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**IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH**

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MIKE PETKE,  
  
Plaintiff,

vs.

UTAH SOCCER, LLC, d/b/a REAL SALT  
LAKE, a Utah limited liability company,  
  
Defendant.

**MEMORANDUM OF LAW IN  
OPPOSITION TO DEFENDANT'S  
MOTION TO COMPEL ARBITRATION  
AND DISMISS OR, IN THE  
ALTERNATIVE, STAY THE  
PROCEEDINGS  
[HEARING REQUESTED]**

Civil No. 190907265  
Judge Patrick Corum

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Mike Petke files this Memorandum of Law in Opposition to Defendant Utah Soccer, LLC d/b/a Real Salt Lake, a Utah limited liability company's ("RSL") Motion to Compel Arbitration and Dismiss or, in the Alternative, Stay the Proceedings ("Motion to Compel"), and states:

### **I. BASIS OF OPPOSITION AND PREFERRED DISPOSITION**

If there was an actual agreement to arbitrate as RSL argues in its pending Motion to Compel, RSL would have filed a concise brief citing the arbitration provision and requesting the Court to enforce the parties' arbitration agreement. RSL didn't file such a brief because there is no arbitration clause in any of Mr. Petke's contracts with RSL. Instead, RSL filed an 18-page motion spinning convoluted factual and legal arguments that are ultimately untenable because RSL wants to hide its egregious misconduct from the public and a jury by sweeping Mr. Petke's lawsuit under a rug of arbitration.

Make no mistake, Mr. Petke's lawsuit is no publicity stunt as RSL alleges in its opening brief. If this lawsuit were a ruse, RSL would not have recently sacked a material fact witness—RSL's now former General Manager Craig Waibel—whose emails and statements attacking RSL's decision to fire Mr. Petke are quoted throughout Mr. Petke's complaint. Furthermore, if Mr. Petke's lawsuit was merely a sham, RSL would be filing pleadings addressing the merits of Mr. Petke's lawsuit rather than dodging them with a motion to compel arbitration despite being unable to identify any arbitration clause in the contracts between these parties.<sup>1</sup>

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<sup>1</sup> In fact, RSL is so concerned about the potential of a jury of Mr. Petke's peers deciding this case that RSL's attorney issued a letter to Major League Soccer Commissioner Don Garber yesterday afternoon, October 14, 2019, pleading for the Commissioner to immediately enter "an order commencing arbitration by setting a schedule to conduct the arbitration." (See Exhibit ("Ex. C") attached hereto.) If the Court denies the Motion to Compel, which it should, Mr. Petke also requests the Court to determine that Mr. Petke is relieved from obeying any order issued by Commissioner Garber purportedly compelling the parties to arbitrate Mr. Petke's claims filed in this Court.

In this Memorandum in Opposition, Mr. Petke raises five independent reasons why the Court should deny RSL's Motion to Compel. First, RSL fails to adduce admissible evidence of any agreement between Mr. Petke and RSL to arbitrate their disputes. Instead, RSL presents the Court with an unsigned, undated, and unauthenticated document titled "MLS Constitution as of January 1, 2017" ("Alleged Constitution") marked as Exhibit B to the Motion to Compel. The Alleged Constitution should be stricken and disregarded because it violates the parol evidence rule, constitutes rank hearsay, and is not properly authenticated. If Exhibit B to the Motion to Compel is stricken and disregarded, the Court's analysis ends, and the Motion to Compel must be denied.

Second, the Employment Agreement marked as Exhibit A to the Motion to Compel shows Mr. Petke and RSL never agreed to arbitrate their disputes because it does not include an arbitration clause, and the words "arbitrate" or "arbitration" are not found in the document. Moreover, the Employment Agreement's clear and express terms show Mr. Petke and RSL specifically agreed to have their disputes resolved in this Court because § 7.08 states that "the parties consent to the jurisdiction of any appropriate court in the State of Utah to resolve" their disputes.

Third, RSL cannot import the "Dispute Resolution" provisions from the Alleged Constitution into the Employment Agreement because RSL cannot satisfy the rigorous requirements for incorporating the collateral document by reference into the parties' contract.

Fourth, if the Alleged Constitution's "Dispute Resolution" provisions were incorporated by reference into the parties' agreement, which Mr. Petke denies, the alleged "Dispute Resolution" provision is illusory and unenforceable because Major League Soccer's ("MLS") Commissioner reserved the complete and unfettered right to revoke arbitration "for any reason" based on his "sole discretion."

Finally, if the so-called “Dispute Resolution” procedures were incorporated by reference, the Motion to Compel should still be denied because the procedures are substantively unconscionable. For instance, the parties’ contract lacks mutuality and only Mr. Petke is required to arbitrate his disputes in an expensive, distant, and inconvenient forum. Next, the “Dispute Resolution” procedures do not afford Mr. Petke the right to obtain discovery, which is impermissible in employee-employer disputes and also likely violates the Utah Uniform Arbitration Act. Third, the arbitrator under the “Dispute Resolution” procedures—MLS’s Commissioner or his designee—has an incurable conflict of interest because the Commissioner is a material fact witness in this case.

## **II. OBJECTIONS TO EVIDENCE AFFIXED TO RSL’S MOTION TO COMPEL**

Mr. Petke raises three independent objections to the Alleged Constitution marked as Exhibit B to RSL’s Motion to Compel. First, Mr. Petke objects to the Alleged Constitution because it constitutes impermissible parol evidence. As RSL’s Motion to Compel demonstrates, the Alleged Constitution was not attached as an exhibit to the Employment Agreement and is not signed by Mr. Petke and RSL. Further, this document is not specifically incorporated by reference into the Employment Agreement, which includes a merger clause in § 7.10. In addition, Mr. Petke objects to the Alleged Constitution as hearsay because it is an out-of-court statement offered to prove the truth of the matter asserted in the statement. Finally, Mr. Petke objects because the Alleged Constitution is not authenticated. If the Court sustains any ones of these objections, the Court should strike the Alleged Constitution from the record and disregard the document. Moreover, if the Court sustains any one of these objections, the Court may end its analysis and

deny the Motion to Compel because, as shown below, the Employment Agreement affixed to RSL's Motion to Compel does not include an agreement to arbitrate.

