

EXHIBIT “C”

Tab 2

AMERICAN ARBITRATION ASSOCIATION

Piotr Nowak,

Claimant/Counterclaim
Respondent

v.

Pennsylvania Professional Soccer LLC
and Keystone Sports and Entertainment
LLC,

Respondent/Counterclaim
Claimant

v.

Pino Sports LLC

Counterclaim Respondent

CASE NO. 14 166 01589 12

Arbitrator: Margaret R. Brogan

**PHILADELPHIA UNION'S PROPOSED STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Respondent/Counterclaim Claimant, Pennsylvania Professional Soccer LLC (hereinafter, "Philadelphia Union" and Respondent, Keystone Sports and Entertainment LLC (hereinafter "Keystone")¹ (the Philadelphia Union and Keystone will hereinafter collectively be referred to as "Respondent"), by and through their attorneys, Buchanan Ingersoll & Rooney PC, hereby submit the following Proposed Statement of Undisputed Material Facts as part of its Post-Hearing Brief.

PROCEDURAL HISTORY

1) Claimant/Counterclaim Respondent, Piotr Nowak (hereinafter, "Nowak" or "Claimant"), initiated the instant litigation on July 20, 2012, by filing a Complaint Seeking Expedited Declaratory Judgment against the Philadelphia Union in the United States District

¹ Of note, Claimant has included Keystone Sports and Entertainment LLC as a Respondent. Claimant, however, was employed at all times by Pennsylvania Professional Soccer LLC and not Keystone Sports and Entertainment LLC.

Court for the Eastern District of Pennsylvania (hereinafter, the "Complaint"). (See "Complaint Seeking Expedited Declaratory Judgment," marked as part of Respondent's Exhibit 72.")

2) On August 23, 2012, the Philadelphia Union filed a Motion to Dismiss the Complaint and to Compel Arbitration, arguing that the clear and unambiguous arbitration provision within Claimant's Employment Agreement required the claims raised within the Complaint to be litigated through arbitration. (See "Motion to Dismiss Plaintiff's Complaint and Compel Arbitration," marked as part of Respondent's Exhibit 72.")

3) On September 26, 2012, the Court granted the Philadelphia Union's Motion to Dismiss and Compel Arbitration, holding that the unambiguous language within the arbitration provision of Claimant's Employment Agreement clearly encompassed the claims raised within Claimant's Complaint. As a result, the Court entered an Order compelling Claimant to pursue his claims through arbitration. (See "September 26, 2012 Memorandum and Order," marked as part of Respondent's Exhibit 72.")

4) On or about December 5, 2012, Claimant filed the instant Demand for Arbitration, raising a "Wrongful Termination" claim against the Philadelphia Union. (See Claimant's December 5, 2012 Arbitration Demand.)

5) On or about January 8, 2013, the Philadelphia Union filed an Answering Statement with Counterclaims, raising two counterclaims against Claimant: (1) counterclaim for the remaining balance of a \$60,000 loan extended to Claimant, as well as interest, attorneys' fees and the costs of collecting the remaining loan balance; and (2) counterclaim for attorneys' fees and costs incurred in defending both the instant litigation as well as the litigation Claimant initiated in the United States District Court for the Eastern District of Pennsylvania. (See Philadelphia Union's Answering Statement with Counterclaims.)

6) The Philadelphia Union's Answering Statement with Counterclaims also included a claim against Claimant's Limited Liability Company, Pino Sports, LLC ("Pino Sports"). More specifically, the Philadelphia Union is seeking to recover the unearned portion of the \$85,000 advance it provided to Pino Sports in 2012, as well as interest, attorneys' fees and the costs of collecting the advance. (See Philadelphia Union's Answering Statement with Counterclaims.)

BACKGROUND

Pertinent Contractual Language

7) On or about June 1, 2009, Claimant and the Philadelphia Union entered into a Manager Employment Agreement (the "Employment Agreement"). (Respondent Exhibit 1; Arbitration Hearing Transcript, attached hereto as Exhibit "A," 258:7-13; (hereinafter cited as "Hearing Trans., ____").)

8) At the time he executed the Employment Agreement, Claimant was represented by an attorney, William Daluga, who, according to Claimant, "was one of the authors of the [Employment Agreement]." (Hearing Trans., 145:21-146:13, 244:18-20, 272:11-13, 621:21-24.)

9) In executing the Employment Agreement, Claimant agreed to be the Manager of the Philadelphia Union, responsible for, *inter alia*, coaching all Philadelphia Union games (including exhibition games), supervising all other coaching staff of the Philadelphia Union, and supervising the athletic trainers employed by the Philadelphia Union. (Respondent's Exhibit 1, at I(A)(1)-(12); Hearing Trans., 259:1-13, 260:5-11, 261:9-16, 261:19-22.)

10) Within the Employment Agreement, Claimant also agreed, *inter alia*, that he would (1) report to the Chief Executive Officer or Chairman of the Club; (2) obey and comply with all Team rules, regulations, policies and guidelines applicable to the coaching staff; and (3) obey and comply with all constitutions, bylaws, rules, regulations, policies, guidelines,

directives, instructions, rulings, orders and agreements of Major League Soccer ("MLS" or the "League"). (Respondent's Exhibit 1, at I(B).)

11) The Employment Agreement commenced June 1, 2009, and was originally set to expire on December 31, 2012 – unless "sooner terminated as provided [within the Employment Agreement]." (Respondent's Exhibit 1, at II.)

12) The Employment Agreement contained two (2) explicit termination provisions: (1) Paragraph I(C)(v); and (2) Paragraph III. (Respondent's Exhibit 1.)

13) Paragraph I(C)(v) of the Employment Agreement provides, in pertinent part:

Manager expressly acknowledges and agrees that he shall be subject to discipline by the League...or Club...including without limitation, fines, suspension (with or without pay) or termination of this Agreement if:

(v) he makes a statement or engages in conduct...that is materially prejudicial to the interests 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.

...Club...shall determine, in good faith and its sole discretion, whether Manager has engaged in any of the above-listed behaviors.

(Respondent's Exhibit 1, at I(C)(v)) (emphasis added.)

14) Moreover, Paragraph III(A) of the Employment Agreement provides, in pertinent part:

...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) ...any material breach of this Agreement or the Pino Agreement...by Manager;

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

- (5) Manager's commission of any action or involvement in any occurrence that (x) brings Manager into public disrepute or (y) reflects in a materially adverse manner on the integrity, reputation or goodwill of Club or the Team;
- (6) Manager engages in any activity set forth in Paragraph I(C);
- (7) Manager's failure to comply in all material respects with Team Rules...or League Rules; or
- (8) Club is directed by the Commissioner of the League to terminate or suspend this Agreement as a result of the acts or omissions of Manager.

(Respondent's Exhibit I, at III(A).)

15) The Employment Agreement also spoke to the specific application of the termination provisions, providing the Philadelphia Union with discretion to enforce the same. More specifically, Paragraph III(C) of the Employment Agreement provides, in pertinent part:

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;

- (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, at III(C)) (emphasis added.)

16) Accordingly, pursuant to the express terms of the Employment Agreement, the Philadelphia Union could terminate the Employment Agreement if: (1) *in its sole discretion*, it determined Claimant made a statement or engaged in "conduct...that is materially prejudicial to the interests 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"; and/or (2) if it determined – *in its reasonable discretion* – that Claimant engaged in any of the conduct outlined in Paragraph III (A)(1)-(8). (Respondent's Exhibit 1, at I(C)(v), III(C).)

17) Additionally, while the Employment Agreement provided Claimant with the ability to cure should the Philadelphia Union terminate the Employment Agreement pursuant to Paragraph III(2), (3), or (7), it further provided that the Philadelphia Union was under no obligation to provide Claimant with an opportunity to cure, if the Philadelphia Union determined – *in its good faith judgment* – that the occurrence is of a nature that is not curable or that the continued employment of claimant during a cure period could reasonably be expected to result in material harm to the Philadelphia Union. (Respondent's Exhibit 1, at III(C).)

18) Moreover, the Employment Agreement did not provide Claimant with the ability to cure if the Philadelphia Union determined – *again, in its reasonable discretion* – that Claimant engaged in any of the conduct outlined in Paragraph III(A)(4), (5), (6), and/or (8). (Respondent's Exhibit 1, at III(C).)

19) Before the parties entered into the Employment Agreement, the Philadelphia Union was required to negotiate a "buy-out" for Claimant relative to his then current contract with United States Soccer Federation. (Hearing Trans., 508:14-22, 509:3-10.)

20) The Philadelphia Union ultimately paid the United States Soccer Federation \$75,000 to release Claimant from his contract. (Respondent Exhibit 69; Hearing Trans., 509:3-10, 510:3-13.)

21) Given that it invested significant resources, including the \$75,000 payment to the United States Soccer Federation, to bring Claimant to the team, the Philadelphia Union had concerns about Claimant returning to U.S. Soccer while he was still under contract with the Philadelphia Union. (Hearing Trans., 510:14-18.)

22) Accordingly, the Parties agreed to put the following language within Paragraph VIII of the Employment Agreement:

Furthermore, during the Term, [Claimant] shall not (1) engage in discussions with any other professional soccer team regarding employment by such team...

(Respondent's Exhibit 1, at VII.)

23) Claimant understood that, during the term of the Employment Agreement, he was prohibited from engaging in "any discussions with any clubs and if any clubs or federations or national teams would like to engage with me in discussion of the contract, that they need to seek the permission from the Philadelphia Union..." (Hearing Trans., 269:23-270:14.)

24) In executing the Employment Agreement, Claimant and the Philadelphia Union agreed to the following additional terms, as it relates to the pending litigation:

(A)

(1) to treat all information, no matter how obtained, regarding Club, the Team, the Stadium, the Stadium operator, any affiliate of the foregoing and their respective owners, officers, employees and agents and the Team's players, as well as regarding the League and its affiliates, other teams and other players, on the one hand, and the Manager and Pino, on the other hand, as well as this Agreement, the Pino Agreement and the negotiations related thereto, with the strictest confidentiality; and

(2) to not disclose such confidential information to any third party including the media, or otherwise use such confidential information.

(D) ...during the Term and for twelve months thereafter, Manager and the executives of the Club shall refrain from making any disparaging remarks regarding Club or the Team, its players, management, ownership or employees or the Stadium, on the one hand, and Manager or Pino, on the other hand.

(Respondent's Exhibit 1, at IX.)

25) In executing the Employment Agreement, Claimant explicitly agreed that any breach by him of the Agreement would cause irreparable injury to the Club, specifically agreeing to the following language:

[Claimant] represents and agrees that he has extraordinary and unique knowledge, skill and ability as manager of a professional soccer team and its operations, that the services [Claimant] is to provide to [the Philadelphia Union] hereunder cannot be replaced or the loss thereof adequately compensated for in money damages and that any breach by [Claimant] of this [Employment] Agreement will cause irreparable injury to [the Philadelphia Union].

(Respondent's Exhibit 1, at VIII.)

26) The Employment Agreement also contained a clear and unambiguous arbitration provision, mandating the prompt reimbursement of reasonable attorneys' fees and costs to the prevailing party. (Respondent's Exhibit 1, at XIII.)

27) On or about December 20, 2010, the parties entered into an Extension Agreement (hereinafter, the "2010 Extension Agreement"), which, in effect, extended the original Employment Agreement through December 31, 2015. (Respondent's Exhibit 3.)

28) On or about December 20, 2011, the parties entered into another Extension Agreement (hereinafter, the "2011 Extension Agreement"), which rendered the 2010 Extension Agreement null and void. (Respondent Exhibit 5; Hearing Trans., 284:2-9.)

29) The 2011 Extension Agreement also confirmed the terms of the original Employment Agreement and that the Employment Agreement was extended until December 31, 2015. (Respondent Exhibit 5; Hearing Trans., 284:2-20.)

Facts leading up to 2012 Season

30) The Philadelphia Union made the playoffs in 2011 – in only its second year in existence. (Hearing Trans., 303:14-17.)

31) Overall, the President and CEO of the Philadelphia Union, Nick Sakiewicz, was pleased with how the 2011 season went and, heading into the 2012 season, he had no intention of terminating Claimant as the head coach of the Philadelphia Union. (Hearing Trans., 546:5-23.)

32) In fact, at the end of 2011 – on or about December 20, 2011 – the Philadelphia Union entered into the 2011 Extension Agreement with Claimant, extending Claimant's Employment Agreement through December 31, 2015. (Respondent Exhibit 5; Hearing Trans., 303:18-20, 546:24-547:2.)

33) As part the December 20, 2011 Extension Agreement, the Philadelphia Union also agreed to loan Claimant \$60,000. (Respondent Exhibit 5; Hearing Trans., 303:21-23, 548:15.)

34) Additionally, on or about March 15, 2011, the Philadelphia Union entered into an Advance and Pledge Consent Agreement with Claimant, agreeing to advance Claimant the remainder of the 2011 fee and the entire 2012 fee it owed to Claimant pursuant to the Pino Agreement. (Respondent Exhibit's 2 and 4; Hearing Trans., 277:12-15, 278:5-12, 280:21-23.)

35) The Parties entered into the *original* Pino Agreement on or about June 1, 2009, wherein Claimant agreed to provide the Philadelphia Union with his marketing rights in

exchange for an annual payment of \$85,000 – a payment that the Philadelphia Union was only required to make in semi-monthly installments. (Respondent Exhibit 2.)

36) After the 2011 season, Mr. Sakiewicz invited Claimant to a Board of Director meeting – partner meeting – to present the strategy for the upcoming 2012 season. (Hearing Trans., 549:6-550:3-7.)

37) Claimant testified that up until the beginning of the 2012 season, his job was never threatened. (Hearing Trans., 190:25-191:2-6.)

Players' Union Interference

38) In accordance with the terms of the Collective Bargaining Agreement, on or about March 15, 2012, around the end of the 2012 preseason training camp, representatives from the Major League Soccer Players Union (hereinafter, the "MLSPU" or "Players Union"), including its Executive Director, Robert Foose, visited with the Philadelphia Union's players. (Respondent Exhibit 66; Hearing Trans., 308:23-309:10, 428:15-19, 696:4-5, 697:22-698:22, 701:5-6, 984:2-6.)

39) Following this March 15, 2012 meeting, Mr. Foose contacted the Philadelphia Union's Technical Director, Diego Gutierrez, to advise him of a [REDACTED] issue that had been brought to the attention of the MLSPU. (Hearing Trans., 698:24-699:22, 701:5-6.)

40) Mr. Foose and Mr. Gutierrez exchanged emails from the initial March 15, 2012 meeting through March 20, 2012, ultimately – at least from the perspective of the MLSPU – resolving the issue. Mr. Foose testified on the point as follows:

...[Mr. Foose] called Diego, talked it through. He said he would get back to me. We then had an e-mail exchange where [Diego] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

So I get that information back. I responded by e-mail to Diego and [Claimant] was copied on the e-mail that Diego had sent to me. I responded and said: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

So that was the gist of the e-mail exchange that happened, and at that point I considered the matter closed.

