EXHIBIT "F"

AMERICAN ARBITRATION ASSOCIATION

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

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

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

I. ARGUMENT ON REPLY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Respondents Did Not Act In Good Faith

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

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

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

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

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

D. Respondents Have Overstated Their Case and Overblown the Facts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Mitigation

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

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

II. COUNTER-STATEMENT OF UNDISPUTED FACTS

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

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

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

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

Similarly misleading, Paragraph 94 reads as follows:

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

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

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

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

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

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

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

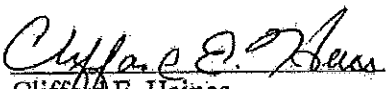
I. CONCLUSION

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

Respectfully submitted

HAINES & ASSOCIATES

Date: December 23, 2014



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