### III. STATEMENT OF RELEVANT FACTS

1. Mr. Petke and RSL entered into an Employment Agreement effective September 30, 2017. (*See* RSL's Motion to Compel ("Mot.") at Ex. A.) The Employment Agreement's term was for three years and discusses, among other things, the parties' respective duties, the compensation Mr. Petke would receive to serve as the head coach of RSL, and the termination of the Employment Agreement. (*See generally id.*)

2. The Employment Agreement includes only one attachment: a Compensation Schedule. (*See id.*)

3. The Employment Agreement does not include an arbitration clause and does not include the words "arbitration" or "arbitrate" within its four corners. (*See generally id.*)

4. Conversely, the Employment Agreement includes the following provision, which RSL conveniently fails to acknowledge or address in its Motion to Compel:

7.08 Governing Law. This Agreement, and all matters relating hereto, including any matter or dispute arising out of the Agreement, shall be interpreted, governed, and enforced according to the laws of the State of Utah, and the parties hereto consent to the jurisdiction of any appropriate court in the State of Utah to resolve such disputes.<sup>2</sup>

(*See id.* at 10, § 7.08 (emphasis added).)

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<sup>2</sup> The fact that Employment Agreement § 7.08 is titled "Governing Law" does not limit its scope because § 7.06 states that "paragraph headings of this Agreement are inserted only for convenience and in no way define, limit or describe the scope or intent of this Agreement nor affect its terms and provisions." (*See id.* at 10, § 7.06 (emphasis added).)

5. The Employment Agreement also expressly permits amendments at “any time upon mutual agreement of the parties hereto, which amendments must be reduced to writing and signed by both parties to become effective.” (*Id.* at 10, § 7.09.)

6. On July 29, 2019, Mr. Petke and RSL’s Executive Vice President of Soccer Operations, Robert Zarkos, signed another agreement titled “Violation of Club Policy” (“July 2019 Contract”).<sup>3</sup> (*See* Declaration of Mike Petke (“Petke Dec.”) affixed as Ex. A hereto and attachment 1 thereto.) The July 2019 Contract, which expressly refers to the Employment Agreement, addresses Mr. Petke’s conduct after a RSL soccer match on July 24, 2019 and identifies specific punishment imposed by RSL upon Mr. Petke for his conduct after the match. (*Id.*) The punishment included: (1) suspension from all club activities, without pay, for two weeks; (2) mandatory anger management counseling, with a therapist chosen by RSL; and (3) Mr. Petke must issue written apologies to certain individuals. (*Id.*) More importantly, the July 2019 Contract states that RSL was giving Mr. Petke another opportunity rather than firing him. (*Id.*)

7. Like the Employment Agreement, the July 2019 Contract does not include an arbitration agreement and never mentions or otherwise references the words “arbitration,” “arbitrate,” or any derivative thereof. (*See id.*)

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<sup>3</sup> RSL’s Motion to Compel conveniently ignores the July 2019 Contract, which is referred to, cited, and attached to the Complaint and Jury Demand as Exhibit A.

8. Despite amending the Employment Agreement by entering into the July 2019 Contract to provide that only *future* infractions could result in Petke's immediate dismissal for cause, RSL removed Petke as head coach of the soccer club *the day before* Mr. Petke's two-week suspension without pay concluded. (*See, e.g.*, Mr. Petke's Complaint and Jury Demand ("Compl.") at ¶¶ 74-81.) RSL also executed a publicity campaign designed to damage Mr. Petke's reputation and detrimentally impact his future job prospects in professional soccer. (*Id.* at ¶¶ 81-85.)

9. Considering RSL's conduct, Mr. Petke filed a Complaint and Jury Demand alleging seven causes of action: (1) breach of contract; (2) violation of the duty of good faith and fair dealing; (3) promissory estoppel; (4) quantum meruit/unjust enrichment; (5) intentional infliction of emotional distress; (6) defamation; and (7) false light. (*See generally id.*)

10. On September 24, 2019, MLS sent a letter to Mr. Petke's counsel demanding Mr. Petke "immediately withdraw his complaint in Utah state court" based on an alleged arbitration provision in § 2.D.3 of the MLS Constitution. (*See Mot. at Ex. C.*) *But MLS's letter did not enclose a copy of the alleged MLS Constitution.* (*Id.*)

11. The following day, September 25, 2019, Mr. Petke's counsel responded to MLS arguing that Employment Agreement § 7.08 requires this dispute be filed and litigated in a Utah court. (*See Declaration of Clayton E. Bailey ("Bailey Dec.")* affixed as Ex. B and attachment 1 thereto.) Mr. Petke's counsel also requested MLS to provide "the legal authority MLS is relying on for its position, including a complete copy of MLS's Constitution." (*Id.*)

12. On September 27, 2019, MLS replied arguing that it disagrees with Mr. Petke's interpretation of the Employment Agreement. (Bailey Dec. at attachment 2.) And although Mr. Petke's counsel requested a "complete copy of MLS's Constitution," MLS merely sent Mr. Petke a redacted excerpt from the purported MLS Constitution. (*See id.*)

13. Because MLS failed to provide Mr. Petke with a complete unredacted copy of the applicable MLS Constitution, Mr. Petke's counsel again requested a complete copy of the document and offered to sign a non-disclosure agreement. (Bailey Dec. at attachment 3.)

14. Mr. Petke's counsel also requested MLS to provide "any documentation in MLS's possession, custody or control demonstrating that Mr. Petke has previously received the applicable MLS Constitution and/or had an opportunity to previously review the Constitution." (*Id.*)

15. MLS ultimately produced a copy of the Alleged Constitution on Thursday, October 3, 2019 (just 2 business days before RSL filed its Motion to Compel), but never provided any documentation demonstrating Mr. Petke previously received the document or had an opportunity to previously review the Alleged Constitution. (Bailey Dec. at ¶¶ 6-8 and Attachment 4.)

#### IV. ARGUMENT & AUTHORITIES

**A. RSL's Motion to Compel should be denied because there is no direct and specific evidence on the face of the Employment Agreement or the July 2019 Contract that Mr. Petke and RSL agreed to arbitration; rather, the express language in those contracts evidences an intent to submit the dispute to this Court.**

Because "arbitration is a contractual remedy for the settlement of disputes,"<sup>4</sup> the Court should deny RSL's Motion to Compel; the clear and unambiguous language within the eight corners of the Employment Agreement and July 2019 Contract show that Petke and RSL never agreed to

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<sup>4</sup> *Lindon City v. Engr's Constr. Co.*, 636 P.2d 1070, 1073 (Utah 1981).

arbitration. Rather, the express language of the Employment Agreement demonstrates the parties intended the opposite—to present their disputes to *this Court* for resolution.