(Hearing Trans., 699:22-700:21, 701:5-6) (emphasis added.)

41) Claimant was aware of the fact that a [REDACTED] complaint was brought to the attention of the MLSPU, as Mr. Gutierrez not only informed him of the complaint, but Claimant was copied on the emails exchanged between Mr. Gutierrez and Mr. Foose. (Hearing Trans., 310:23-311:20, 312:9-13, 700:11-14.)

42) During the 2012 season (including preseason), the Philadelphia Union had two [REDACTED] (Hearing Trans., 230:6-22, 428:7-11, 946:9-21.)

43) After being made aware of the [REDACTED] issue, Claimant met with Mr. [REDACTED] and Mr. [REDACTED] in his office. (Hearing Trans., 378:18-23, 433:24-434:3, 949:17-21.)

44) During this meeting, Claimant initially asked Mr. [REDACTED] and Mr. [REDACTED] whether they or another member of the team raised an issue with the MLSPU relative to the [REDACTED] [REDACTED]. (Hearing Trans., 949:22-950:4.)

45) During this meeting, Claimant also informed Mr. [REDACTED] and Mr. [REDACTED] that issues, including the [REDACTED] issues, should be brought to the Claimant and not the Players

Union – directing them not to contact the MLSPU. (Hearing Trans., 434:4-18, 451:22-452:3, 949:3-9.)

46) After meeting with Mr. [REDACTED] and Mr. [REDACTED] in his office, Claimant held a team meeting and communicated the same message to the team – that issues, including the [REDACTED] issue, should be brought to his attention and not the Players Union. (Hearing Trans., 434:13-23, 476:18-477:8, 950:14-22.)

47) More specifically, Mr. [REDACTED] testified that, during the team meeting, Claimant said:

...that we should not involve the Players Union for something that we can handle internally.

(Hearing Trans., 435:6-12.)

48) Claimant acknowledges that he told the players the following during this team meeting:

...So if any kind of issues will occur, I told them basically that please, if you have any kind of concerns, any issues...just to tell them if you have any kind of issues, please see us first so we will not have problems or questions from the Players Union about any kind of concerns you have or you might have in the future.

(Hearing Trans., 379:16-380:6.)

49) Following the team meeting, Claimant called Mr. [REDACTED] and, again, asked him who went to the MLSPU with the [REDACTED] issue, specifically asking Mr. [REDACTED] whether he was the one that brought the issue to the MLSPU. (Hearing Trans., 435:14-436:10.)

50) Another Philadelphia Union player, [REDACTED], was present at the time Mr. [REDACTED] received the phone call from Claimant and confirmed, through his testimony, that Claimant did in fact make this call to Mr. [REDACTED] (Hearing Trans., 436:12-19, 477:23-478:3.)

51) Following the team meeting, Claimant also called Mr. [REDACTED] and asked him who brought the [REDACTED] issue to the attention of the MLSPU – reiterating to Mr. [REDACTED] that there was no need to use the MLSPU for issues that arise; they can be handled internally. (Hearing Trans., 951:5-21.)

52) Claimant also contacted Mr. Foose – the head of the MLSPU – and informed him that he did not think it was appropriate for players to be talking to the MLSPU. (Hearing Trans., 704:23-705:18.)

53) During his conversation with Mr. Foose, Claimant also asked Mr. Foose to identify the player that brought the [REDACTED] issue to his attention – to the attention of the MLSPU. (Hearing Trans., 704:23-705:18.)

54) This was an “extremely unusual conversation” for Mr. Foose, as he never before had a similar conversation – a conversation where a coach asked him to disclose the identity of a player that raised an issue with the MLSPU. (Hearing Trans., 705:23-24, 706:22-707:5.)

55) Mr. Foose did not immediately raise this “extremely unusual conversation” with the League, as he was made aware of the communications between Claimant and Mr. [REDACTED] and he – the head of the MLSPU – was afraid Claimant would retaliate against Mr. [REDACTED] (Hearing Trans., 707:12-19, 708:17-24.)

56) Claimant believed that Mr. [REDACTED] brought the [REDACTED] issue to the attention of the MLSPU, and less than two weeks after Claimant made the telephone call to Mr. [REDACTED] specifically asking him whether he raised the issue with the MLSPU, Mr. [REDACTED] was traded from the Philadelphia Union. (Hearing Trans., 310:5-13, 438:25-439:8.)

57) After Mr. [REDACTED] was traded, the MLSPU brought the following issues to the attention of the League during a prescheduled meeting it had with the League on May 22, [REDACTED]

(1) the [REDACTED] issue; (2) two separate interference issues – Claimant informing players not to contact the Players Union and Claimant pressuring [REDACTED] to disclose the identity of individuals exercising their Union rights; and (3) their belief that Mr. [REDACTED] was traded in retaliation for Claimant's belief that Mr. [REDACTED] raised the [REDACTED] issue with the MLSPU. (Hearing Trans., 708:25-710:2, 773:16-18, 777:15-778:14, 779:3-17.)

58) Todd Durbin, the Executive Vice President of Competition, Player and Labor Relations for the League, summed up the May 22, 2012 meeting as follows:

...the Players Union had an issue that not only was Mr. Nowak directing them not to bring issues to the Players Union but also seemed to be trying to find out who, in fact, had brought these issues to the Players Union and they were very concerned about retaliation taking place...one of their core assertions was that there was a trade of a player by the name of [REDACTED] and that they believed that not only was there the potential threat of retaliation, but that retaliation was taking place.

(Hearing Trans., 773:16-18, 779:3-17.)

59) On or about May 24, 2012, after he met with the MLSPU, Mr. Durbin called Mr. Sakiewicz and informed him that there were several complaints regarding Claimant interfering with players' rights to communicate with the MLSPU, and, as a result, the League was performing an investigation. (Hearing Trans., 563:23-564:5, 565:4-8, 779:19-6, 888:10-15.)

60) After speaking with Mr. Durbin, Mr. Sakiewicz called Claimant and the following conversation took place:

...[Claimant] had expressed to me that there was a player who filed a grievance. He was pretty upset about it. He was determined to find out who that player would be.

I told [Claimant] that we can't stand between the Players Union and the players. Having been a player myself and part of the Players Union, I knew that that was sacrosanct.

(Hearing Trans., 889:4-24.)

April 21, 2012 Red Card and Ejection

61) On April 21, 2012, Claimant coached the Philadelphia Union in a game against Chivas USA. (Respondent Exhibit 9; Hearing Trans., 306:11-22.)

62) During the game, Claimant received a red card and was ejected from the game. (Respondent's Exhibit 6; Hearing Trans., 197:7-9, 312:14-20.)

63) The Philadelphia Union produced a video to illustrate the actions taken by Claimant during the April 21, 2012 Chivas USA game to warrant his receipt of a red card and ejection from the game. (Respondent Exhibit 6; Hearing Trans., 389:20-392:20.)

64) Claimant testified that the video produced by the Philadelphia Union – Respondent Exhibit 6 – fairly and accurately reflected what happened on April 21, 2012. (Hearing Trans., 199:21-200:7.)

65) The video illustrates that a Philadelphia Union player, [REDACTED], engaged in a two-footed, studs-up challenge (tackle) on an opposing player, resulting in Mr. [REDACTED] receiving a red card and ejection from the game. (Respondent Exhibit 6; Hearing Trans., 390:7-8, 12-16.)

66) Mr. [REDACTED] challenge caused tempers to “flare” and an ensuing “melee.” (Respondent Exhibit 6; Hearing Trans., 390:7-9.)

67) As part of the “melee,” Claimant left the Coach’s “Technical Area” – in violation of League rules – charged on to the field and pushed the goalkeeper for Chivas USA. (Respondent Exhibit 6 at 1:53 mark;² Hearing Trans., 390:7-8, 12-16.)

² Although it happens quickly, if you pause the video at the 1:53 minute mark, it is clear that Claimant pushes the opposing team’s goalkeeper.

68) Although the video clearly illustrates that Claimant pushed the goalkeeper for Chivas USA, Claimant testified that he did not “push anybody.” (Respondent Exhibit 6; Hearing Trans., 393:18-394:16.)

69) Although Claimant claims that he was protecting Mr. [REDACTED] at the time Claimant reached Mr. [REDACTED], the referee was already there taking control of the situation. (Respondent Exhibit 6 at 0:15 mark and 1:50 mark.)

70) Additionally, at the time Claimant reached Mr. [REDACTED], two to three Philadelphia Union players were already there or arriving at the same time as Claimant – one of which was right there to protect Mr. [REDACTED] from the goalkeeper – from the opposing player Claimant pushed. In fact, in response to being pushed by Claimant, the goalkeeper pushed that Philadelphia Union player who was in-between him and Claimant. (Respondent Exhibit 6 at 0:15 mark and 1:50 mark.)

71) After pushing the opposing team’s goalkeeper (1:53 mark), Claimant was pulled out of the “melee” by Philadelphia Union player, [REDACTED] (0:16 mark). (Respondent Exhibit 6.)

72) Simply put, in violation of League rules, Claimant left the Technical Area, ran onto the field, and participated in a “melee” with the players, pushing a player on the opposing team. (Respondent Exhibit 6 at 1:53 mark; Hearing Trans., 390:7-8, 12-16.)

73) The League conducted an investigation into Claimant’s conduct, concluding that Claimant, in violation of League rules, left the Technical Area, entered the field of play and “initiated contact with an opposing player.”³ (Respondent Exhibit 7.)

³ As detailed within the 2012 Game Operations Manual, coaches are not permitted to leave the Technical Area and enter the field of play during a game. (Respondent Exhibit 67, pgs. 17, 73.) Additionally, it is considered a Major Game Misconduct for a coach to engage in “fighting” or “provoke a fight” during a game. (Respondent Exhibit 67, pg. 73.)

74) As a result of Claimant's actions during the April 21, 2012 Chivas USA game, not only was Claimant red-carded and ejected from the actual game, but the League took subsequent action against Claimant as well as the Philadelphia Union. (Respondent Exhibit 7 at PPS0002262; Hearing Trans., 392:23-393:9.)

75) More specifically, as a result of Claimant's inappropriate actions during the April 21, 2012 Chivas USA game, the League fined the Philadelphia Union \$5,000. (Respondent Exhibit 7 at PPS0002262; Hearing Trans., 392:23-393:9.)

76) Additionally, as a result of his inappropriate actions during the April 21, 2012 Chivas USA game, the League also fined Claimant \$5,000 and suspended him for two (2) games (Respondent Exhibit 7; Hearing Trans., 312:21-23, 394:19-25.)

77) This was not the first time Claimant received a red card ejection from a game for leaving the Coach's Technical Area; he also received a red card and was ejected for leaving the Technical Area during a U.S. Open Cup game against DC United on April 6, 2011. (Respondent Exhibit 8; Hearing Trans., 182:20-183:19, 183:20-184:19.)

78) It was also not the first time Claimant initiated physical contact with someone during his tenure with the Philadelphia Union; he also pushed another Philadelphia Union employee, Rick Jacobs, after a reserve game in 2011. (Respondent Exhibit 49; Hearing Trans., 531:23-532:8.)

79) As explained by Mr. Sakiewicz, Claimant's actions during the April 21, 2012 Chivas USA game were "out of control" and significantly embarrassing to the Philadelphia Union:

It was more than infuriating...it was alarming, it was embarrassing. I know all the owners in the League, including Mr. Anschutz, whose name is on the trophy, who I worked for for six years, who are watching this,

and the first thing that pops in my head is: What kind of team is Nick Sakiewicz running? It's, excuse my French, a shit show.

And this was more than just heat of the moment, coach running onto the field, players engaging in a fight. This was the beginnings of a brand that Jay and I did not want to have as a club and it was hurtful, it was disappointing, it was alarming, and it was tough to watch.

(Hearing Trans., 558:5-18, 630:23-631:16.)

80) Claimant's actions also reflected in a materially adverse manner on the integrity, reputation and goodwill of the Team, as evidenced by the announcers' reaction to Claimant's actions:

And Peter Nowak lost his mind there. Yeah, he should be sent off. That's inexcusable. Inexcusable for a head coach to act in this manner.

...and that is what Baldomero Toledo is telling him. It's like: What's your justification? Just walk off. He's telling him: Peter, just go.

...Look at Peter Nowak. See, that's why he gets sent off. What are you doing on the field?

(Hearing Trans., 391:7-10, 15-17, 392:15-17.)

81) Claimant's actions during the April 21, 2012 Chivas USA game did not comport with Philadelphia Union policies and procedures in at least two respects:

...There is our purpose statement, which I alluded to earlier, which lays out a lot of detail about things like the brand, our core beliefs, our greatest imaginable challenge, which is to become one of America's most admired soccer brands; and then there's an employee manual. And then, of course, there's [Claimant's] contract, which addresses a lot of those responsibilities, roles, duties, and things that we expect out of [Claimant].

(Hearing Trans., 637:12-638:3.)

82) Claimant actually acknowledged that he received negative feedback as a result of his actions during the April 21, 2012 game against Chivas USA. (Hearing Trans., 384:15-385:6.)

Events Immediately Following the April 21, 2012 Chivas USA Game

83) As a result of his red card and ejection – for violating League rules by leaving the Technical Area and initiating contact with an opposing player during the April 21, 2012 Chivas USA game – the League suspended Claimant for two games. (Respondent Exhibit's 7; Hearing Trans., 312:17-23.)

84) The Philadelphia Union's next MLS game was against San José on April 28, 2012 – it was forced to play this game without its head coach, as this was the first of two MLS games Claimant was suspended for as a result of his actions during the April 21, 2012 Chivas USA game. (Respondent Exhibit's 7 and 9; Hearing Trans., 313:6-11.)

85) The Philadelphia Union lost the game against San Jose on April 28, 2012. (Respondent Exhibit 9.)

86) The Philadelphia Union's next game was against Seattle on May 5, 2012 – it was again forced to play without its head coach, as this was the second of the two MLS games Claimant was prohibited from coaching as a result of his actions during the April 21, 2012 Chivas USA game. (Respondent Exhibit's 7 and 9; Hearing Trans., 313:24-314:5.)

87) The Philadelphia Union also lost the game against Seattle on May 5, 2012. (Respondent Exhibit 9.)

88) The Philadelphia Union's next game was a League game against the New York Red Bulls, and, although Claimant was allowed to coach this game, the Philadelphia Union lost the game. (Respondent Exhibit 9; 314:21-24.)

89) The next game for the Philadelphia Union was a League game against FC Dallas, which resulted in a tie. (Respondent Exhibit 9; 314:25-315:3.)

