hand, Respondents presented no direct testimony that indicated that Mr. Nowak was in any way abusive to his team (other than if you were to somehow classify the testimony of Mr. [redacted], Mr. [redacted] and Mr. [redacted] as somehow evidencing abuse). The conditions of the May 31st run as presented by Respondents were exaggerated as set forth in Mr. Nowak's Post-Hearing Brief. In addition, with respect to concussions, the "evidence" surrounding Mr. Nowak's treatment of concussions was all second or third hand, other than Mr. Nowak's credible testimony about two specific players who had concussions and the action he took to order helmets after these incidents. Mr. Foose offered nothing but rhetoric and second hand information he claims to have received from an unknown number of unnamed players.[7] Respondents did not offer testimony from a single player who had actually had concussion symptoms and/or been treated poorly by Mr. Nowak because of his symptoms. As with much of the evidence presented by Respondents, it was all hearsay by often unidentified speakers.

On the other hand, Mr. Nowak spoke with great passion about his players being the most important asset to a soccer team. (August 20, 2014 Tr. at p. 1270-71). He acknowledged in his

[7] It bears mention that there was extensive discussion about protecting the identities of these players during the MLS investigation for fear of retaliation by Mr. Nowak. Since Mr. Nowak's termination, he has not been in a position to retaliate against the players, yet Respondents continue to hide these players in secrecy.

heavy Polish accent that "I step on some wrong foot." (Id. at p. 1272). He also admitted that he may be a "control freak" but further testified, "I did all for the players. And I believe in what I did, I believe in the work I did, because as Diego said and my record is, I won the MLS Cup, and I don't think many coaches can do in their rookie year."[8] (Id. at p. 1275). Mr. Guitierrez, who had himself played under Mr. Nowak, testified credibly that he was unaware of players complaining about Mr. Nowak. (August 20, 2014 Tr. at p. 1206). Even [redacted] admitted that during the 2012 pre-season meeting with the Players Union, [redacted]. (August 19, 2014 Tr. at p. 987). In addition, Mr. [redacted] testified that when the players were told that Mr. Nowak had been terminated, "there was more shock than anything, just statements of shock." (Id. at pp. 1057-58). He further testified that he did not hear anyone say "Thank God Nowak's gone" or "I'm really glad they fired that son of a bitch." (Id. at p. 1058).

Respondents again grossly overstate the allegations related to the alleged interference by Mr. Nowak. (See Respondents' Post-Hearing Br. at p. 45). They push so far as to say that not only did Mr. Nowak violate the CBA and League Rules, but he violated the National Labor Relations Act and therefore, this is a material breach of the Employment Agreement. They accuse Mr. Nowak of "repeated attempt to restrain, coerce, and threaten the players". (Respondents' Brief at p. 45). Respondents' problem is that the evidence they offered did not prove there was interference by Mr. Nowak as more fully discussed in Mr. Nowak's Post-Hearing Brief. (Claimant's Post-Hearing Br. at pp. 46-50. Respondents' testimony on this

[8] On the subject of Mr. Nowak's accent and English not being his primary language, it seems possible that some of the discord regarding whether players would be limited to a single bottle of water or would be permitted to have as much water as they wanted but in a bottle specifically designated for that particular player to avoid sharing germs may have been a result of this language barrier.

issue was weak at best. Respondents introduced testimony that a grievance was filed by the MLSPU, but never introduced any evidence that the matter was raised to the NLRB or that a formal finding that Mr. Nowak had violated the NLRA was made.

In connection with the red card and fine issued to Mr. Nowak as a result of his conduct in the April 21, 2012 Chivas game, Respondents argue that this conduct was a violation of League Rules that warranted termination under Paragraph III(A) and that is also "reflected in a materially adverse manner on the integrity, reputation and goodwill of the Team." Respondents latch on to the inflammatory language used by the announcers, classifying a dust up largely between players on the field as a "melee." (Respondents' Post-Hearing Brief at pp. 10-12, 46-48). They rely heavily on the announcers' reaction and commentary, disregarding that the announcers are paid to say whatever is necessary to keep the fans entertained. They also rely on Mr. Sakiewicz's extraordinarily biased testimony that Mr. Nowak was "out of control" and that Mr. Nowak's conduct apparently caused, an apparently sensitive Mr. Sakiewicz, to feel "alarm[ed]" and "embarrass[ed]."

Respondents again try to draw an analogy but go too far by referencing the 1978 Gator Bowl incident during which Coach Woody Hayes *punched* a player from the opposing team and was subsequently terminated. Respondents admit that we know nothing about the impact on Mr. Hayes' contract. Mr. Nowak did not punch anyone. At the end of the day, after all of Respondents' overstatements of the events, they have to acknowledge that the suspension and fine were as a result of Mr. Nowak "leaving the Technical area" and "initiating contact with an opposing player." (Respondents Ex. 7).[9] We disagree with Respondents' description of the

[9] Notably, Mr. Nowak testified that he had done some research regarding the issuance of red cards to coaches and believed that over a two year span, 19 coaches were suspended for

event and encourage the Arbitrator to review the video rather than simply to rely on Respondents' inflammatory musings about this event.

E. Respondents Have Not Shown A Negative Impact On The Goodwill And Reputation Of The Club.

As set forth more fully in Mr. Nowak's Post-Hearing Brief, deep down, Respondents know they failed to offer Mr. Nowak the opportunity cure as required under most provisions of the Employment Agreement. Thus, they seek to rely on Paragraph III(A)(5) of the Employment Agreement, arguing that Mr. Nowak's conduct had a negative impact on the integrity, reputation and goodwill of Team. In doing so, they rely only on Mr. Sakiewicz's reaction to the Chivas game (explained above); the announcers commentary and reaction to the Chivas game (explained above); an acknowledgement by Mr. Nowak the there was some negative reaction to *him (not the Team)* as a result of the Chivas game; the media reaction to Mr. Nowak filing a lawsuit; and Mr. Sakiewicz's reaction and concerns to MLS report which *to this day is not public*, so clearly did not have any impact at all. This evidence is, without question, insufficient to demonstrate a negative impact on the integrity, reputation and goodwill of the Team.