Arbitration is a matter of contract law and Utah state law principles of contract formation apply.<sup>5</sup> *Ellsworth v. The Am. Arbitration Ass’n*, 148 P.3d 983, 987 (Utah 2006). As with any contract, the Court must determine what Petke and RSL agreed upon by looking first to the plain language within the eight corners of the Employment Agreement and the July 2019 Contract. *Peterson & Simpson v. IHC Health Servs., Inc.*, 217 P.3d 716, 720 (Utah 2009). “While there is a presumption in favor of arbitration, that presumption applies *only when arbitration is a bargained-for remedy of the parties.*” *Ellsworth*, 148 P.3d at 987 (emphasis added).

As the movant, RSL has the burden of presenting “direct and specific evidence of an agreement [to arbitrate] *between the parties.*” *Id.* (emphasis added). “Direct and specific evidence requires non-inferential evidence,” and “it requires an agreement between the *particular* parties regarding arbitration of future disputes.” *Id.* at 987-988 (emphasis in original).

Here, RSL’s 18-page Motion to Compel fails to adduce any direct and specific evidence showing the parties manifested assent to an agreement to arbitrate their disputes. For instance, RSL never identifies an arbitration clause in either the Employment Agreement or the July 2019 Contract. In fact, RSL does not contend that either the Employment Agreement or the July 2019 Contract include the words “arbitrate,” “arbitration,” or any derivative thereof.

On the other hand, the admissible evidence affixed to the Motion to Compel demonstrates that the parties intended to submit their disputes to this Court. Employment Agreement § 7.08

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<sup>5</sup> The parties agreed that Utah law governs the interpretation and enforcement of the Employment Agreement. (*See* Mot. at Ex. A, p. 10, § 7.08.)

states that “the parties hereto consent to the jurisdiction of any appropriate court in the State of Utah to resolve such disputes.” (Mot. at Ex. A, p. 10, § 7.08.)

The clear and unambiguous language within the Employment Agreement defeats RSL’s Motion to Compel. If the parties actually assented to arbitration as RSL alleges, there would be no directly contradictory language in Employment Agreement § 7.08 stating that the parties agree to resolve their disputes in an appropriate Utah state court.

Because there is no direct and specific admissible evidence on the face of the parties’ contracts that Mr. Petke and RSL agreed to arbitration, the Motion to Compel should be denied.

**B. The Alleged Constitution’s “Dispute Resolution” provisions were not incorporated into the parties’ Employment Agreement or the July 2019 Contract.**

Because RSL cannot identify an arbitration provision within either the Employment Agreement or the July 2019 Contract, RSL improperly attempts to import the Alleged Constitution’s “Dispute Resolution” provisions. But even if the Court considers the Alleged Constitution (which it should not for the reasons explained above), RSL’s reliance on the Alleged Constitution’s “Dispute Resolution” provisions are misplaced because this collateral document and its terms were not properly incorporated into either the Employment Agreement or the July 2019 Contract. Consequently, Petke never even had notice of any arbitration provision in the Alleged Constitution and thus could not have assented to such a provision.

A contract may include a separate writing or portions thereof *only* if properly incorporated by reference. Incorporation by reference requires that “the reference . . . be clear and unequivocal, and alert the non-drafting party that terms from another document are being incorporated.” *Peterson & Simpson v. IHC Health Servs., Inc.*, 217 P.3d 716, 721 (Utah 2009) (quoting *Hous. Auth. of the Cty. of Salt Lake v. Snyder*, 44 P.3d 724, 729 (Utah 2002)). “Additionally, the party

‘must consent thereto, and the terms of the incorporated documents must be known or easily available to the contracting parties.’” *Id.* (quoting *Consol. Realty Grp. v. Sizzling Platter, Inc.*, 930 P.2d 268, 273 (Utah Ct. App. 1996)).

While there is a dearth of case law from Utah considering a factual pattern similar to the facts here, there are several opinions from Florida<sup>6</sup> that are instructive because they concern attempts by one party to compel arbitration by referencing an arbitration clause in a collateral document. *See, e.g., Affinity Internet, Inc. v. Consolidated Credit Counseling Servs., Inc.*, 920 S.2d 1286, 1288-1289 (Fla. Ct. App. 2006); *Temple Emanu-El of Greater Fort Lauderdale v. Tremarco Indus., Inc.*, 705 So.2d 983, 984 (Fla. Ct. App. 1998); *St. Augustine Pools, Inc. v. James M. Barker, Inc.*, 687 So.2d 957, 958-59 (Fla. Ct. App. 1997).

*Affinity Internet, Inc. v. Consolidated Credit Counseling Services, Inc.* is particularly instructive. There, the court examined whether the online agreement between the parties contained an arbitration clause that would compel Consolidated Credit to enter into binding arbitration with Affinity. 920 S.2d 1286, 1287 (Fla. Ct. App. 2006). The parties had previously entered into a computer and web hosting internet services contract. *Id.* Consolidated then filed a lawsuit and Affinity tried to compel arbitration because the parties’ contract stated it was “subject to all of SKYNetWEB’s terms, conditions, user and acceptable use policies located at

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<sup>6</sup> Considering case law from Florida in the arbitration context is proper because, as RSL contends, the Utah Uniform Arbitration Act applies (Mot. at 1), which is essentially adopted word for word from the Revised Uniform Arbitration Act (“RUAA”). *Westgate Resorts, Ltd. v. Adel*, 378 P.3d 93, 95 (Utah 2016). Florida likewise adopted the RUAA or substantial versions of it. *See* Fla. Stat. Ann. §§ 682.01-.25. One of the policies of the RUAA is to promote uniformity of arbitration law among the participating states. *See, e.g., Sun Valley Ranch 308 Ltd. P’ship, Inc. v. Robson*, 294 P.3d 125, 129 (Ariz. Ct. App. 2012).