May 26, 2012 Loss to Toronto

90) The next game was on May 26, 2012 against Toronto, which, at that point in the season, had not won a game. (Respondent Exhibit 9; 315:4-11.)

91) Toronto beat the Philadelphia Union on May 26, 2012 – obtaining its first win of the season. (Respondent Exhibit 9; 315:4-11, 316:6-9.)

92) After the game, Claimant admittedly made an “emotional statement” to the players. (Hearing Trans., 316:10-12, 316:25-317:5.)

93) More specifically, Claimant made the following statement to the players:

We were supposed to have five days off, but not 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.

(Hearing Trans., 954:21-955:4, 956:3-11, 460:8-19.)

94) Within his “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.

(Hearing Trans., 1030:17-1031:13.)

95) Claimant acknowledges that the team was originally – prior to the Toronto game – scheduled to have at least four days-off starting on May 30, 2012. (Hearing Trans., 324:17-23.)

96) Three days after the Toronto game – on May 29, 2012 – the Philadelphia Union had a U.S. Open Cup game against the Rochester Rhinos. (Respondent Exhibit 9; Hearing Trans., 320:17-321:3.)

97) Claimant was unable to coach this game, as he was suspended from the game as a result of his receipt of a red card ejection for leaving the coach's Technical Area during the Philadelphia Union's last U.S. Open Cup game on April 6, 2011. (Respondent Exhibit 8; Hearing Trans., 182:20-183:19, 183:20-184:19, 321:4-21.)

98) Accordingly, as a result of his inappropriate on-field actions – including leaving the Coach's Technical Area on two separate occasions as well as his initiating contact with an opposing player – Claimant was suspended and unable to coach the Philadelphia Union for three (3) games in a seven (7) game stretch from May 5, 2012 through May 29, 2012. (Respondent Exhibit 9; Hearing Trans., 313:6-11, 313:24-314:5, 321:4-21.)

The May 31, 2012 Run – Refusing the Players Water and Making Injured Players Participate Against the Directives of the Athletic Trainers

99) As threatened in his “emotional statement” after the Toronto game, Claimant cancelled the players' scheduled days-off – requiring the players to cancel their vacation plans – and made the players, for the first time in team history, show up at a trail located at the Youth Soccer Center (“YSC”). (Hearing Trans., 333:6-8, 958:21-959:4, 1079:17-23, 1154:15-18.)

100) The trail was located approximately 100 yards from the YSC facility. (Hearing Trans., 958:18-20, 960:11-12, 1074:8-10, 1156:23-25.)

101) The trail was a blacktop/cement/pavement trail that was approximately two body widths wide, uneven in parts with rolling hills, and approximately 1.3 miles in length. (Hearing Trans., 461:17-25, 959:5-12, 1078:23-25.)

102) On that particular day, it was hot and sunny, about 80 degrees and humid.⁴

(Hearing Trans., 462:2-7, 962:5-8, 1078:17-20.)

103) Claimant directed the players to run the trail, but did not tell the players how far he was making them run – Claimant simply told the players to keep running until he told them to stop. (Hearing Trans., 464:5-8, 961:15-25.)

1. Claimant's Denial of Water to the Players During 10-12 Mile Run

104) Claimant did not monitor or ensure that the players hydrated before the start of the run. (Hearing Trans., 343:10-16.)

105) Claimant initially made the players run three lengths of the trail – approximately 4 miles (“First Interval”). (Hearing Trans., 465:12-20.)

106) Generally speaking, it is the responsibility of the athletic trainers to ensure the players are appropriately hydrated during practices. (Hearing Trans., 1064:9-19.)

107) During the May 31, 2012 trail run, the athletic trainers brought 24 reusable “Gatorade” water bottles, which are 22-ounce “squirt” bottles, to the actual trail – there was essentially at least one 22-ounce squirt bottle available for each player. (Hearing Trans., 1069:15-25.)

108) During the run, Claimant admits that he told the players that they were not able to have water and he, in fact, did not let the players have water during the run. (Hearing Trans., 203:15-17, 206:15-19, 351:14-17.)

⁴ Towards the end of the hearing, Claimant introduced – as Claimant Exhibit 13 – a Quality Controlled Local Climatological Data Report (“Weather Report”), which, according to Claimant, provides a fair assessment of the weather on May 31, 2012. It appears as though Claimant is offering this evidence to counteract the testimony of several witnesses relative to the weather during the May 31, 2012 trail run. Significantly, however, this Weather Report only details the weather *observed* at the Philadelphia International Airport, which is approximately 30 miles away from the YSC facility. Accordingly, it does not provide an accurate representation of the weather at the YSC facility during the May 31, 2012 trail run – it certainly is not more credible than the witnesses who consistently testified as to what they actually experienced the weather to be during the May 31, 2012 trail run.

109) Claimant admits that he took the reusable squirt bottles from the players and put them in the bushes. (Hearing Trans., 211:17-22, 361:19-22, 1258:16-22.)

110) ██████████ witnessed Claimant having an argument with the teams Athletic Trainers and, at one point, he saw Claimant take the reusable "squirt" water bottles and hide them in the woods – telling players "you guys don't need water." (Hearing Trans., 96222-963:4, 966:10-16.)

111) Paul Rushing – the Philadelphia Union's Head Athletic Trainer – described the argument he had with Claimant relative to Claimant's decision to deny the players water on May 31, 2012, as follows:

...we had the bottles out, the water bottles out and the Gatorade squeeze bottles, and put those out; and the players started getting a drink, which is standard, and then [Claimant] got mad and took it [water] away. And then they all went on their next bout [interval trail run] and then I got in an argument about the water with him...He just said, 'no water'...in a harsh manner. And again, this whole thing was kind of snowballing and I was like, I couldn't believe it was happening. And...my job is to protect the players and to, you know, not put them in harm's way and do what I think is right and that's what I was hired for as the head trainer, and I felt like I wasn't allowed to do that. And, again, I was just really frustrated and really upset about that...

...So when [the players] left again, we got into more of an argument...and [Claimant] physically took the bottles with the carriers and threw them in the bushes...

...[Claimant]...was basically saying...this is what I say and this is what I want you to do and if you're not with me, you're against me
kind of thing...

(Hearing Trans., 1076:15-1077:19) (emphasis added.)

112) One player, ██████████, testified that, after he completed the First Interval of the run, the following occurred:

Again, I sort of happened upon it already occurring and [Claimant] was like pretty explicitly letting everybody know that they weren't going to have any water ...

And I remember having like a Kirkland Costco bottle, much like that sort of plastic bottle, in my hand. And he [Claimant] took the water bottle out of my hand and said that when you're thirsty, you lose focus — which I sort of thought at the time, well, if I'm thirsty and I get some water, then I'll be focused. I'll be ready to run some more — and then tossed it to the side.

And then there were some hushed conversations going on between Paulie [Paul Rushing], John [Hackworth], and [Claimant] and I remember kind of questioning Paulie as to, you know, frankly: What the hell's going on? I mean, it's hot as hell, we're out here running. There's no reason why guys shouldn't have water. I certainly never had seen anything like that.

(Hearing Trans., 465:23-466:17.)

113) When another player, [REDACTED], finished the First Interval of the run, he not only witnessed the dispute between Claimant and Mr. Rushing regarding the players access to water, but he also specifically saw Claimant actually take water bottles from Mr. Rushing and throw them away from the players. (Hearing Trans., 1044:18-20, 1045:8-24.)

114) Mr. [REDACTED] also witnesses the following between Mr. Rushing and Claimant:

...After both of them went back and forth about whether water should be distributed or not, Mr. Rushing...pretty much had a Pontius Pilate moment where he was like, 'You know what? You're in charge, but I refuse to have my hands in this because this isn't right. So if this is what you want to do, I'm washing my hands of this. I want no part of this. But this isn't right...[Claimant] — I remember him saying this distinctively — was like...'I don't care. I'm going to make men out of these guys.'

(Hearing Trans., 1046:13-1047:6, 1050:22-1051:10.)

115) After denying the players water once they completed the First Interval of the run, Claimant directed the players to keep running on the trail — to run additional Intervals. (Hearing Trans., 468:18-21.)

116) After initially arguing with Claimant regarding the players' access to water during the trail runs, Mr. Rushing — as he was concerned about players becoming dehydrated — tried to

sneak water to the players, but Claimant, once again, physically took the water bottles from Mr. Rushing, walked through the players and threw the water bottles into the woods/bushes.

(Hearing Trans., 1079:24-1080:10.)

117) In total, the players ran three or four Intervals, totaling approximately 10-12 miles. (Hearing Trans., 213:25-214:3, 464:9-17.)

118) Claimant also admits that, during the run, he said the following to Mr. Rushing:

No fucking water put the water back, water will make you lose focus and if you're thirsty you are weak.

(Hearing Trans., 212:2-25.)

119) Claimant testified that he denied the water to the players because a player, [REDACTED], was sick and he did not want the other players to get sick. (Hearing Trans., 206:15-25, 216:6-9.)

120) Claimant, however, testified that Mr. [REDACTED] was sent back to the locker room immediately after the warm-up. (Hearing Trans., 213:15-20.)

121) More importantly, Claimant never mentioned [REDACTED] as the reason why he would not let the players have water; the players all confirmed that Claimant simply stated:

...water makes you weak. If you're thirsty, you're weak...If you're thirsty, you lose focus...

(Hearing Trans., 468:10-17, 469:14-17, 972:14-72, 1050:10-22, 1080:11-1081:4, 1162:11-13.)

122) Generally speaking, when a player is sick, the athletic trainers take one of the 22-ounce reusable squirt bottles and put different color tape on it to ensure that only the sick player uses that particular water bottle – and that the sick player does not drink out of the other water bottles. (Hearing Trans., 1136:12-1137:6.)

123) Claimant also testified that if the players were given individual disposable bottles of water or Gatorade, it would have probably alleviated his concerns relative to Mr. [REDACTED] stomach flu. (Hearing Trans., 358:18-22.)

124) Individual disposable bottles of water and Gatorade were in fact available at YSC at the time of the run. (Hearing Trans., 467:18-468:6.)

125) In fact, [REDACTED] testified that he attempted to drink out of an individual disposable water bottle, but Claimant took it out of his hands and threw it to the side. (Hearing Trans., 466:3-10.)

126) Mr. Rushing had brought three ice chests (one with wheels on it) filled with three cases of individual (not shared) 16.9-ounce disposable water bottles and three cases of individual (not shared) 20-ounce disposable Gatorade bottles to the YSC on the day of the May 31, 2012 trail run. (Hearing Trans., 1072:6-9, 1073:9-24, 1074:8-13, 1156:17-25; 1236:22-23.)

127) These disposable bottles of water and Gatorade were available to the Team – a short three (3) minute 100 yard walk from the trail – and could have been used to hydrate the players if Claimant was in fact concerned about Mr. [REDACTED] stomach flu. (Hearing Trans., 1072:6-9, 1073:9-24, 1074:8-13, 1156:17-25; 1236:22-23.)

128) The use of disposable bottles of water and Gatorade would have removed any alleged concern of cross contamination relative to Mr. [REDACTED] (Hearing Trans., 358:18-22.)

129) Claimant did not, however, direct the Athletic Trainers to provide the players with disposable water bottles, and, during his testimony, he never offered any explanation as to why he failed to do so. (Hearing Trans., 358:14-17.)

130) Claimant understood at the time that MLS games were actually being stopped to allow players to get a break – simply because it was too hot during the summer months.

(Hearing Trans., 364:13-17.)

2. *Claimant's Forcing of Injured Players to Participate in Training Against the Directives of the Athletic Trainer*

131) Before the start of practice on May 31, 2012, Mr. Rushing informed Claimant inside the YSC facility that four players were on the injury list – [REDACTED] with a right big toe injury, [REDACTED] with a right ankle injury, [REDACTED] with gastroenteritis, and [REDACTED] with an ankle injury – and it was his opinion that they should not participate in the trail runs – they should remain in the facility on a bike. (Hearing Trans., 1066:14-1067:4, 1067:11-24, 1068:25-1069:5, 1082:6-17.)

132) Mr. Rushing was concerned about Mr. [REDACTED] participating in the run – even simply walking – because:

...[Mr. [REDACTED]] suffered a toe injury...and obviously the big toe is the weightbearing part of your foot, you don't want to put weight on that foot if it's a fresh injury like that.

(Hearing Trans., 1082:6-12.)

133) Mr. Rushing wanted Mr. [REDACTED] on a bike, which is nonweightbearing and allows a player to get fitness without putting any pressure on the joint or the injured part of the body. (Hearing Trans., 1082:6-21.)

134) Mr. Rushing also did not want Mr. [REDACTED] or Mr. [REDACTED] participating in the trail runs because he was afraid they would aggravate their ankle injuries – neither of them had ankles that were ready for a 10 mile run on concrete. (Hearing Trans., 1083:7-1084:4.)

135) Mr. Rushing conveyed his concerns regarding Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] to Claimant. (Hearing Trans., 1083:4-6, 1083:17-19, 1084:8-10.)

136) Claimant's response to Mr. Rushing was that everyone "was going to go outside" and, to Mr. Rushing's shock, Claimant made the injured players participate in the trail runs once outside. (Hearing Trans., 1067:25-1068:24.)

137) Claimant also informed Mr. Rushing that neither Mr. Rushing nor the team doctors were going to make decisions regarding the ability of a player to train or play in a game; these decisions were now going to be made by Claimant. (Respondent Exhibit's 13 and 27; Hearing Trans., 1075:16-20.)

138) Claimant also admitted during his testimony that he "ordered" players that were injured to participate in the trail run – at least walk – on May 31st – against the clear direction of the Athletic Trainer, Paul Rushing. (Hearing Trans., 213:25-3, 207:13-16, 340:7-12, 341:6-20, 342:18-22.)

139) Specifically, Claimant testified that he "ordered" [REDACTED], [REDACTED] and [REDACTED] to participate in the May 31st run even though the Head Athletic Trainer, Mr. Rushing, informed Claimant that they had injuries and should not participate. (Hearing Trans., 339:5-16, 340:7-12, 341:6-20, 342:18-22.)

140) [REDACTED] was not planning on practicing as a result of an injury to his foot, but Claimant told him that he was required to run – when Mr. [REDACTED] told Claimant that he could not "run" because of an injury to his foot, Claimant said, "[w]ell, then you'll have to walk." (Hearing Trans., 1034:20-21, 1035:2-13.)

141) In fact, Claimant forced all injured players to participate in the 10-12 mile interval trail runs:

Q. Did you instruct him to run on May 31st?

A. ...I told that the injury group that Paul Rushing was referring to would be the Group No. 3 and they will walk the trail.