F. Mitigation

Respondents argue that Paragraph III(D) permits them to set off against amounts due to Mr. Nowak under the contract. (Respondents' Br. at p. 102). At least with respect the calculation of damages through the last day of hearing, August 20, 2014, to the extent Respondents failed to introduce at hearing the evidence that was produced to them on these issues, the argument is waived.

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either leaving the technical or being involved in a physical confrontation. He also provided detailed testimony regarding the coach of another team who was issued a two-game suspension and fine. (May 28, 2014 Tr. at pp. 185-86).

II. COUNTER-STATEMENT OF UNDISPUTED FACTS

Throughout their statement of "undisputed material facts," ("Respondents SMF"), Respondents mischaracterize who actually made various statements and omit critical language to provide necessary and appropriate context. While Claimant does not intend to address each and every line of Respondents 74 page statement of "undisputed material facts," we are compelled to raise the following by way of example:

1) Paragraph 92 of Respondents SMF is an accurate attribution that Claimant admitted he made an "emotional statement" to the players. Paragraph 93, however, is an inaccurate attribution to Mr. Nowak that states as follows:

> More specifically, Claimant made the following statement to the players:
>
> We were supposed to have five days off, but not (sic) I'm going to think about how long that's actually going to be. We're going to get home, we're going to work hard, we're going to shake tree, and we're going to figure out who sticks and who doesn't . . . My job is not going anywhere, I can't be fired.
>
> Cancel your trips. We're going to go back and we're going to work hard.

While the aforementioned quotation and introductory language is attributed to Mr. Nowak, other than admitting to making an "emotional statement," the quotation is not from Mr. Nowak. Rather, quotation is from [redacted] The second citation referenced is a citation to testimony by [redacted] who was testifying about what he had heard from another player who allegedly was present when Mr. Nowak addressed the team. Thus, with respect to Mr. [redacted] testimony, this "undisputed fact" is also objectionable because it is hearsay within hearsay.

Similarly misleading, Paragraph 94 reads as follows:

> Within this "emotional statement," Claimant also informed the players that:
>
> ... he couldn't be fired ... he wasn't afraid to do anything in regards to the team ...
>
> ... he wasn't afraid to shake the tree...he had traded away [redacted] and [the] leading goal scorer...[he] wasn't afraid to make moves and to roll with it.

Again, this quotation and its introductory language clearly attribute the statement to Mr. Nowak; however, the statement was made by [redacted]. Respondents rely heavily upon these inappropriately attributed "SMF's" throughout their brief.

2) In Paragraph 144 of Respondents' SMF, Respondents ask the Arbitrator to accept as an undisputed fact that Mr. [redacted] Mr. [redacted] and Mr. [redacted] suffered set-backs with their injuries as a result of the May 31st run. In support of this, they reference Mr. Rushing's letter of that very same day during which he says that he "feels" at least three of the players were dealt set-backs. (Ex. 13 at PPS0001373). Respondents conveniently fail to refer to the opinion of the actual medical doctors treating these players who state only that players with lower extremity injuries "*could* have those injuries exacerbated," but not that such a thing occurred. (Ex. 13 at PPS0001375). Of course, given the lack of actual support for Mr. Rushing's "feelings," Respondents did not present any of the team physicians for testimony at the hearing.

3) In Paragraphs 255-264 of Respondents SMF and beginning at page 58 of Respondents brief, Respondents discuss testimony and e-mails related to communications between Mr. Nowak and Veljko Paunovic. In Paragraph 261, Respondents assert that "Claimant unequivocally testified that, during the time he was employed by the Philadelphia Union, he never put together a resume or a CV." Respondents' citation is to deposition testimony elicited prior to Mr. Nowak's recollection being refreshed, rather than to hearing testimony. In addition,

paragraphs 262-264 are provided without the context of any of Mr. Nowak's testimony which was consistent in both his deposition and at hearing. Mr. Paunovic was a former Philadelphia Union Player. Mr. Nowak acknowledged that he was communicating with Mr. Paunovic and he admitted that he sent his resume to Mr. Paunovic because Mr. Paunovic had a family member who Mr. Paunovic thought might be able to assist Mr. Nowak in obtaining his UEFA Pro License, which was expressly permitted under the Employment Agreement.[10] Mr. Nowak provided an explanation as to why he requested the e-mails to be sent to his personal address. He testified that he made the request so that if the Philadelphia Union took his computer, he would still have the information associated with attempts to secure his UEFA Pro License. (May 29, 2014 Tr. at pp. 405-410).

Accordingly, Claimants respectfully suggest the Arbitrator closely examine the actual testimony referenced by Respondents.

[10] This testimony demonstrates that both parties were aware that at some point Mr. Nowak might seek employment outside of the MLS and that some efforts in connection with such a move might be made during his employment with the Philadelphia Union.

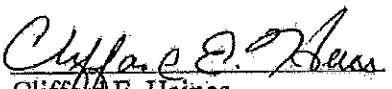
I. CONCLUSION

For all the foregoing reasons, as well as those set forth in Claimant's Post-Hearing brief, Claimant, Piotr Nowak, respectfully requests the Arbitrator to sustain his claims for breach of contract.

Respectfully submitted

HAINES & ASSOCIATES

Date: December 23, 2014



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