[http://www.skynetweb.com/company/legal/legal.php.](http://www.skynetweb.com/company/legal/legal.php)” *Id.* Paragraph 17 of the online user agreement included an arbitration clause. *Id.*

The court determined that the parties’ contract did not contain an express agreement to arbitrate and only a statement that the contract was “subject to all of SKYNetWEB’s terms, conditions, user and acceptable use policies,” which were to be found at a separate website, and the arbitration clause was only contained in the online user agreement. *Id.* at 1287-1288. The court determined that *the mere reference to another document is not sufficient* to incorporate that other document into a contract. *Id.* at 1288. While the parties’ contract stated that it was “subject to” the collateral document, the court found that this simple statement, “with nothing more,” was insufficient to compel Consolidated to arbitrate. *Id.* The court’s decision was also supported by the failure to attach the collateral document to the parties’ contract and because a copy of the collateral document or the information contained therein was not provided to the signatory. *Id.*

If the *Affinity* court determined that the collateral document’s arbitration clause was not incorporated by reference into the parties’ agreement, then this Court should likewise find that the Alleged Constitution’s “Dispute Resolution” provisions are not incorporated by reference because the facts here are even worse for RSL than those presented in *Affinity*. First, although Employment Agreement § 1.03 obliquely refers to “constitutions,” the Employment Agreement never refers to any dispute resolution provisions in those “constitutions.”<sup>7</sup> (*See Mot. at Ex. A, p. 3, §§ 1.03-1.04.*) Second, unlike *Affinity* where the parties’ agreement at least referenced a web address where the

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<sup>7</sup> RSL’s contention that Employment Agreement § 1.04 supports compelling arbitration is unfounded because it merely authorizes MLS to punish Mr. Petke in certain situations. (*See Mot. at Ex. A, pp. 3-4, § 1.04.*) This provision also does not reference collateral documents and omits any reference to arbitration. Importantly, Mr. Petke’s lawsuit against RSL does not involve any punishment meted out by MLS against him, but rather RSL’s acts and omissions such as, but not limited to, its material breaches of its contractual obligations owed to Mr. Petke.

collateral agreement containing the arbitration clause could allegedly be reviewed, the Employment Agreement does not identify where Mr. Petke could have found a copy of any “constitutions.” (*See generally* Mot. at Ex. A.) Third, unlike *Affinity*, there is no “subject to” language in § 1.03, which is the section referring to the “constitutions.”

But that is not all. There is more. The record bolsters supporting a determination that the rules for incorporation by reference have not been satisfied. Specifically, the record demonstrates:

- a copy of the Alleged Constitution was not affixed to the Employment Agreement (*see* Mot. at Ex. A.);
- a copy of the Alleged Constitution was neither signed by Mr. Petke nor MLS (*see* Ex. B);
- RSL presents no evidence showing Mr. Petke was ever provided a copy of the Alleged Constitution (*see generally* Mot.);
- RSL fails to demonstrate Mr. Petke was ever made aware of the “Dispute Resolution” provisions in the Alleged Constitution (*id.*);
- RSL adduces no evidence showing anyone ever explained to Mr. Petke that the Alleged Constitution included a “Dispute Resolution” provision (*id.*);
- RSL presents no evidence that the Alleged Constitution was easily available to Mr. Petke when he signed the Employment Agreement on September 30, 2017 (*id.*);
- MLS’s website does not include a copy of *any* MLS Constitution, let alone the Alleged Constitution (*see* Petke Dec. ¶ 13);

- when Mr. Petke’s counsel requested a complete copy of the Alleged Constitution, MLS’s General Counsel merely produced a three-page excerpt of the document that was redacted (Bailey Dec. at Attachment 2);
- Mr. Petke contends he neither received nor has possessed a copy of the Alleged Constitution (Petke Dec. ¶¶ 4-5);
- Mr. Petke states no one explained to him that the Alleged Constitution includes a “Dispute Resolution” provisions (*id.* ¶ 7);
- Mr. Petke represents that the first time he received the Alleged Constitution was when MLS produced redacted excerpts of the Alleged Constitution to his attorneys just 2 business days before RSL filed the Motion to Compel (*id.* ¶3); and
- Mr. Petke contends he never intended to enter into an agreement to arbitrate because the Employment Agreement says a court in Utah should resolve the parties’ disputes. (*id.* ¶ 8.)

Collectively, the language in the parties’ agreements, coupled with the facts in the record, demonstrate that the Employment Agreement’s mere reference to “constitutions” in § 1.03 is not sufficient to incorporate the Alleged Constitution’s “Dispute Resolution” provisions into either the Employment Agreement or the July 2019 Contract. Moreover, if the collateral document was incorporated by reference, its “Dispute Resolution” provisions would render Employment Agreement § 7.08 partially meaningless because it would preclude giving effect to the Employment Agreement’s provisions and terms, an outcome that must be avoided under Utah law.

*See Peterson & Simpson*, 217 P.3d at 720 (instructing courts to interpret contracts by looking for a reading that harmonizes all provisions and avoids rendering any provision meaningless).<sup>8</sup>

For all these reasons, the Motion to Compel should be denied as a matter of law.

**C. If the Alleged Constitution’s “Dispute Resolution” provisions apply, it is nevertheless illusory and unenforceable, and the Motion to Compel should be denied.**

If the Court determines the Alleged Constitution’s “Dispute Resolution” provisions were incorporated by reference into the Employment Agreement, which Mr. Petke denies, the Court should still deny the Motion to Compel because the “Dispute Resolution” provisions are illusory and unenforceable. Under Utah law, formation of a contract generally requires an offer, acceptance, and consideration. *Cea v. Hoffman*, 276 P.3d 1178, 1185 (Utah Ct. App. 2012). However, where a party reserves an absolute and unconditional power to terminate a contract, the contract is illusory and unenforceable. *Res. Mgmt. Co. v. Western Ranch & Livestock Co., Inc.*, 706 P.2d 1028, 1037 (Utah 1985).

Here, RSL claims Mr. Petke must submit to arbitration before MLS’s Commissioner under Alleged Constitution § 2(C) and (D). (*See Mot.* at 11-13.) But RSL conveniently fails to acknowledge and address Alleged Constitution § 2(E), which states:

E. Right to Designate or Decline. Notwithstanding the foregoing, the Commissioner may, *in his sole discretion*, . . . (iii) *decline to arbitrate any dispute* listed in Section 2.D.1-4 *that the Commissioner determines* should not be arbitrated by the Commissioner *for any reason*.