Q. Okay. So, you did instruct him to walk the trail; correct?

A. Yes.

Q. And Paul Rushing had told you that he wanted him back inside the facility on the bike; correct?

A. That's what he indicated before we leave the facility. He was making strong case that those players have to be in the facility on the bikes.

(Hearing Trans., 341:6-20.)

142) Claimant admits that his requiring of the injured players to participate did not make the Athletic Trainer, Paul Rushing, happy. (Hearing Trans., 344:6-9.)

143) Claimant also acknowledges that he is not a licensed Athletic Trainer. (Hearing Trans., 262:10-13.)

144) As a result of their forced participation in the interval trail runs on May 31st, at least three players – Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] – suffered set-backs with their injuries, likely requiring these players to miss additional playing time. (Respondent Exhibit 13; Hearing Trans., 1090:15-24; 1092:15-1093:10.)

145) Two of the injured players forced to participate in the May 31st run, [REDACTED] and [REDACTED], were unable to play in the next game for the Philadelphia Union. In fact, both players were unable to play for at least sixteen (16) days after the run. (Hearing Trans., 371:11-17, 1039:12-23, 1127:15-25.)

146) Additionally, at least one player – [REDACTED] – was injured during the interval trail runs. Mr. [REDACTED] testified directly on this point:

I had pain in my foot the second day of the run, starting the run. A bit of pain that night. Tried to get through the first segment of the second – day run and [the Assistant Athletic Trainer] pulled me and said that's enough.

...Shortly after they sent me to Chip Hummer, the team doctor, the team physician, to get an MRI. It revealed I had a stress reaction. Dr. Hummer basically said had I gone any longer, it would have turned into a stress fracture. And subsequently I was on crutches for a few days, I couldn't put any weight on it...

(Hearing Trans., 475:5-476:12.)

147) In short, Mr. [REDACTED] was injured on May 31, 2012 during the trail runs – apparently due to the length and intensity of the running/training. (Respondent Exhibit 13; Hearing Trans., 475:5-476:17.)

148) As a result of the injury [REDACTED] suffered during the trail runs, he was unable to play for at least a week – missing at least one game. (Hearing Trans., 476:13-17, 1127:6-14.)

149) A “handful” of other players, including [REDACTED] (complaining that his “feet were on fire”), came to Mr. Rushing after the May 31, 2012 run seeking treatment – with several of the players being referred to a doctor the next day or within the next couple of days. (Hearing Trans., 1132:5-16.)

150) After the conclusion of the run, Mr. Rushing was “upset and confused,” and worried about the status of his license as an athletic trainer and, as such, he decided – on his own accord – to contact John Gallucci, one of the medical coordinators for the League, and asked him for advice. (Hearing Trans., 1084:14-1085:4, 1089:10-14, 1107:8-1108:5).

151) Mr. Gallucci suggested that Mr. Rushing write a letter outlining everything that happened during the May 31, 2012 trail runs and send it to Philadelphia Union's chief medical officer, Dr. Chip Hummer. (Hearing Trans., 1089:3-6.)

152) Mr. Rushing followed Mr. Galucci's suggestion, drafting and sending — on May 31, 2012 — a letter to the Philadelphia Union's medical director, Dr. Chip Hummer. (Respondent Exhibit 13; Hearing Trans., 1089:19-1090:14.)

3. Excessiveness of Claimant's Actions during the May 31, 2012 Training

153) Mr. [REDACTED] has approximately [REDACTED] years experience playing in the MLS, specifically playing for approximately [REDACTED] different MLS teams and having approximately [REDACTED] different coaches; he also played for the United States National Team in the [REDACTED] and was a member of the United States National Team during the [REDACTED]. (Hearing Trans., 458:6-459:11.)

154) When asked whether the trail runs Claimant required the players to run on May 31, 2012 were usual or normal, Mr. [REDACTED] testified:

It was roughly twice as long as I've ever run in my [REDACTED] years of professional soccer, and that's including my time with the [United States] National Team.

(Hearing Trans., 462:23-463:9, 463:24-464:3.)

155) In fact, Mr. [REDACTED] stated that this trail run was approximately 11 to 12 miles in total and he — in his [REDACTED] plus years playing professional soccer, including his time with the United States National Soccer Team — never had to run more than 6 miles at one time in a training session. (Hearing Trans., 462:23-463:9, 463:24-464:3.)

156) [REDACTED] who has been a player within Major League Soccer for [REDACTED] years and who also has experience playing for the United States Men's National Soccer team, testified that he had never previously been asked to run the distance he was asked to run by Claimant on May 31, 2012. (Hearing Trans., 968:8-13.)

157) Mr. [REDACTED] also testified that – in his [REDACTED] plus years playing professional soccer, including his time with the United States National Soccer Team – he was never asked to run where water was withheld from the players. (Hearing Trans., 466:18-22.)

158) Mr. [REDACTED] similarly testified that, in his [REDACTED] years of Major League Soccer experience, other than the May 31, 2012 trail run and the subsequent practice on June 7, 2012, a water limitation had never been placed on him. (Hearing Trans., 1022:21-25.)

159) Mr. [REDACTED] also testified that he believed the Claimant's actions during the May 31, 2012 training session were meant to "punish" the players. (Hearing Trans., 1025:12-16.)

4. Claimant's Placing of Water Limitations on Players During the June 7, 2012 Practice

160) On June 7, 2012, the team held a practice at the Stadium. (Hearing Trans., 487:6-12.)

161) During the June 7, 2012 practice, Claimant placed a water volume limitation on the players, informing each player that they were limited to one bottle of water for the entire practice. (Hearing Trans., 487:13-25.)

162) [REDACTED] described the water limitation as follows:

...At that point we were allowed to have water and everyone had their own specific water bottle with differing amounts of water in it and you could only have what was filled up into that bottle, which maybe was half of the bottle for some people or a quarter of the bottle filled up for other people, but essentially it was a reminder that you don't need that much water to perform and the more water you need, the weaker you are.

(Hearing Trans., 973:21-974:10.)

163) [REDACTED] also discussed the additional water limitation imposed by Claimant on June 7, 2012:

...in reaction to the game we just played against D.C. United, which was an Open Cup quarterfinal game in D.C., so the incident with the water and

the running happened the week before in preparation for that game, we go to D.C. and win the game...And [the next] practice everybody is obviously excited, pretty tired, but we're practicing because we have a League game, and it comes to the point of the water break – because there's usually a standard water break during each practice – and...I remember [Claimant] making a comment of that we were going to get water, but that each person was only allowed to have one water bottle and if they finished that water, then that was the water for the day that they could have; and that...because we won our game in D.C., then...it was a possibility that we would go the rest of the season without, you know, having as much water...

(Hearing Trans., 1049:8-1050:9.)

164) Assistant Athletic Trainer, Steve Hudyma, also testified that Claimant wanted players to be limited in the volume of water they received at practice on June 7th. (Hearing Trans., 1162:17-21.)

The Knowledge of the MLSPU & the League re: the May 31, 2012 Run

165) On June 1, 2012 – the day after the May 31, 2012 trail runs – Mr. Foose had multiple conversations with the League concerning the length of the May 31, 2012 trail runs, the fact that Claimant withheld water from the players, that Claimant required injured players to participate in the May 31, 2012 run, and the confrontation Claimant had with medical staff. (Hearing Trans., 710:13-711:2, 713:5-12, 753:2-10.)

166) Mr. Foose communicated this information – information relating to Claimant's actions during the May 31, 2012 trail runs – primarily to Todd Durbin, Executive Vice President of Competition, Player and Labor Relations, who, at the time, was responsible for investigating the allegations of wrongdoing made against Claimant. (Hearing Trans., 714:6-22, 774:24-775:15.)

167) Mr. Durbin was also made aware of Claimant's actions on May 31, 2012 from Evan Dabby – as a result of Mr. Rushing's independent report to Mr. Gallucci – who was in charge of team trainers and medical operations for the League. (Hearing Trans., 782:13-22.)

168) Mr. Dabby specifically informed Mr. Durbin that the Philadelphia Union team trainer had a “very serious incident take place” during a training session – both as it related to having injured players participate in training and the withholding of hydration to players. (Hearing Trans., 782:13-22.)

169) At the time he received the information from Mr. Foose and Mr. Dabby – on or about June 1, 2012 – the League – through Mr. Durbin – was already investigating the MLSPU interference allegations against Claimant (made at the end of May, 2012). (Hearing Trans., 574:10-18, 779:21-781:11.)

170) According to Mr. Durbin, upon receipt of these additional allegations against Claimant – relating to the May 31, 2012 trail runs – “major alarm bells” went off. (Hearing Trans., 780:18-781:11.)

171) Although Mr. Foose obtained the information relating to the May 31, 2012 trail runs from the players of the Philadelphia Union, he did not disclose the identity of the players to the League. (Hearing Trans., 753:18-754:5.)

172) Mr. Durbin immediately informed Mr. Foose that the League would be conducting a thorough investigation. (Hearing Trans., 715:5-12.)

The League's Investigation into the May 31, 2012 Trail Run

173) Again – reiterating for context purposes – at the time Mr. Durbin received the information from Mr. Foose and Mr. Dabby – on or about June 1, 2012 – the League – through Mr. Durbin – was already investigating the MLSPU interference allegations against Claimant (made at the end of May, 2012). (Hearing Trans., 574:10-18, 779:21-781:11.)

174) As the players of the Philadelphia Union were “extremely afraid” of the potential “consequences” or “retaliation” if it became known that they participated in the League’s investigation, the MLSPU asked the League to put a Confidentiality Agreement in place. (Hearing Trans., 715:13-716:6.)

175) There was only one other instance in which the MLSPU asked the League to put in place a Confidentiality Agreement relative to a League investigation into misconduct – that other instance involved Claimant during Claimant’s tenure as the head coach of another MLS team, DC United. (Hearing Trans., 716:7-717:5, 789:19-25.)

176) The MLSPU and the League where able to agree on the language of the Confidentiality Agreement and the League began its investigation into the allegations made against Claimant. (Hearing Trans., 717:6-718:12.)

177) Mr. Durbin was responsible for overseeing the investigation. (Hearing Trans., 786:16-19.)

178) Shortly after he was informed of the allegations relating to the May 31, 2012 training session, Mr. Durbin sat down with Brett Lashbrook, the Special Assistant to the Commissioner, to discuss how to conduct the investigation. (Respondent Exhibit 27; Hearing Trans., 8-19.)

179) Shortly thereafter, Mr. Durbin called and emailed Mr. Sakiewicz informing him about a series of allegations that were made against Claimant – the most immediate of which was that Claimant was not following the advice/input of the trainer. (Respondent Exhibit 11; Hearing Trans., 574:4-18, 887:25-888:9.)

180) Mr. Durbin's communications to Mr. Sakiewicz also informed him that the League was performing an investigation into these allegations – an investigation that was in addition to the investigation the League was already performing as a result of the players union interference allegations made against Claimant at the end of May, 2012. (Respondent Exhibit 11; Hearing Trans., 574:4-18, 887:25-888:9.)

181) In an email dated June 6, 2012 to Mr. Sakiewicz, Mr. Durbin also provided Mr. Sakiewicz with a letter dated May 31, 2012, from Mr. Rushing to the Philadelphia Union's Team Physician, Dr. Chip Hummer. (Respondent Exhibit 11; Hearing Trans., 575:5-19, 577:4-9.)

182) The May 31, 2012 letter of Mr. Rushing to Dr. Hummer informed Mr. Durbin of the following issues relative to the May 31, 2012 training session:

- That he felt the players' health was put at risk when they were not allowed to have water by Claimant during an 8-10 mile interval run in 80-82 degree heat;
- That he felt at least three players suffered set-backs with their injuries;
- That when he attempted to raise these issues with Claimant, he was advised by Claimant that neither he (Mr. Rushing) or any other member of the medical staff would make the determination as to which players are healthy enough to play in each game or to participate in training sessions – he was further told that these decisions were going to now be made by Claimant.

(Respondent Exhibit 11.)

183) In response, Mr. Sakiewicz sent an email to Mr. Durbin, assuring him that he had instructed the medical staff to continue to administer the highest level of medical care to the

players and, if anything should change or prevent them from doing that, Mr. Sakiewicz was to be notified immediately. (Respondent Exhibit 12.)

184) Thereafter, it was determined that the League would conduct a series of interviews, and, after the completion of the interviews, Mr. Durbin would discuss the League's findings with Mr. Sakiewicz – before it put together a report formally detailing the League's findings. (Hearing Trans., 718:3-12.)

185) On Sunday, June 10, 2012, the League – through Mr. Durbin's investigation – conducted the contemplated series of interviews, initially interviewing Paul Rushing, the Head Athletic Trainer of the Philadelphia Union, and then interviewing the players. (Hearing Trans., 788:11-25, 791:7-9, 791:10-792:2, 826:19-23.)

186) Mr. Rushing was interviewed as part of Mr. Durbin's investigation approximately three times. (Hearing Trans., 1094:14-1095:6.)

187) A few days later, the League, through Mr. Durbin, issued the MLS Report – dated June 12, 2012 – which detailed the results of the investigation performed by the League relative to the allegations made against Claimant. (Respondent Exhibit 27; Hearing Trans., 792:8-10, 793:8-10.)

188) As of June 12, 2012, the League's investigation into the allegations against Claimant was complete. (Hearing Trans., 826:10-18.)

189) When questioned as to why Mr. Durbin did not interview Claimant, Mr. Durbin responded:

The conclusion I came to, having heard the testimony of Mr. Rushing and, more importantly, the testimony that I did hear from the players, coupled with the testimony that was reported back to me by Mr. Lashbrook, I didn't see a path forward at that point in time.

(Hearing Trans., 827:23-828:4) (emphasis added.)

190) The League does not have formal due process rules or appeal procedures with respect to coaches. (Hearing Trans., 844:19-25.)

The Reaction of the League and MLSPU with respect to the Findings of the League's Investigation into the May 31, 2012 Trail Runs

191) Later in the day on June 10, 2012, after completing the interviews, Mr. Durbin contacted Mr. Sakiewicz and informed him that a formal report would be provided shortly, but that the testimony received from the players was "very disturbing." (Hearing Trans., 794:9-22.)

192) During their conversation on June 10, 2012, Mr. Durbin's view was that Claimant's employment needed to be terminated – **specifically informing Mr. Sakiewicz that he believed Claimant "needs to be fired."** (Hearing Trans., 796:11-14, 848:4-10.)

193) Mr. Durbin did not believe Claimant's actions could be corrected, specifically testifying:

...I wouldn't look at it as being narrowly focused as to whether or not after we notified the team, the President, and the Club of an issue as it relates to following specific instances, the medical personnel and the water, that the issues were behind us...because our issues were much bigger than that... We were talking about the players not feeling comfortable and safe in their work environment...

(Hearing Trans., 837:17-838:12.)