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<sup>8</sup> If Mr. Petke and RSL intended to make the Alleged Constitution’s “Dispute Resolution” provisions part of their contracts, they could easily have accomplished that purpose by drafting their agreements employing words of express incorporation or clearly referencing, identifying, and directing Mr. Petke to the Alleged Constitution’s “Dispute Resolution” provisions. They also could have attached the Alleged Constitution to the Employment Agreement as an exhibit. But the parties did not express their intent in that fashion within their contracts because that is not what they intended.

(*See* Mot. at Ex. B, p. 14, § 2.E (emphasis added).)

The language in § 2.E renders the arbitration clause illusory and unenforceable because it reserves for the Commissioner the complete and unfettered right to revoke arbitration “for any reason” in his unbridled “discretion.” Accordingly, binding legal precedent requires that RSL’s Motion to Compel be denied as a matter of law.

**D. The Court should deny the Motion to Compel on the grounds that the Alleged Constitution’s “Dispute Resolution” provisions are substantively unconscionable.**

Assuming, *arguendo*, the Court determines the Alleged Constitution’s “Dispute Resolution” provisions were incorporated by reference into the parties’ Employment Agreement or the July 2019 Contract, the Court should nevertheless deny the Motion to Compel because the “Dispute Resolution” provisions are substantively unconscionable.

Substantive unconscionability is part of a two-pronged analysis Utah courts use for determining whether an arbitration agreement is unconscionable. *Sosa v. Paulos*, 924 P.2d 357, 360 (Utah 1996). Utah courts consider whether a contract provision is unconscionable in light of the twofold purpose of the doctrine, which is the prevention of oppression and unfair surprise. *Res. Mgmt.*, 706 P.2d at 1041. The Utah Supreme Court has determined that substantive unconscionability *alone* may support a finding that an agreement is unenforceable as unconscionable. *Sosa*, 924 P.2d at 361.

Substantive unconscionability focuses on “the contents of an agreement, examining the ‘relative fairness of the obligations assumed.’” *Id.* (quoting *Res. Mgmt.*, 706 P.2d at 1043). In assessing whether an arbitration agreement is substantively unconscionable, the Court must consider whether the agreement’s terms are “so one-sided as to oppress or unfairly surprise an

innocent party or whether there exists an overall imbalance in the obligations and rights imposed by the bargain . . . according to the mores and business practices of the time and place.” *Id.*

The *Owner-Operator Independent Drivers Association v. C.R. England, Inc.* opinion issued by the Utah federal district court is instructive. 325 F. Supp.2d 1252 (D. Utah 2004). There, the court determined an arbitration clause was substantively unconscionable and unenforceable because one of the parties to the agreement could “act unfettered by any requirement to arbitrate” whereas the other party was purportedly bound to “submit any and all disputes to an expensive arbitration proceeding in a distant and inconvenient forum.” *Id.* at 1263.

The Court should follow *C.R. England* and likewise find that the Alleged Constitution’s “Dispute Resolution” provision is substantively unconscionable. The two sections of the Employment Agreement RSL relies on to contend that Mr. Petke agreed to arbitration—§§ 1.03 and 1.04—*relate solely to Mr. Petke*. (See Employment Agreement § 1.03 (“Employee covenants and agrees . . . .”); § 1.04 (“Employee expressly acknowledges that Employee is subject to the jurisdiction of the League Commissioner . . . .”)) Additionally, RSL’s recent letter demanding that MLS’s Commissioner issue an order allegedly “commencing arbitration” further demonstrates the “Dispute Resolution” provision’s substantively unconscionable unilateral nature. (See Ex. C (“Mr. Petke, as an employee of RSL, expressly acknowledges that [he] is subject to . . . .”) (“Mr. Petke also covenanted and agreed that he will ‘comply with . . . .’”))

Because neither §§ 1.03 nor 1.04 apply to RSL, the club can act unfettered by any requirement to arbitrate under the Employment Agreement or the July 2019 Contract. In stark contrast, Mr. Petke is (according to RSL) purportedly bound to submit all of his disputes in this lawsuit to an arbitration proceeding before MLS’s Commissioner, who offices in Manhattan,

which is an expensive, distant, and inconvenient forum given that all the events occurred in Utah, and the documents and nearly all of the witnesses are located in the Salt Lake City area.

Next, the “Dispute Resolution” procedures provide for no discovery and thus curtail Mr. Petke’s ability to substantiate any of his claims against RSL. In employee-employer disputes, courts have determined that employees “are entitled to discovery sufficient to adequately arbitrate” their claims, “including access to essential documents and witnesses.” *See, e.g., Armendariz v. Found. Health Psychcare Servs., Inc.*, 6 P.3d 669, 684 (Cal. 2000); *see also Narayan v. The Ritz-Carlton Dev. Co., Inc.*, 400 P.3d 544, 554-555 (Haw 2017); *Ferguson v. Countrywide Credit Indus., Inc.*, 298 F.3d 778, 786-87 (9th Cir. 2002).

Here, the Alleged Constitution’s “Dispute Resolution” procedures do not afford Mr. Petke the opportunity to issue written discovery to RSL like requests for production, interrogatories, or requests for admissions. Additionally, the procedures do not allow Mr. Petke to take depositions, to subpoena documents from third-parties, or to subpoena witnesses for deposition. Each of these discovery tools is necessary for Mr. Petke to collect information so he may vindicate his rights under Utah state law. Because the “Dispute Resolution” procedures do not expressly authorize Mr. Petke to obtain discovery from RSL or third-parties, the procedures violate Utah Code Ann. § 78B-11-118 (discussing discovery in arbitrations).

Mr. Petke anticipates RSL will likely argue in its reply brief that the “Dispute Resolution” procedures apply to both parties and thus they are not substantively unconscionable. However, such an argument is irrelevant and has been rejected by courts because an employer, like RSL, is in a far better position because it almost certainly “has in its possession many of the documents relevant to” this case, “as well as having in its employ many of the relevant witnesses.” *Fitz v.*

*NCR Corp.*, 118 Cal. App.4th 702, 717 (Cal. Ct. App. 2004) (quoting *Mercuro v. Superior Court*, 96 Cal. App.4th 167, 183 (Cal. Ct. App. 2002); *see also Kinney v. United HealthCare Servs., Inc.*, 70 Cal. App.4th 1322, 1332 (Cal. Ct. App. 1999) (“Given that [the employer] is presumably in possession of the vast majority of evidence that would be relevant to employment-related claims against it, the limitations on discovery, although equally applicable to both parties, work to curtail the employee’s ability to substantiate any claims against [the employer].”). The courts’ rationale is equally applicable here because RSL has the documents in its custody, possession or control and the vast majority of witnesses are within its employ.

Finally, the Alleged Constitution’s arbitration clause should be stricken as unconscionable because the arbitrator—that is, MLS’s Commissioner Don Garber—is a material fact witness in this case. (*See* Compl. ¶¶ 51, 54, & 64; RSL’s initial disclosures filed October 7, 2019.) Accordingly, neither Mr. Garber nor anyone else from MLS’s Commissioner’s office sitting by designation can serve as an arbitrator in this dispute because of the incurable conflict-of-interest that exists. Indeed, to compel this case to arbitration under the Alleged Constitution’s “Dispute Resolution” procedures would violate Utah Code Ann § 78B-11-113 because Mr. Petke is entitled to a neutral and impartial arbitrator.

Considering all the above, the Motion to Compel should be denied because the Alleged Constitution’s “Dispute Resolution” procedures are substantively unconscionable and unenforceable as a matter of law.

## **V. CONCLUSION**

The general rule of arbitration agreements is that one who has not manifested assent to an agreement to arbitrate cannot be required to submit to arbitration. As demonstrated above, Mr.

Petke never agreed to arbitration and RSL's attempt to import an arbitration provision from an inadmissible collateral document that Mr. Petke never received or signed and that was not attached to the parties' agreements lacks merit. But even if the arbitration provision is incorporated by reference, the Court should conclude that the provisions are illusory and substantively unconscionable. Therefore, Mr. Petke requests the Court to deny the Motion to Compel and grant Mr. Petke such other and further relief to which he may be entitled both at law and equity.<sup>9</sup>

DATED this 15th day of October, 2019.

**BENNETT TUELLER JOHNSON & DEERE**

By: /s/ Ryan B. Braithwaite

RYAN B. BRAITHWAITE, ESQ. (8817)  
3165 East Millrock Drive, Suite 500  
Salt Lake City, Utah 84121  
Telephone: (801) 438-2000  
Email: [rbraithwaite@btjd.com](mailto:rbraithwaite@btjd.com)

**ADDITIONAL COUNSEL:**

TRAVIS KOCH, ESQ. (*Pro Hac Vice pending*)  
Wyoming State Bar No. 7-5418  
**OVERSTREET HOMAR & KUKER**  
508 East Eighteenth Street  
Cheyenne, Wyoming 82001  
Telephone: (307) 274-4444  
Email: [travis@kukerlaw.com](mailto:travis@kukerlaw.com)

—And—

CLAYTON E. BAILEY (*Pro Hac Vice pending*)  
Texas State Bar No. 00796151  
BENJAMIN L. STEWART (*Pro Hac Vice*)  
Texas State Bar No. 24046917

---

<sup>9</sup> If the Court grants the Motion to Compel, the case can only be stayed and *not dismissed* as RSL requests. *Mariposa Express, Inc. v. United Shipping Sol., LLC*, 295 P.3d 1173, 1178 (Utah Ct. App. 2013) (reversing and remanding for reinstatement a trial court's dismissal of an action compelled to arbitration).

**BAILEY BRAUER PLLC**  
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8350 N. Central Expressway, Suite 206  
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Telephone: (214) 360-7433  
Email: [cbailey@baileybrauer.com](mailto:cbailey@baileybrauer.com)  
[bstewart@baileybrauer.com](mailto:bstewart@baileybrauer.com)

**ATTORNEYS FOR PLAINTIFF  
MIKE PETKE**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 15th day of October, 2019, I caused a true and correct copy of the foregoing **MEMORANDUM OF LAW IN OPPOSITION OF DEFENDANT'S MOTION TO COMPEL ARBITRATION AND DISMISS OR, IN THE ALTERNATIVE, STAY THE PROCEEDINGS** to be served via the Court's electronic notice and filing system upon counsel of record:

*/s/ Ryan B. Braithwaite*  
\_\_\_\_\_  
Ryan B. Braithwaite

# EXHIBIT

# A

BARRY N. JOHNSON, ESQ. (6255)  
RYAN B. BRAITHWAITE, ESQ. (8817)  
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[bstewart@baileybrauer.com](mailto:bstewart@baileybrauer.com)

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**IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH**

---

MIKE PETKE,

Plaintiff,

vs.

UTAH SOCCER, LLC d/b/a REAL SALT  
LAKE, a Utah limited liability company,

Defendant.

**DECLARATION OF MIKE PETKE**

Civil No. 190907265

Judge Patrick Corum

---

1. My name is Mike Petke. I am over the age of twenty-one (21) years, of sound mind, and fully competent to testify in this cause. I am the plaintiff in this litigation. I have

never been convicted of a felony or crime of moral turpitude, and I have personal knowledge that all facts set forth in this Declaration are true and correct.

2. I have received a copy of Utah Soccer LLC d/b/a Real Salt Lake, a Utah limited liability company's ("RSL") Motion to Compel Arbitration and Dismiss or, in the Alternative, Stay the Proceeding ("Motion to Compel") that was filed on October 7, 2019, and Exhibits A through D attached thereto.

3. The first time I received a copy of the document titled, "MLS Constitution as of January 1, 2017," that is marked as Exhibit B to the Motion to Compel, was when my attorneys received a redacted excerpt purportedly from that document from MLS on Thursday, October 3, 2019. October 3, 2019 was just two business days before the Motion to Compel was filed in this Court.

4. Prior to receiving a copy of the Motion to Compel, I have neither been provided nor seen a copy of any document purporting to be a constitution of Major League Soccer. In fact, I never possessed the document titled, "MLS Constitution as of January 1, 2017," that is marked as Exhibit B to the Motion to Compel, until I received a copy of the Motion to Compel.

5. The document titled, "MLS Constitution as of January 1, 2017," that is marked as Exhibit B to the Motion to Compel, was never attached to my Employment Agreement with RSL, that was effective September 30, 2017 ("Employment Agreement").

6. The Employment Agreement was written solely by RSL and provided to me by RSL.

7. No one with either RSL or MLS ever explained to me the terms of any MLS Constitution or ever me informed that any MLS Constitution included an arbitration agreement.

8. When I signed my Employment Agreement with RSL, I did not agree to arbitrate any future disputes I may have against RSL. Instead, I intended to be able to file a lawsuit and

have my claims resolved by a judge or jury in a court in Utah. My intention is reflected in Section 7.08 of the Employment Agreement.