194) Mr. Foose believed Claimant's actions during the May 31, 2012 trail runs created a "very, very dangerous situation" for the players, specifically noting:

...it was a hot day, it was an extremely humid day – both of them were – and the length of the runs was completely out of whack with anything that I had ever heard of any coaching staff doing within the League.

So, you know, every player was endangered with regard to the water because it is simply not safe to be out in those conditions and running that length – even for athletes as fit as ours it is not safe to be out and doing that – without access to water.

(Hearing Trans., 713:19-714:5.)

195) At the conclusion of the League's investigation into all of the allegations against Claimant, the MLSPU took the following position:

We certainly took a position and I think our position really from June 1st on was very clear, which was that [Claimant] needed to be removed as coach of the team and that it was not appropriate nor was it safe for our members to have him as coach of the team. So from the moment we learned about the runs and the things that happened with those as well as the concussion issues, our position was he can't continue as coach.

(Hearing Trans., 719:22-720:10.)

196) Mr. Foose, who had led the MLSPU since its inception on April 1, 2003, testified that the MLSPU had never previously (or subsequently) taken the position that a coach needed to be removed from a team. (Hearing Trans., 696:4-7, 721:18-23, 798:2-11.)

197) The MLSPU in fact informed Mr. Durbin that they were contemplating a strike or withholding players from team activities if Claimant continued to coach the Philadelphia Union:

So this was a conversation that took place between Jon Newman [counsel for MLSPU] and myself on the 10th and when we talked about what was going to be happening next, the Union, Players Union, given their concern, the health and safety concern, for the players, the environment that the players were in, felt that if [Claimant] was going to continue to be the coach, that there were discussions about whether or not the players would, in fact, report for training.

(Hearing Trans., 803:19-804:6.)

198) Simply put, the MLSPU believed that Claimant's actions warranted his termination – warranting him being “fired as the coach [of the Philadelphia Union].” (Hearing Trans., 763:6-15.)

199) Mr. Durbin – and the League – shared the same view as Mr. Foose, with Mr. Durbin specifically testifying that he believed Claimant “need[ed] to be fired.” (Hearing Trans., 848:6-10; Respondent Exhibits No. 25 and 26.)

200) Both Mr. Durbin and Mr. Foose came to their conclusions – that Claimant needed to be fired – that he could not continue to coach the Philadelphia Union – on their own, completely independent of Mr. Sakiewicz or anyone else from the Philadelphia Union. (Hearing Trans., 720:2-10, 848:6-10.)

Mr. Sakiewicz's Knowledge of and Independent Investigation into Claimant's Actions During the May 31, 2012 Training Session

201) On May 31, 2012, shortly after the conclusion of the trail runs, Mr. Sakiewicz was made aware that Claimant required the players, including injured players, to run approximately 10 miles on the trails at YSC without hydration. (Hearing Trans., 570:4-10, 572:9-15.)

202) Later that same day – May 31, 2012 – Mr. Sakiewicz spoke with the team physician, Dr. Chip Hummer, for approximately 45-60 minutes, attempting to understand which players on the team were injured, the level of their respective injuries, the potential impact the lack of hydration can have on players, and the exact details of the length of the trails runs. (Hearing Trans., 890:16-10.)

203) Mr. Sakiewicz also asked Dr. Hummer to document his knowledge and opinion relative to the trail runs that took place on May 31, 2012. (Hearing Trans., 891:11-12.)

204) After speaking with Dr. Hummer – still on May 31, 2012 – Mr. Sakiewicz contacted Mr. Rushing and asked Mr. Rushing to describe the events that took place that morning during the trail runs. (Hearing Trans., 891:17-20, 1091:9-22.)

205) Mr. Rushing's conversation with Mr. Sakiewicz occurred after Mr. Rushing had made contact with Mr. Galucci at the League office and sent his May 31, 2012 letter to Dr. Hummer. (Hearing Trans., 1094:8-13.)

206) During their conversation, which was approximately an hour long, Mr. Rushing was "shaken," his "voice was cracking," and he was "very, very upset," as he was worried about

losing his Athletic Training License because of the events that took place during the May 31, 2012 trail runs. (Hearing Trans., 891:17-892:2.)

207) Mr. Sakiewicz, obviously alarmed by Claimant's actions, told Mr. Rushing that he no longer reported to Claimant and that he was to ensure that all players were appropriately hydrated, that he delivered the utmost care to the players, and that he should immediately contact Mr. Sakiewicz if anyone hindered his ability to comply with these directives. (Hearing Trans., 572:18-23, 573:7-13, 892:3-10.)

208) After speaking with Dr. Hummer and Mr. Rushing, Mr. Sakiewicz contacted Mr. Debusschere, the Philadelphia Union's Executive Vice President and CFO, and informed him of the situation related to the trail runs and directed Mr. Debusschere to monitor the team's training activities, to have a conversation with Josh Gros to investigate further what went on during the trail run and to obtain a timeline of the events, and to attend the next practice or have someone attend the team's next practice to ensure that the proper medical treatment was being provided to the players. (Hearing Trans., 892:14-23.)

209) Mr. Sakiewicz did not contact Mr. Durbin or anyone else within the League's Commissioner's office to discuss Claimant's actions relative to the May 31, 2012 trail runs. (Hearing Trans., 926:4-11.)

210) On or about June 6, 2012, Mr. Sakiewicz received a voicemail and an email from Mr. Durbin informing Mr. Sakiewicz that a series of allegations were made against Claimant – the most immediate is that Claimant was not following the advice/input of the trainer – and the League was performing an investigation into the allegations. (Respondent Exhibit 11; Hearing Trans., 574:4-18, 887:25-888:9.)

211) The investigation referred to in the June 6, 2012 email was in addition to the investigation the League was already performing as a result of the players union interference allegations previously made against Claimant (at the end of May, 2012), and of which Mr. Sakiewicz was previously made aware. (Respondent Exhibit 11; Hearing Trans., 574:10-18.)

212) Attached to Mr. Durbin's June 6, 2012 email to Mr. Sakiewicz was a letter dated May 31, 2012, from the Head Athletic Trainer of the Philadelphia Union, Paul Rushing, to the Philadelphia Union's Team Physician, Dr. Chip Hummer. (Respondent Exhibit 11; Hearing Trans., 575:5-19, 577:4-9.)

213) As of June 6, 2012, Mr. Sakiewicz was already aware of the circumstances of the May 31, 2012 trail run from his lengthy discussions with Mr. Rushing and Dr. Hummer. (Hearing Trans., 890:16-10, 891:17-892:2, 1091:9-22.)

214) Within his May 31, 2012 letter to Dr. Hummer, Mr. Rushing noted the following:

- That he felt the players' health was put at risk when they were not allowed to have water by Claimant during an 8-10 mile interval run in 80-82 degree heat;
- That he felt at least three players suffered set-backs with their injuries;
- That when he attempted to raise these issues with Claimant, he was advised by Claimant that neither he (Mr. Rushing) nor any other member of the medical staff would make the determination as to which players are healthy enough to play in each game or to participate in training sessions – he was further told that these decisions were going to now be made by Claimant.

(Respondent Exhibit 11.)

215) In response to Mr. Durbin's June 6, 2012 email, Mr. Sakiewicz sent Mr. Durbin an email informing Mr. Durbin that he instructed the medical staff to continue administering the highest level of medical care to the players and if anything should change or prevent them from doing that, they were to notify Mr. Sakiewicz directly. (Respondent Exhibit 12.)

216) On or about June 7, 2012, Dr. Hummer sent Mr. Sakiewicz an email, which attached another copy of Mr. Rushing's May 31, 2012 letter to Dr. Hummer, as well as a letter from Dr. Hummer to Mr. Sakiewicz dated June 7, 2012. (Respondent Exhibit 13; Hearing Trans., 576:12-20.)

217) Dr. Hummer's June 7, 2012 letter notified Mr. Sakiewicz of the following:

- Players running a significant distance in 82 degree heat on concrete without the availability of hydration may put the players at risk of electrolyte imbalance or subject them to risk of heat stroke;
- Players with existing lower extremity injuries could have those injuries exacerbated with increased healing time if they participated in a long distance run on a concrete surface on two consecutive training days;
- [REDACTED] relates his severe right lateral mid foot pain to the trail runs. His working diagnosis is mid foot capsular sprain and his return to play is indeterminate.

(Respondent Exhibit 13.)

Communications Between Mr. Sakiewicz and Mr. Durbin Subsequent to the Completion of the League's Investigation into the May 31, 2012 Training Session

218) On Sunday night, June 10, 2012, while Mr. Sakiewicz was in Florida, Mr. Durbin called him to advise him of the results of the multiple League investigations into Claimant's actions. (Hearing Trans., 577:22-578:22; 578:9-19.)

219) During their conversation, Mr. Durbin told Mr. Sakiewicz that the League was going to provide him with a report, but that, in the meantime, Claimant could not be near Philadelphia Union players. (Hearing Trans., 578:20-24, 580:21-581:5.)

220) Of note here, the League, and not the Philadelphia Union, technically employs the players. (Hearing Trans., 714:23-25, 787:6-11.)

221) Mr. Durbin informed Mr. Sakiewicz that he wanted Claimant to be terminated on Monday, June 11, 2012, sending Mr. Sakiewicz the following email on June 11, 2012:

This cannot last until the weekend. You gave me your assurance this would happen wed. [sic]. It was my recommendation for it to happen this morning.

(Respondent Exhibit 26.)

222) Mr. Sakiewicz wanted additional time before making a final determination to terminate Claimant, as the Philadelphia Union had two games coming up, he wanted to receive and review the actual League report to confirm the results of the League's investigation, and he wanted time to talk to the Philadelphia Union owners and investors. (Hearing Trans., 580:21-581:19, 913:20-914:2.)

223) Mr. Durbin – within several back and forth emails with Mr. Sakiewicz on June 11, 2012 – informed Mr. Sakiewicz that Claimant had to be terminated by the morning of Wednesday, June 13, 2012 – specifically telling Mr. Sakiewicz that Claimant “cannot train the team on [Wednesday, June 13, 2012]...” (Respondent Exhibit's 25 & 26; Hearing Trans., 580:8-20; 909:2-910:9.)

224) Mr. Sakiewicz, who has been an executive in Major League Soccer for 19-20 years, had never seen an instance in which the League prohibited a coach from participation in practice – while coaches have been red carded and unable to coach in games, he had never experienced a coach being unable to practice or be around players between contests. (Hearing Trans., 593:2-13.)

225) On June 12, 2012, Mr. Durbin sent Mr. Sakiewicz an email attaching an MLS Report detailing the results of the League's investigation into the multiple complaints it received relative to Claimant. (Respondent Exhibit 27; Hearing Trans., 581:22-582:14.)

226) After receiving the June 12, 2012 email, including the MLS Report, from Mr. Durbin, Mr. Sakiewicz believed he had no choice but to terminate the Employment Agreement, specifically testifying:

I fired [Claimant] for the six reasons that I outlined in my memo [Respondent Exhibit 36] that everybody has seen ad nauseam, principally because I was protecting the health and welfare of our players, and that was the primary reason.

I was disgusted by all of this. I still am. I'm kind of emotional about it now because I'm having to recant it all. But as a former player, you have to play with a smile on your face and I had a team with no smiles. And I needed to protect the health and welfare of those 30 guys in that locker room. That was first and foremost.

But there were five other reasons why I terminated him, and they're all outlined in that memo [Respondent Exhibit 36].

(Hearing Trans., 588:5-21.)

227) Mr. Sakiewicz was left without a choice when it came to the timing of Claimant's termination because:

Because the pressure – and I say “pressure,” but it's probably a bad word – the strong recommendation from two men who I had greatly respected at the League, Todd Durbin and Don Garber, the report that I had been sent the day before corroborating a lot that was going on the weeks prior that I had known about, some of which that I had investigated myself, like the run, and it was an emergent situation.

Because that phone call that I got on Sunday night [from Mr. Durbin on June 10, 2012], I mean, I didn't believe what I was hearing from Todd Durbin. And, again, you know, I've been a pretty consistent manager over 20-some-odd years. I don't knee-jerk decision make.

This was a coach that I fought pretty hard to sign and bring to the club. This was a person's livelihood that I had in my hand and, you know, undisputed coaching capabilities. So I wasn't going to make a knee-jerk decision.

But that report [MLS Report], when I received it on the 12th, was the final equation to what I was having to deal with for the six to eight weeks leading up to it.

(Hearing Trans., 588:23-589:11, 590:6-23.)

Additional Issues Uncovered and Addressed by the League During its Investigation

1. *Concussions*

228) The Medical Policies and Procedures Manual for Major League Soccer contains concussion protocols – protocols that are, generally speaking, updated annually.⁵ (Respondent Exhibit 68 at PPS0002573; Hearing Trans., 1102:7-1103:3, 1103:17-1104:5.)

229) Claimant would make light of the fact that players had concussions and, in fact, it was not uncommon for Claimant to call a player a “pussy” for having a concussion. (Hearing Trans., 479:3-18.)

230) Claimant would also tell players that they should not miss any time due to a concussion – you are weak if you can’t play through a concussion. (Hearing Trans., 971:12-21.)

231) On June 1, 2012, Mr. Foose was also made aware of a pattern of abuse directed by Claimant against players who had suffered concussions. (Hearing Trans., 711:3-7.)

232) The complaints received from Philadelphia Union players relative to Claimant and his viewpoint on concussions was summed up by Mr. Foose as follows:

Well, there are several things: a repeated suggestion that there’s no such thing [as concussions], they don’t exist, they’re not real; a repeated suggestion that they don’t have them in Germany, that players just take a pill and go on, the implication being that it’s a toughness question; the denigration of players who had suffered them for not being able to get immediately back out on the field; statements about players who are recovering from concussions and happen to be eating at a training table and saying in front of the group or some group of players why do you need to eat, you’re not even practicing, you don’t have any need for food.

⁵ Pursuant to Paragraph I(A)(9), Claimant is responsible for enforcing all League Rules applicable to players, coaching staff, trainers and doctors. (Respondent Exhibit 1.)

Those types of statements then generally creating an atmosphere where players were afraid to speak up and be honest about their symptoms for fear of the reaction and the consequences that would come down on them from those disclosures.

(Hearing Trans., 759:23-760:22.)

233) The concussion issue was a huge issue for the MLSPU and Mr. Foose:

...The concussion issue is a huge issue for us and a big issue for me personally. I had at that point just spent the prior year before that working with the League to develop a concussion protocol and those efforts have continued today.

It's a big issue in our sport. I spent yesterday actually at the White House listening to the President talk about how important this issue is and how much we need to change this sort of macho culture that can be out there with regard to this issue, that concussions have to be taken seriously... Players' lives are at risk. So my reaction was very, very strong on both of these cases that there had been a real sort of recklessness towards players' safety shown in Philadelphia.