9. Attached hereto as Attachment 1 is a true, correct, and authentic copy of an agreement I signed with RSL's Executive Vice President of Soccer Operations Robert Zarkos on July 29, 2019 titled "Violation of Club Policy" ("July 2019 Contract").

10. When I signed the July 2019 Contract, I did not agree to arbitrate any future disputes I may have against RSL.

11. The document titled, "MLS Constitution as of January 1, 2017," that is marked as Exhibit B to the Motion to Compel, was not attached to the July 2019 Contract.

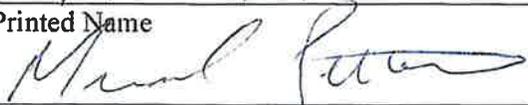
12. The July 2019 Contract was written by RSL and provided to me by RSL

13. I have analyzed MLS's website on several occasions, including the date on which I signed this Declaration, and the MLS website does not make a copy of the MLS Constitution accessible to the public.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the 14th day of October, 2019

at Middletown, New Jersey.

MICHAEL PETKE  
Printed Name  
 10.14.19  
Signature

# ATTACHMENT

1

## Violation of Club Policy

Pursuant to your employment contract and based on actions taken by you on July 24, 2019 during the Leagues Cup, Real Salt Lake v. Tigres UANL match, including but not limited to aggressive behavior towards the referees at the end of the match, offensive language towards the referees at the end of the match, premeditated writing of offensive language on a piece of paper after the match, aggressive behavior towards the referees in the back hallway after the match, and offensive language towards the referees and Major League Soccer staff in the hallway after the match, you are being subject to the following team levied sanctions in addition to any punishment levied by the League:

1. You will be Suspended from all Club activities, without pay, for two (2) weeks

During this two-week period, you will be suspended from all Club activities, including, but not limited to, coming on club property, calling or assisting your coaches in any way, attending matches at any Club level. This is a true suspension for two weeks with no participation in Club work or activities. For any questions whether an action violates this call, immediately call Rob Zarkos or Craig Waibel.

As stated above, you are suspended without pay, this shall total:

\$18,750.01 in Salary

\$500.00 in Car Allowance

\$40.00 in Cell Phone Allowance

\$19,290.01 will be withheld for the duration of this suspension

2. You will attend mandatory anger management counseling, with a therapist chosen by Real Salt Lake

The Club will assign an anger management counselor. You will be required to attend sessions as assigned. The Club will be allowed all session notes and counseling plans in order to ensure that you are following your treatment plan. The Club will also determine when and whether counseling is complete.

3. You will be required to issue a written apology to the Commissioner, Todd Durbin and to the four referees who worked the RSL v. Tigres match.

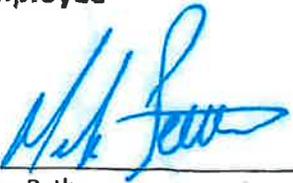
A copy of these written apologies shall provided to the Club.

We hold everyone in our organization - particularly the leadership - to the highest standards and expect them to treat everyone with dignity and respect. We, as a Club, should have the utmost respect for the referees, PRO and Major League Soccer and will be working with the League to ensure that everyone in our organization treats all referees, players, coaches and fans with the dignity, respect, civility and professionalism that is consistent with our values going forward. Although we appreciate your passion and drive to win, it should never come at the expense of those values.

Any further violations of these policies will result in immediate termination for cause under your employment contract.

Executed as to understanding and agreement of the above sanctions and penalties

**Employee**

By:   
Mike Petke  
Head Coach  
Real Salt Lake

Date: 7/29/19

**Real Salt Lake**

By:   
Robert Zarkos  
EVP of Soccer Operations  
Real Salt Lake

Date: 7/29/19

# EXHIBIT

## B

BARRY N. JOHNSON, ESQ. (6255)  
RYAN B. BRAITHWAITE, ESQ. (8817)  
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*(Pro Hac Vice Pending)*  
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*(Pro Hac Vice Pending)*  
BENJAMIN L. STEWART, ESQ.  
*(Pro Hac Vice Pending)*  
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[bstewart@baileybrauer.com](mailto:bstewart@baileybrauer.com)

---

**IN THE THIRD JUDICIAL DISTRICT COURT  
SALT LAKE COUNTY, STATE OF UTAH**

---

MIKE PETKE,

Plaintiff,

vs.

UTAH SOCCER, LLC d/b/a REAL SALT  
LAKE, a Utah limited liability company,

Defendant.

**DECLARATION OF  
CLAYTON E. BAILEY**

Civil No. 190907265

Judge Patrick Corum

1. My name is Clayton E. Bailey. I am over the age of twenty-one (21) years, of sound mind, and fully competent to testify in this cause. I am the co-founder of and a partner with the law firm of Bailey Brauer PLLC based in Dallas, Texas. I have never been convicted of a felony or crime of moral turpitude, and I have personal knowledge that all facts set forth in this Declaration are true and correct.

2. I am one of Plaintiff Mike Petke's attorneys in this proceeding. I have served as one of Mr. Petke's attorneys since Sunday, August 11, 2019.

3. Attached hereto as Attachment 1 is a true, correct, and authentic copy of an email from my colleague, attorney Travis W. Koch, to Major League Soccer's ("MLS") Executive Vice President & General Counsel Anastasia Danias Schmidt on September 25, 2019. I am copied on the email. Mr. Koch's email to Ms. Schmidt also attached a letter, dated September 25, 2019, as well as a copy of Mr. Petke's Employment Agreement, as amended on July 29, 2019, with Utah Soccer, LLC d/b/a Real Salt Lake, a Utah limited liability company. I have worked with Mr. Koch for several years and am familiar with Mr. Koch's signature. Mr. Koch's signature appears on page 2 of his letter addressed to Ms. Schmidt.

4. Attached hereto as Attachment 2 is a true, correct, and authentic copy of an email I received on September 27, 2019 from MLS's Ashley Geveda, which attached a letter from MLS's Ms. Schmidt, dated September 27, 2019, as well as three pages of an unidentified, redacted document.

5. Attached hereto as Attachment 3 is a true, correct, and authentic copy of an email Mr. Koch sent to MLS's Ms. Schmidt, dated October 1, 2019, which attached a letter signed by

Mr. Koch dated October 1, 2019. Mr. Koch's signature appears on page 2 of his letter to Ms. Schmidt. I am copied on the email.