(Hearing Trans., 711:15-712:8.)

234) Mr. Foose sits on the League's concussion committee and was part of that committee in May/June of 2012, when the issue relating to Claimant's treatment of concussions was brought to the attention of Mr. Foose and the MLSPU. (Hearing Trans., 712:10-16.)

235) Mr. Foose raised the issue relating to Claimant's treatment of concussions to the concussion committee:

...I [Mr. Foose] sent a lengthy e-mail detailing the information that I had learned, what had happened, and saying very forcefully that from my perspective we could not be successful as a concussion committee until we had removed people who had these kinds of attitudes from positions of management in the League, from coaching staffs and medical staffs, and that from my perspective this was completely unacceptable to be happening in our League.

(Hearing Trans., 712:17-713:4.)

236) Claimant's inappropriate handling of concussions — his creating of an atmosphere where concussion symptoms should be kept from the medical staff and not treated — was

addressed by the League during its investigation and included within the League's final report.
(Respondent Exhibit 27.)

2. Hazing

237) Claimant brought the idea of spanking rookie players following training camps to the Philadelphia Union, as he also spanked players when he was the head coach of DC United.
(Hearing Trans., 453:11-16, 969:8-970:21.)

238) Claimant admits that he participated in a practice following the training camps of 2010, 2011 and 2012 where players were spanked. (Hearing Trans., 382:3-10.)

239) Claimant would dip his hand in ice water and then spank the rookie players.
(Hearing Trans., 438:4-24.)

240) Claimant would also strike players with a sandal. (Hearing Trans., 970:22-971:7.)

241) He also admits that [REDACTED]
participated in the [REDACTED] training camp. (Hearing Trans., 382:15-23.)

242) Claimant physically spanked [REDACTED]
[REDACTED] (Hearing Trans., 382:15-23, 427:10-17, 552:12-25.)

243) The Philadelphia Union's CEO, Nick Sakiewicz, became aware of the "spanking" when he was shown a video of the ritual in 2011. (Hearing Trans., 526:22-527:2.)

244) As soon as he and Claimant were alone, Mr. Sakiewicz approached Claimant and told him that he did not want the "spanking" to happen again; he wanted Claimant to "cease doing it." (Hearing Trans., 527:6-19, 529:19-23.)

245) Mr. Debusschere also testified that he knew Mr. Sakiewicz had directed the Claimant to cease the "spanking." (Hearing Trans., 79:2-9.)

246) In March/April of 2012, Mr. Sakiewicz found out that, contrary to his direct order to Claimant, the rookie hazing ritual – including the spanking of [REDACTED] – had taken place at the conclusion of training camp in February of [REDACTED] (Hearing Trans., 911:9-13.)

247) On or about June 4, 2012, the MLSPU became aware of the hazing issue. (Hearing Trans., 719:5-12.)

248) Mr. Foose and the MLSPU were concerned of the hazing, finding it to be “bizarre” and “trouble[ing] by the notion that players were being physically struck as part of the hazing.” (Hearing Trans., 719:14-21.)

249) Claimant’s inappropriate hazing of rookie players was addressed by the League during its investigation and included within the League’s final report. (Respondent Exhibit 27.)

Additional Violations of Claimant’s Employment Agreement

1. *Claimant’s Applying for Other Positions while Employed by the Philadelphia Union and Making Disparaging Remarks about the Philadelphia Union*

250) At the time Claimant was hired, the Philadelphia Union was required to “buy-out” Claimant from his then current contract with United States Soccer. (Hearing Trans., 508:14-22.)

251) The CEO of the Philadelphia Union, Nick Sakiewicz, negotiated a \$75,000 buyout with Dan Flynn, the General Secretary of U.S. Soccer. (Hearing Trans., 509:3-10.)

252) The Philadelphia Union paid U.S. Soccer the \$75,000. (Respondent Exhibit 69; Hearing Trans., 509:3-10, 510:3-13.)

253) Given that it invested significant resources – including the \$75,000 payment to U.S. Soccer – to bring Claimant to the team, the Philadelphia Union had concerns about Claimant returning to U.S. Soccer while he was still under contract with the Philadelphia Union. (Hearing Trans., 510:14-18.)

254) Accordingly, the Philadelphia Union put a provision in the Employment Agreement prohibiting the Claimant from seeking employment with another professional soccer team during the time he was employed with the Philadelphia Union. (Respondent Exhibit 1; Hearing Trans., 510:24-511:16.)

255) The Employment Agreement also specifically provided that “during the Term and for twelve months thereafter, Manager and the executives of the Club shall refrain from making any disparaging remarks regarding Club or the Team, its players, management, ownership or employees or the Stadium, on the one hand, and Manger or Pino, on the other hand.” (Respondent’s Exhibit 1, at IX.)

256) On April 30, 2012, Claimant sent an email to Veljko Paunovic, which stated:

Let’s work the project together and I feel that it would be great to have you as my assistant coach wherever I & we can go. Let me know what do you think about this opportunity.

(Respondent Exhibit 15; Hearing Trans., 404:25-405:5.)

257) During his hearing testimony, Claimant was asked what he meant by “wherever I & we can go” and, in response, Claimant testified that he didn’t know – he had “no recollection whatsoever.” (Hearing Trans., 406:24-407:3.)

258) On the following day, May 1, 2012, at 9:50 a.m., Claimant sent another email to Mr. Paunovic, this time attaching his resume. (Respondent Exhibit 16; Hearing Trans., 407:15-20.)

259) Claimant sent Mr. Paunovic a resume that had been updated and included the Claimant’s experience with the Philadelphia Union. (Respondent Exhibit 16; Hearing Trans., 408:7-21.)

260) Additionally, on the last page of Claimant's resume, Claimant wrote:

My resume is enclosed for your review. Thank you in advance for your generous consideration. I may be reached at my telephone number or E-mail indicated above should You [sic] wish to contact me. I would be happy to make myself available for a professional Interview [sic] at your convenience.

(Respondent Exhibit 16; Hearing Trans., 408:25-409:5.)

261) Although the resume sent on May 1, 2012, to Mr. Paunovic was updated with his Philadelphia Union experience, at his deposition, Claimant unequivocally testified that, during the time he was employed by the Philadelphia Union, he never put together a resume or a CV.

(Respondent Exhibit 64 at 37:9-11; Respondent Exhibit 16.)

262) On his resume, Claimant does not include his Philadelphia Union address – he only includes his personal email address. (Respondent Exhibit 16.)

263) Additionally, within one (1) minute of sending his resume to Mr. Paunovic – at 9:51 a.m., Claimant sent another email to Mr. Paunovic directing Mr. Paunovic to send future emails to his “personal email address.” (Respondent Exhibit 17; Hearing Trans., 409:24-410:10.)

264) During his hearing testimony, Claimant was asked why he directed Mr. Paunovic to communicate with him at his personal email address and, in response, Claimant stated that he “ha[d] no clue.” (Hearing Trans., 410:8-12.)

265) Claimant and former-player representative and current sports broadcaster, Shep Messing, were very close and, in fact, Mr. Messing acted as Claimant's advisor during the time Claimant was employed as the head coach of DC United – another Major League Soccer team; Mr. Messing's advisor relationship was to a degree where Claimant believed it necessary to give

Mr. Messing a championship ring after DC United won the MLS championship. (Hearing Trans., 662:9-663:4.)

266) Claimant would refer players to Mr. Messing to represent. (Hearing Trans., 679:14-20.)

267) Mr. Messing also recommended Claimant to Mr. Sakiewicz for the head coaching position with the Philadelphia Union. (Hearing Trans., 663:5-20, 682:15-19.)

268) According to the testimony of Mr. Messing—an unbiased and independent witness (Hearing Trans., 692:2-8.)—in April/May of 2010, before the start of the 2010 World Cup in South Africa, Claimant contacted Mr. Messing and told him that, if the United States Men's National Soccer Team did not do well in the World Cup, he wanted to take over for Bob Bradley as Head Coach of the United States Men's National Soccer Team. (Hearing Trans., 663:21-664:11, 665:4-18.)

269) The week after the United States Men's National Soccer Team lost in South Africa, Claimant called Mr. Messing and asked Mr. Messing to speak to Sunil Gulati—President of United States Soccer—and see if Claimant could become the next Head Coach of the United States Men's National Soccer Team—he wanted to take over for Bob Bradley, who was actually still under contract at the time. (Hearing Trans., 663:21-664:19, 665:19-23.)

270) Although he was reluctant to, Mr. Messing did in fact reach out to Mr. Gulati on Claimant's behalf—specifically notifying Mr. Gulati that Claimant was interested in Bob Bradley's Head Coaching position. (Hearing Trans., 667:23-668:14.)

271) Mr. Messing also testified that, during the time Claimant was employed by the Philadelphia Union, he met with Claimant for about an hour and Claimant made the following statements to him:

... We spoke for an hour and the gist of – not the gist; that conversation was [Claimant] telling me: 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...that also was a very shocking conversation to me because he was bad mouthing and slamming a team in the League... But he was off the wall at that point saying that they're stupid, they don't have a clue, and they're broke...

(Hearing Trans., 666:13-667:7; see also 683:6-10.)

272) Claimant also specifically told Mr. Messing that “Nick [Mr. Sakiewicz] doesn't have a fucking clue”; “[t]hey don't know what they're doing. They have no money.” (Hearing Trans., 684:24-685:5, 685:18-21.)

273) Mr. Messing – again, an unbiased, independent witness – testified that the disparaging comments Claimant made about the Philadelphia Union and Mr. Sakiewicz were damaging to the reputation of the Philadelphia Union. (Hearing Trans., 692:21-693:5.)

274) In 2012, while Claimant was still employed by the Philadelphia Union, Claimant again contacted Mr. Messing, asking Mr. Messing whether he could find Claimant a coaching position in Europe. (Hearing Trans., 668:15-25, 669:10-25, 670:2-10.)

275) In particular, Claimant asked Mr. Messing to investigate a coaching position with the Polish National Team, a coaching opportunity in Scotland, and coaching possibilities in England. (Hearing Trans., 670:16-671:2.)

276) In 2012, Claimant also asked Mr. Messing for the contact information of sports agent, Michael Morris, as he thought Mr. Morris would be able to help Claimant find a coaching position in Europe. (Hearing Trans., 669:2-9, 671:16-672:4.)

277) Mr. Messing did provide Claimant with the contact information of sports agent Michael Morris. (Hearing Trans., 669:2-9.)

278) According to the testimony of an unbiased and independent witness—sports agent Michael Morris—Claimant, during the time he was employed by the Philadelphia Union, contacted Mr. Morris on 3 or 4 occasions asking Mr. Morris to find him a coaching position in the Emirates or in Europe. (Hearing Trans., 646:19-647:5.)

279) Additionally, according to Mr. Morris, Claimant, during the time he was employed by the Philadelphia Union, also sent Mr. Morris his CV—his resume. (Hearing Trans., 646:19-647:8.)

280) As requested by Claimant—again, during the time he was employed with the Philadelphia Union—Mr. Morris also testified that he actually reached out on Claimant's behalf to clubs in the U.K., America, Dubai and Europe—informing these clubs that Claimant was looking for a coaching position. (Hearing Trans., 647:15-648:5.)

281) As several of the clubs Mr. Morris reached out to on behalf of Claimant asked for a copy of Claimant's CV/resume, Mr. Morris sent Claimant's CV/resume to the clubs. (Hearing Trans., 648:6-9.)

282) On or about May 24, 2012, Mr. Messing, again, a former teammate and acquaintance of Mr. Sakiewicz, called Mr. Sakiewicz unsolicited and informed him that Claimant: (1) sought employment with the United States Men's National Soccer; (2) was actively seeking employment in Europe; (3) asked for the contact information of Michael Morris, a well-known sports agent; and (4) was making disparaging remarks about Mr. Sakiewicz and the Philadelphia Union team—saying that the team is broke and that ownership doesn't have a clue as to what they are doing. (Hearing Trans., 565:18-566:5, 567:2-568:4, 672:5-674:10.)

2. *Claimant's Breaching of the Confidentiality Provision within the Employment Contract*

283) In executing the Employment Agreement, Claimant and the Philadelphia Union agreed to: (1) "treat all information, no matter how obtained, regarding Club, the Team, the Stadium, the Stadium operator, any affiliate of the foregoing and their respective owners, officers, employees and agents and the Team's players, as well as regarding the League and its affiliates, other teams and other players, on the one hand, and the Manager and Pino, on the other hand, as well as this Agreement, the Pino Agreement and the negotiations related thereto, with the strictest confidentiality"; and (2) to not disclose such confidential information to any third party including the media, or otherwise use such confidential information" (hereinafter, the "Confidentiality Provision"). (Respondent's Exhibit 1, at IX) (emphasis added.)

284) Claimant breached this Confidentiality Provision when he – also in blatant disregard of the Arbitration Provision within the Employment Agreement – filed the Eastern District of Pennsylvania lawsuit against the Philadelphia Union attaching a copy of the Employment Agreement, the 2011 Extension Agreement, and the June 13, 2012 Termination Letter. (See "Complaint Seeking Expedited Declaratory Judgment," marked as part of Respondent's Exhibit 72.")

285) The Employment Agreement explicitly prohibited Plaintiff from disclosing the Employment Agreement and/or any other information – no matter how obtained – regarding the Club, Team, League on the one hand and Claimant on the other hand. (Respondent's Exhibit 1, at IX.)

286) As a result of Claimant's filing of the Eastern District Complaint, ignoring the unambiguous arbitration provision ultimately enforced by the Court and without filing it under seal, information protected by the Confidentiality Provision became public – affecting the

Philadelphia Union – the media wrote about it, fans opined about it and there was a lot of traffic on social media. (Respondent Exhibit 72; Hearing Trans., 919:18-22, 921:14-20, 934:14-25.)

3. *Additional League Rule Violations*

287) As the head soccer coach of the Philadelphia Union, Claimant is charged with knowing League Rules, including without limitation ensuring that the Philadelphia Union fields a team consistent with such rules (defined broadly to include all constitutions, bylaws, rules, regulations, policies, guidelines, directives, instructions, rulings, orders and agreements). (Respondent Exhibit 1; Hearing Trans., 498:13-23, 499:9-16.)

288) On July 21, 2011, Claimant started an Academy Player in an exhibition game against Everton FC, an English Premier League team. (Hearing Trans., 539:25-540:8.)

289) It was a violation of the MLSPU rules to play an Academy Player in an exhibition game. (Hearing Trans., 540:3-20.)

290) The following day, on July 22, 2011, the Executive Vice President of Major League Soccer, Todd Durbin, sent an email to all MLS Coaches and all MLS Technical Directors providing them with a Memo outlining that all Trialist and Academy Players are not allowed to participate in gated exhibition games (hereinafter, the “Memorandum”). (Respondent Exhibit 37; Hearing Trans., 420:10-22.)

291) Claimant admits that he received the email from Todd Durbin forwarding the Memorandum. (Respondent Exhibit 37; Hearing Trans., 420:10-22, 498:13-23.)

292) After receiving the email with the Memorandum, Diego Gutierrez, who was hired by Claimant as the Sporting Director, contacted the Executive Director of the MLSPU, Robert Foosse, and asked whether the Philadelphia Union could use Academy Players for their game

against Real Madrid. (Respondent Exhibit 37; Hearing Trans., 539:14-18.) Mr. Foose informed Mr. Gutierrez that he could not – it was prohibited. (Respondent Exhibit 37.)

293) Despite his receipt of the Memorandum and the conversation Mr. Gutierrez had with Mr. Foose, Claimant ignored a League rule and played an Academy Player during the Real Madrid game. (Respondent Exhibit 37; Hearing Trans., 497:8-24, 540:21-25, 540:21-25.)

294) Claimant's decision to play an Academy Player during the Real Madrid game after receipt of the Memorandum "caused a lot of angst around the League." (Respondent Exhibit 37; Hearing Trans., 540:21-541:24.)

295) On August 25, 2011 – approximately one month after Claimant allowed an Academy Player to play against Real Madrid, Claimant allowed a Trialist player to play in a gated exhibition game against the Harrisburg Islanders. (Respondent Exhibit 64 at 112:3-25; Hearing Trans., 419:6-8.)

296) Claimant's playing of the trialist player in the gated exhibition game against the Harrisburg Islanders was his second violation of the Memorandum sent by Mr. Durbin – second violation is approximately one month since the issuance of the Memorandum. (Respondent Exhibit 38.)

297) Claimant spoke with Mr. Durbin, informing Mr. Durbin that he understood it was a violation for the unsigned (Trialist) player to participate in the gated exhibition game, but that he decided to play the player anyway. He also informed Mr. Durbin that he disagreed with the rule and would do it again. (Respondent Exhibit 38.)

298) As a result of Claimant's action in blatantly ignoring a League Rule, the Commissioner of Major League Soccer, Don Garber, fined the Philadelphia Union \$25,000. (Respondent Exhibit 38; Hearing Trans., 542:5-10.)

299) The Philadelphia Union was able to get the \$25,000 fine reduced to \$15,000 through negotiation with the League, but the other \$10,000 was held in abeyance in case there were any future violations. (Respondent Exhibit 42; Hearing Trans., 542:22-25.)

300) The \$15,000 fine was ultimately billed to the Philadelphia Union on February 22, 2012. (Respondent Exhibit 43; Hearing Trans., 542:18-25.)

301) The \$10,000 that was held in abeyance was ultimately assessed against the Philadelphia Union. (Hearing Trans., 543:4-7.)

302) Within the Philadelphia Union organization, the Team Manager is responsible for the signing of all Homegrown Players. (Hearing Trans., 555:22-556:4.)

303) On or about May 1, 2012, the League concluded that the Philadelphia Union violated the League's Home Grown Player rule and sanctioned it as follows: (1) loss of \$75,000 in allocation money; (2) a \$35,000 fine payable immediately; and (3) should the player be transferred – which is a determination that will now solely be made by the League - the League will retain 2/3's of the transfer revenue with the Philadelphia Union only receiving 1/3. (Respondent Exhibit 44; Hearing Trans., 553:21-554:10.)

304) The team was also fined \$5,000 for Claimant's leaving of the Technical Area during the April 21, 2012, game against Chivas USA. (Respondent Exhibit 7; Hearing Trans., 556:13-22.)

305) As a result of Claimant's violations of League Rules, the Philadelphia Union was required to pay \$55,000 in fines from February 22, 2012, through April 26, 2012. (Respondent Exhibit's 7, 43, 44; Hearing Trans., 556:23-557:15.)

4. Insubordination

306) In or around August of 2011, Vice President of Operations, Rick Jacobs, came up with the idea of inviting all the high school coaches to PPL Park for a symposium where the Philadelphia Union could share its plan for rolling out its youth soccer program. (Respondent Exhibit 46; Hearing Trans., 532:19-25.)

307) Mr. Sakiewicz thought it was a good enough idea to warrant a collaborative, brainstorming session and asked Mr. Jacobs to send sent out an email. (Respondent Exhibit 46; Hearing Trans., 533:2-8.)

308) Mr. Jacobs agreed and sent such an email to a variety of people, mistakenly failing to copy Claimant on the email. (Respondent Exhibit 46; Hearing Trans., 533:2-8.)

309) Although Mr. Jacobs apologized for not including Claimant on the email, Claimant became very upset – inciting a significant amount of back-and-forth emails. (Respondent Exhibit 46; Hearing Trans., 533:14-16, 534:2-6, 535:14-22.)

310) Mr. Sakiewicz repeatedly asked Claimant to meet with him to discuss the issue of Mr. Jacobs leaving him off of the email, but Claimant refused to meet with him. (Respondent Exhibit 46; Hearing Trans., 535:14-536:7.)

311) Rather than meet with Mr. Sakiewicz, Claimant had his attorney send Mr. Sakiewicz correspondence advising Mr. Sakiewicz that he is not required to report him; rather, he reports to the owner of the Philadelphia Union, Jay Sugarman. In other words, Claimant was telling Mr. Sakiewicz – the CEO of the Philadelphia Union – that he does not have to listen to him. (Respondent Exhibit 47; Hearing Trans., 536:8-25.)

312) Mr. Sakiewicz responded to Claimant, citing to the pertinent provisions of the Employment Agreement clearly illustrating that Claimant reported to Mr. Sakiewicz. (Respondent Exhibit 48; Hearing Trans., 537:2-17.)

313) Additionally, although Mr. Sakiewicz – as corroborated by Mr. Debusschere – directed Claimant to cease spanking rookie players (hazing), he continued to do it – violating a direct order of Mr. Sakiewicz. (See, Facts 242-245, *supra*.)

Claimant's Actions Having a Negative Impact on Integrity, Reputation and Goodwill of the Philadelphia Union

314) Claimant's actions during the April 21, 2012 Chivas USA game were "out of control" and significantly embarrassing to the Philadelphia Union. As Mr. Sakiewicz testified:

It was more than infuriating...it was alarming, it was embarrassing. I know all the owners in the League, including Mr. Anschutz, whose name is on the trophy, who I worked for for six years, who are watching this, and the first thing that pops in my head is: What kind of team is Nick Sakiewicz running? It's, excuse my French, a shit show.

And this was more than just heat of the moment, coach running onto the field, players engaging in a fight. This was the beginnings of a brand that Jay and I did not want to have as a club and it was hurtful, it was disappointing, it was alarming, and it was tough to watch.

(Hearing Trans., 558:5-18, 630:23-631:16.)

315) Claimant's actions also reflected in a materially adverse manner on the integrity, reputation and goodwill of the Club and the Team, as evidenced by the announcers' reaction to Claimant's actions:

And Peter Nowak lost his mind there. Yeah, he should be sent off. That's inexcusable. Inexcusable for a head coach to act in this manner.

...and that is what Baldomero Toledo is telling him. It's like: What's your justification? Just walk off. He's telling him: Peter, just go.

...Look at Peter Nowak. See, that's why he gets sent off. What are you doing on the field?

(Hearing Trans., 391:7-10, 15-17, 392:15-17.)

316) Claimant actions during the April 21, 2012 Chivas USA game further did not comport with Philadelphia Union policies and procedures in at least two respects. As Mr. Sakiewicz explained:

...There is our purpose statement, which I alluded to earlier, which lays out a lot of detail about things like the brand, our core beliefs, our greatest imaginable challenge, which is to become one of America's most admired soccer brands; and then there's an employee manual. And then, of course, there's [Claimant's] contract, which addresses a lot of those responsibilities, roles, duties, and things that we expect out of [Claimant].

(Hearing Trans., 637:12-638:3.)

317) Claimant actually acknowledged that he received negative feedback as a result of his actions during the April 21, 2012 game against Chivas USA. (Hearing Trans., 384:15-385:6.)

318) Additionally, the findings made by the MLS relative to Claimant – detailed within the MLS Report – had a significant negative impact on the position/posture of the Philadelphia Union with the League and the MLSPU. Mr. Sakiewicz specifically testified:

Q. Was the June 12th, 2012, report embarrassing to you?

A. That would put it lightly...It was beyond embarrassing.

Q. Did you feel like it had a detrimental impact on the team's position or posture with the League and the Players Union?

A. No question. It had a negative impact on the team's position in the League; with other owners who are our partners; for me personally and my reputation with the commissioner; senior executives at the League; other members; the President of Soccer United Marketing, Kathy Carter, who I had launched the League with; to multiple, multiple people. It was a very, very difficult thing to read.

(Hearing Trans., 591:2-17.)

319) Mr. Sakiewicz also had concerns about Claimant's actions affecting the organization, the fans, the sponsors, broadcast partners, affiliates, and investors. (Hearing Trans., 916:25-917:15.)

The Termination of the Employment Agreement

320) On June 13, 2012, at approximately 7:31 a.m., Nick Sakiewicz sent Claimant an email informing Claimant that he received a memo from the league concerning an investigation the league has been conducting and specifically outlining several of the findings made by the League. (Respondent Exhibit 34; Hearing Trans., 402:15-403:7, 582:15-25.)

321) Specifically, the June 13, 2012 email from Mr. Sakiewicz to Claimant notified Claimant of the following findings made by the League:

- Claimant jeopardized the health and safety of the players by restricting access to water during training;
- Claimant jeopardized the health and safety of injured players by requiring them to participate in training activities against the advice of the team medical staff;
- Claimant jeopardized the health and safety of the players by creating an atmosphere where concussion symptoms should be kept from the medical staff and not treated;
- Claimant engaged in inappropriate physical contact with rookie players as part of an annual "hazing";
- Claimant interfered with the players right to contact the MLSPU with concerns; and
- Claimant created an overall "culture of fear" where players did not believe they had the ability to raise and address concerns regarding their work environment without retribution.

(Respondent Exhibit 34; Hearing Trans., 583:5-10.)

322) Within the June 13, 2012 email, Mr. Sakiewicz also asked Claimant to meet him in his office at 9:00 a.m., to discuss the League's findings in detail. (Respondent Exhibit 34; Hearing Trans., 402:15-403:7, 583:2-4.)

323) Mr. Sakiewicz was "anxious" to meet with Claimant to discuss the findings of the League and to give Claimant an opportunity to respond. (Hearing Trans., 904:19-25.)

324) Claimant did in fact meet at the office of Mr. Sakiewicz on June 13, 2012, at approximately 9:00 a.m. (Hearing Trans., 151:13-21, 402:15-403:7, 583:11-13, 586:11-15.)

325) Present at the June 13, 2012 meeting was Claimant, Mr. Sakiewicz, and Mr. Debusschere. (Hearing Trans., 110:17-22, 583:14-17.)

326) The meeting lasted approximately 25-30 minutes. (Hearing Trans., 113:20-23, 584:4-11.)

327) During the meeting, Mr. Sakiewicz went through the six League findings with Claimant – as summarized in Mr. Sakiewicz's June 13, 2012 email – giving Claimant as much time as he wanted to discuss each finding. (Respondent Exhibit 34; Hearing Trans., 114:19-116:6, 117:8-119:6, 583:25-584:15, 907:2-5.)

328) During their discussion of the six League findings, Claimant was asked whether the findings were true and his response was simply "this isn't true" and "this is bullshit"; he did not offer any type of a substantive response to suggest that the League's findings were untrue. (Hearing Trans., 584:16-585:7, 915:25-916:7.)

329) Mr. Sakiewicz had previously discussed several of the issues, including the players' interference issue with Claimant on multiple occasions prior to the June 13, 2012 meeting. (Hearing Trans., 887:11-18.)

330) Mr. Sakiewicz's plan for the meeting with Claimant was explained as follows:

My intention was to share the document with him that we drafted for his termination that outlined six points [Document 36] and went through each point diligently with him. And if he would have brought...concerns/issues...objections/proof, anything in that meeting, Mr. Haines, I'm a reasonable guy, I hired [Claimant]...to a long-term agreement, I wanted to have a long run with [Claimant] and building our team, I would have

listened. I would have given him 48 hours to explain each and every issue. But unfortunately the meeting lasted 25 or 30 minutes.

(Hearing Trans., 912:24-913:13.)

331) Claimant acknowledged during his testimony that, on the date of his termination, he was provided with a copy of the termination letter and made aware of issues within the termination letter. (Hearing Trans., 200:14-201:11.)

332) On June 13, 2012, at 9:33 a.m. – immediately after his June 13, 2012 meeting with Claimant concluded – Mr. Sakiewicz sent an email to the Commissioner of Major League Soccer, Don Garber, informing him that Claimant had been terminated. (Respondent Exhibit 31; Hearing Trans., 586:8-20.)

333) In response, Mr. Garber sent Mr. Sakiewicz an email asking “[h]ow did [Claimant] handle it?” (Respondent Exhibit 31; Hearing Trans., 586:8-24.)

334) Mr. Sakiewicz responded to Mr. Garber’s inquiry, informing him that Claimant acted – in typical fashion – very poorly and blaming everyone else. (Respondent Exhibit 31; Hearing Trans., 586:21-587:3.)

335) During the June 13, 2012 meeting, Claimant was also provided with a copy of a termination letter that advised Claimant that the Philadelphia Union was exercising its discretionary right to terminate the Employment Agreement, pursuant to Paragraph III(A), as a result of:

- Claimant’s various breaches of League Rules (including the League’s CBA), including physical confrontations with players during a game resulting in a fine and multi-game suspension, interfering with the rights of players to contact the MLSPU, subjecting players to inappropriate hazing activities, and engaging in behavior that put the health and safety of the players at risk;
- Claimant’s 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 the Philadelphia Union and its management;

- Claimant's demonstrating gross negligence, including putting the health and safety of players at risk by requiring injured players to participate in strenuous training activities, not allowing players to have water during such activities, ignoring the advice of the athletic trainers regarding which players are healthy enough to practice or play in games and creating an atmosphere where medical issues should be hid from medical staff;
- Claimant's committing actions that have reflected in a materially adverse manner on the integrity, reputation and goodwill of the Philadelphia Union (in the eyes of the League, U.S. Soccer, current and potential players, sponsors and fans);
- Claimant's multiple incidents of insubordination with respect to the Chief Executive Officer;
- Claimant's various material breaches of Team Rules, including creating a hostile work environment and culture of fear for players and other front office employees by orally berating and physically intimidating fellow employees.

(Respondent Exhibit 36; Hearing Trans., 111:2-4, 113:16-19.)

336) After walking Claimant through the reasons surrounding the Philadelphia Union's decision to exercise its discretionary right to terminate the Employment Agreement, Claimant was provided with two options: (1) he would be presented with an executed termination letter; or (2) he could sign a mutually agreeable separation agreement and release.

(Hearing Trans., 111:5-10, 119:8-16.)

337) Claimant was then asked whether he had any questions and Claimant simply asked that the termination letter and separation agreement he sent to his attorney, William Daluga. (Hearing Trans., 111:11-14, 119:8-16.)

338) At Claimant's request, later that same day – on June 13, 2012 – Mr. Debusschere sent both the termination letter and the proposed Separation Agreement to Mr. Daluga.

(Respondent Exhibit 63; Hearing Trans., 111:11-112:13.)

339) Approximately three to four weeks later, Claimant, through his counsel, notified the Philadelphia Union that he would be filing suit in Federal Court. (Hearing Trans., 113:1-8.)

340) As a result, the Philadelphia Union formally issued the termination letter to Claimant. (Hearing Trans., 113:1-8.)

Additional Actions Taken by Claimant that Had a Negative Impact on the Integrity, Reputation and Goodwill of the Philadelphia Union

341) The MLS Report (Respondent Exhibit 27) and the Termination Letter (Respondent Exhibit 26) were confidential documents, not made public by the Philadelphia Union; in fact, the Philadelphia Union attempted to keep everything confidential – for the good of Claimant, the Philadelphia Union and the League. (Hearing Trans., 919:18-22, 921:7-20, 922:9-11, 933:13-19.)

342) Information regarding the instant litigation – including the reasons for the termination of Claimant's employment – only became public because Claimant attached the termination letter to a pleading he filed in the United States District Court for the Eastern District of Pennsylvania. (Respondent Exhibit 72; Hearing Trans., 919:18-22, 921:14-20, 934:14-17.)

343) As a result of Claimant making this matter public – by attaching confidential documents to public filings – and errantly pursuing litigation as opposed to Arbitration – the fans and sponsors of the Philadelphia Union were affected – the media wrote about it, fans opined about it and there was a lot of traffic on social media. (Hearing Trans., 934:18-25.)

Claimant believes and has alleged in Court Filings that the MLS/MLSPU ordered his firing

344) During the pendency of the instant Arbitration, Claimant filed a separate lawsuit in the United States District Court for the Eastern District of Pennsylvania against the MLS and the MLSPU. (Respondent Exhibit 73.)

345) Claimant alleges in such litigation that his firing was ordered by Major League Soccer. (Respondent Exhibit 73; Hearing Trans., 1011:7-11.)

Claimant's Inconsistent/Contradicted testimony

346) Claimant testified that he did not "personally take water bottles away from the players" or "physically take anything out of anybody's hands." (Hearing Trans., 211:6-11, 211:23-25.)

347) ██████████ testified that he attempted to drink out of an individual, disposable, single use water bottle, but Claimant took it out of his hands and threw it to the side. (Hearing Trans., 466:3-10.)

348) Claimant testified that he did not "throw any bottles up into the woods." (Hearing Trans., 361:10-12.)

349) ██████████ testified that he specifically witnessed Claimant take the water bottles and hide them in the woods – telling players "you guys don't need water." (Hearing Trans., 96222-963:4, 966:10-16.)

350) Interestingly enough, Claimant later testified that he did take the water as described by ██████████ – contradicting his own testimony. (Hearing Trans., 1258:16-22.)

351) Claimant testified that, subsequent to the May 31, 2012 run, he did not limit the players to one water bottle per practice. (Hearing Trans., 216:18-25, 217:19-20.)

352) However, two players and the Assistant Athletic Trainer all testified that Claimant did in fact place volume water limitations on the players during a practice subsequent to the May 31, 2012 trail runs. (██████████ – Hearing Trans., 973:21-974:10; ██████████ – Hearing Trans., 1049:8-1050:9; Steve Hudyma – Hearing Trans., 1162:17-21.)

353) Claimant testified that he did not advise Mr. Rushing that the medical staff would no longer make the determination as to which players are healthy enough to play in each game or

participate in the training sessions – such determinations would now be made by the Claimant. (Hearing Trans., 219:22-220:9, 366:16-367:4.)

354) Mr. Rushing, however, specifically testified that Claimant explicitly informed him that neither Mr. Rushing nor the team doctors were going to make decisions regarding the ability of a player to train or place in a game; these decisions were now going to be made by Claimant. (Respondent Exhibit's 13 and 27; Hearing Trans., 1075:16-20.)

355) Claimant testified that Philadelphia Union player [REDACTED] was able to play in the June 5, 2012 game – only five days following the May 31st run. (Hearing Trans., 371:7-10.)

356) [REDACTED] testified that he was unable to play until at least sixteen (16) days after the May 31, 2012 run. (Hearing Trans., 1039:12-23.)

357) Claimant testified that he was never told to cease the hazing. (Hearing Trans., 190:20-21, 1241:6-8.)

358) Mr. Sakiewicz, however, testified that he approached Claimant and explicitly told him that he wanted the hazing to cease immediately; Mr. Debusschere also testified that Claimant was told to stop the hazing. (Hearing Trans., 79:2-9, 527:6-19, 529:19-23.)

359) Claimant testified unequivocally that he never told the players they were not allowed to bring issues to the MLSPU. (Hearing Trans., 232:11-14.)

360) However, several players, including [REDACTED] and [REDACTED] specifically testified that Claimant told the players not to contact the MLSPU. (Hearing Trans., 434:4-23, 451:22-452:3, 476:18-477:8, 949:3-9, 950:14-22.)

361) Claimant also denied calling Mr. [REDACTED] and/or Mr. [REDACTED] and asking them who reported the [REDACTED] issue to the MLSPU. (Hearing Trans., 380:18-381:14.)

362) Both Mr. [REDACTED] and Mr. [REDACTED] however, testified unequivocally that Claimant did in fact call them and ask them who reported the [REDACTED] issue to the MLSPU – the call to Mr. [REDACTED] was actually confirmed by another Philadelphia Union player, [REDACTED] (Hearing Trans., 435:14-436:12-19, 436:10, 477:23-478:3, 951-5-21.)

363) Claimant testified that he did not contact Robert Foose, the Executive Director of the MLSPU, and ask him to disclose the identity of the Philadelphia Union players who contacted MLSPU regarding the [REDACTED] issue – actually testifying that he never had a phone conversation with Mr. Foose during his time with the Philadelphia Union. (Hearing Trans., 232:6-233:10.)

364) Mr. Foose, however, clearly testified that Claimant did in fact call him, telling Mr. Foose that he did not think it was appropriate for players to be talking to the MLSPU and asking Mr. Foose to identify the player that brought the [REDACTED] issue to his attention – to the attention of the MLSPU. (Hearing Trans., 704:23-705:18.)

365) Claimant testified that, during his employment with the Philadelphia Union, he did not look to see what other employment opportunities were out there. (Hearing Trans., 241:21-25.)

366) Both Michael Morris and Shep Messing, however, both testified that Claimant reached out to them during the time he was employed as the head coach of the Philadelphia Union in an effort to find other employment. (Hearing Trans., 646:19-647:5, 663:21-664:19, 665:4-23, 668:15-25, 669:2-25, 670:2-10, 671:16-672:4.)

367) Claimant also testified that he never told Shep Messing that the CEO of the Philadelphia Union, Nick Sakiewicz, did not know what he was doing and/or that the Philadelphia Union did not have any money. (Hearing Trans., 401:18-402:3.)

368) Mr. Messing, however, specifically testified that Claimant made both of these statements to him. (Hearing Trans., 666:13-667:7, 684:24-685:5, 685:18-21.)

369) Claimant also initially testified that Shep Messing did not bring him to the United States as a player (Hearing Trans., 244:6-8), but, a few moments later, changed his testimony and explicitly stated “[a]nd I communicate that to Mr. Messing, who was very upset that he brought me here [to the United States], [yet] he didn’t even have commission for my playing time here in United States, and I didn’t give him anything.” (Hearing Trans., 245:18-22.)

370) Claimant testified that Mr. Sakiewicz reached out to him regarding the trade of [REDACTED] (Hearing Trans., 234:17-21.)

371) Mr. Sakiewicz not only testified that he had no involvement in the trading of [REDACTED] but he also emphatically testified that he “never in [his] 18 years of management ever told a manager to trade a player.” (Hearing Trans., 563:4-12.)

372) Claimant testified that he paid \$25,000 to the United States Soccer Federation in order to take the head coaching position with the Philadelphia Union. (Hearing Trans., 270:15-22.)

373) When presented with the cancelled checks illustrating that the Philadelphia Union actually paid the full \$75,000 required to release Claimant from his contract with the United States Soccer Federation, Claimant testified that the Philadelphia Union initially paid the \$75,000, but that it later deducted \$25,000 from his paycheck. (Hearing Trans., 376:17-377:2.)

374) The uncontroverted documents produced in this matter illustrates that the Philadelphia Union paid the full \$75,000 to release Claimant from his contract with the United States Soccer Federation (Respondent Exhibit 72) and that the Philadelphia Union never

deducted \$25,000 from the payments it made to Claimant. (Respondent Exhibit 73; Hearing Trans., 1172:19-1174:24.)

375) In fact, the express language of the Employment Agreement confirms that the Philadelphia Union paid the entire \$75,000 – specifically outlining that Claimant would have to reimburse the Philadelphia Union for the \$75,000 it paid to U.S. Soccer Federation if Claimant terminated the Employment Agreement prior to the start of the 2010 MLS season. (Respondent Exhibit 1, at IV(D).)

376) Claimant testified that he did not have his UEFA Pro Coaching license as of June 1, 2009, and that he did not have it as of the date of his hearing testimony. (Hearing Trans., 264:5-15.)

377) However, Claimant testified that, prior to his employment with the Philadelphia Union – when he was working with the U.S. Soccer Federation – he went to Brazil for purposes of obtaining his UEFA Pro license. (Hearing Trans., 266:11-19.)

378) The resume Claimant produced during discovery further illustrates that Claimant obtained (or claimed to obtain) a UEFA Pro Coaching License in Brazil in 2009. (Respondent's Exhibit 22, at P000098.)

379) Claimant testified that he did not push anyone during the April 21, 2012 game against Chivas USA – the game in which Claimant received a red card and was ejected for “initiating contact with an opposing player.” (Hearing Trans., 393:18-394:16.)

380) Not only did Major League Soccer fine and suspend Claimant for initiating contact with an opposing player, but Respondent Exhibit 6, which is a video of Claimant during

the April 21, 2012 Chivas USA game, unquestionably illustrates that Claimant actually physically pushed the opposing team's goalkeeper. (Respondent Exhibit 6 at 1:53 minute.⁶)

381) Claimant denies that he made certain statements after the Toronto game – specifically denying that he said: (1) he was going to “see who falls out of the tree and who’s left standing”; (2) “I’ve traded the leading scorer and I’ve traded the [REDACTED]”; and (3) “you can’t do anything to me, I’m the GM, the manager, and I can never get fired.” (Hearing Trans., 318:18-319:3, 319:19-22, 320:7-16.)

382) The testimony of the players, however, clearly establishes that Claimant made the following statements to the players after the Toronto game:

...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.

(Hearing Trans., 1030:17-1031:13.)

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.

(Hearing Trans., 954:21-955:4, 956:3-11, 460:8-19.)

Mitigation

383) The Employment Agreement contains a mitigation clause, Paragraph III(D), which explicitly provides as follows:

Club shall have the right to mitigate and set off against its obligations to pay such Severance Payments any amounts Manager and/or Pino earns or receives as a result of any services Manager renders for, or rights granted by Pino to, another person or entity, whether as an employee, consultant or independent contractor, subsequent to such termination and through December 31, 2015⁷ (the “Severance Period”), regardless of whether such

⁶ Although it happens quickly, if you pause the video at 1 minute and 53 seconds, it is clear that Claimant pushes the opposing team's goalkeeper. This is the basis for the actions taken by Major League Soccer against the Philadelphia Union and the Claimant.

⁷ The Employment Agreement initially stated December 31, 2012, but this was extended by the 2011 Extension Agreement. (Respondent Exhibit 5.)

services or rights are comparable in nature to the employment hereunder or to the rights granted under the Pino Agreement or soccer related.

(Respondent Exhibit 1.)

384) Accordingly, any amount deemed owed by the Philadelphia Union to the Claimant cannot actually be calculated until it is determined whether Claimant received any compensation or other monies through December 31, 2015.

COUNTERCLAIMS

385) On or about June 1, 2009, the Philadelphia Union and Claimant's Limited Liability Company, Pino Sports, entered into an Agreement whereby Claimant agreed to provide the Philadelphia Union with his marketing rights – to use Claimant's photographs, quotations, name, and image and likeness for publicity or promotional purposes (hereinafter, the "Pino Agreement"). (Respondent's Exhibit 2.)

386) On or about March 15, 2011, the parties entered into an Advance and Pledge Consent Agreement wherein the Philadelphia Union agreed to advance Claimant the remainder of the 2011 fee and the entire 2012 fee the Philadelphia Union owed to Claimant pursuant to the Pino Agreement. (Respondent Exhibit 4; Hearing Trans., 277:12-15, 278:5-12, 280:21-23.)

387) The Parties agreed that, of the total amount advanced to Claimant pursuant to Respondent Exhibit 4, \$46,680.33 was unearned at the time Claimant's employment was terminated. (Respondent Exhibit 4; Hearing Trans., 1171:3-18.)

388) The Parties also agreed that the interest rate applicable to Claimant's unearned advance of \$46,680.33 is 8%. (Hearing Trans., 1171:3-18.)

389) The December 20, 2011 Extension Agreement also detailed a \$60,000 loan that was made by the Philadelphia Union to Claimant. (Respondent Exhibit 5; Hearing Trans., 303:18-23.)

390) The Parties agreed that, as of the date Claimant's employment was terminated, \$53,717 of the \$60,000 loan remains outstanding. (Respondent Exhibit 5; Hearing Trans., 1170:2-25; 1171:15-18.)

391) The Parties also agreed that the interest rate applicable to the unpaid loan balance is 7%. (Hearing Trans., 1170:2-25, 1171:15-18.)

392) In total, the Philadelphia Union's counterclaims – what Claimant agrees is outstanding relative to the loan and advance provided to him by the Philadelphia Union – equals \$100,397.33, plus interest attorneys' fees and costs.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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Dated: December 5, 2014

CERTIFICATE OF SERVICE

I hereby certify that I am this day filing a copy of Philadelphia Union's Proposed Statement of Undisputed Material Facts by Electronic Mail with the American Arbitration Association and serving a copy via electronic mail and United States First Class Mail, Postage Prepaid, upon the persons indicated below:

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/s/ Thomas G. Collins
Thomas G. Collins, Esquire
*Attorneys for Respondent/
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Date: December 5, 2014