6. Attached hereto as Attachment 4 is a true, correct, and authentic copy of an email I received on October 3, 2019 from MLS's Ms. Schmidt, which included a copy of a 28-page document titled "MLS Constitution as of January 1, 2017" ("Alleged Constitution"). Because of the size of the attachment, I am not affixing the Alleged Constitution to this Declaration.

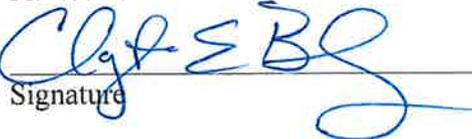
7. Although Ms. Schmidt states, among other things, in her October 3, 2019 email that "I will review your letter and respond more fully in due course," she has never sent another email or letter to Mr. Petke's attorneys.

8. Further, since Attachment 3 was emailed to Ms. Schmidt, neither Ms. Schmidt nor MLS have provided any documentation to anyone on Mr. Petke's legal team in this case demonstrating that Mr. Petke previously received any MLS Constitution and/or had an opportunity to previously review any MLS Constitution.

I declare under criminal penalty under the law of Utah that the foregoing is true and correct.

Signed on the 14th day of October, 2019

at Dallas, Texas.

Clayton E. Bailey  
Printed Name  
  
Signature

# ATTACHMENT

1

## Clayton Bailey

---

**From:** Travis W. Koch <travis@kukerlaw.com>  
**Sent:** Wednesday, September 25, 2019 11:13 AM  
**To:** Danias, Anastasia  
**Cc:** Clayton Bailey; Ben Stewart; 'bjohnson@btjd.com'; 'rbraithwaite@btjd.com'; Christina R. Woodhouse; Geveda, Ashley  
**Subject:** RE: Letter RE: Petke Dispute  
**Attachments:** 190925 Letter to A. Schmidt.pdf; Petke - Employment Agreement.pdf

Ms. Schmidt,  
Thank you for your call yesterday. As we discussed, please find the attached letter and Mr. Petke's Employment Agreement for your review.  
Sincerely,  
Travis

## Travis Koch

Attorney  
508 East Eighteenth Street  
Cheyenne, Wyoming 82001  
307.274.4444 office  
307.274.4443 facsimile



**OVERSTREET HOMAR & KUKER**  
ATTORNEYS AT LAW

The above communications constitute privileged and confidential attorney client communications and are inadmissible in any proceedings of any kind or nature. The above statements do not constitute tax advice and cannot be used in furtherance of any attempt to evade federal tax obligations. If you are the unintended recipient of this email, please contact Overstreet Homar & Kuker at 307.274.4444 or [chandel@kukerlaw.com](mailto:chandel@kukerlaw.com).

**From:** Geveda, Ashley <ashley.geveda@mlssooccer.com>  
**Sent:** Tuesday, September 24, 2019 8:45 AM  
**To:** 'bjohnson@btjd.com' <bjohnson@btjd.com>; 'rbraithwaite@btjd.com' <rbraithwaite@btjd.com>  
**Cc:** Garber, Don <dgarber@MLSsoccer.com>; Abbott, Mark <mark.abbott@MLSsoccer.com>; Barenz, Lindsay [Real Salt Lake] <lbarenz@rsl.com>; Travis W. Koch <travis@kukerlaw.com>; 'cbailey@baileybrauer.com' <cbailey@baileybrauer.com>; 'bstewart@baileybrauer.com' <bstewart@baileybrauer.com>; Danias, Anastasia <Anastasia.Danias@MLSsoccer.com>  
**Subject:** Letter RE: Petke Dispute

All,

Please see the attached letter from Anastasia Danias regarding the Petke dispute.

Thank you,  
Ashley

---

Ashley Geveda  
Executive Assistant

Major League Soccer

O: 212-450-1210

E: [Ashley.Geveda@MLSsoccer.com](mailto:Ashley.Geveda@MLSsoccer.com)



**MAJOR LEAGUE SOCCER**

The information contained in this message and any attachments are intended only for the use of the individual or entity to which it is addressed, and may contain information that is PRIVILEGED, CONFIDENTIAL, and exempt from disclosure under applicable law. If you are not the intended recipient, you are prohibited from copying, distributing, or using the information. Please contact the sender immediately by return e-mail and delete the original message from your system.

L. COOPER OVERSTREET PC\*  
SCOTT A. HOMAR±  
JOHN M. KUKER PC\*°  
JEFFREY M. BOLDT+  
TRAVIS W. KOCH\*  
° OF COUNSEL  
± SPECIAL COUNSEL



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FX. 307.274.4443

WWW.OHKLEGAL.COM  
+ ALSO ADMITTED IN INDIANA  
\* ALSO ADMITTED IN COLORADO

September 25, 2019

Anastasia Danias Schmidt, Esq.  
Executive Vice President & General Counsel  
Major League Soccer  
420 5th Avenue, 7th Floor  
New York, NY 10018

*Via electronic mail and U.S. mail*

Re: *Mike Petke v. Utah Soccer, LLC, d/b/a Real Salt Lake*, Civil No. 190907265, in the Third Judicial District Court, Salt Lake County, State of Utah

Dear Ms. Schmidt:

Thank you for your letter dated September 24, 2019. As you know, I, along with attorneys Barry Johnson, Ryan Braithwaite, Clayton Bailey, and Ben Stewart, represent Mike Petke in the above-referenced lawsuit.

We have considered Major League Soccer's ("MLS") request that Mr. Petke immediately withdraw his complaint in light of MLS's claim that he must arbitrate any disputes with his former employer under the MLS Constitution. Mr. Petke, however, believes that his Employment Agreement with the Real Salt Lake soccer club requires the dispute be filed and litigated in Utah per the express terms of Article III, Section 7.08 of his Employment Agreement, which states as follows:

7.08. Governing Law. This Agreement, and all matters relating hereto, including any matter or dispute arising out of the Agreement, shall be interpreted, governed, and enforced according to the laws of the State of Utah, ***and the parties hereto consent to the jurisdiction of any appropriate court in the State of Utah to resolve such disputes.***

(Emphasis added). For your convenience, enclosed are a copy of Mr. Petke's Employment Agreement with Real Salt Lake and an amendment thereto, which are the focus of his lawsuit.

After MLS has an opportunity to consider Mr. Petke's Employment Agreement and the amendment, please let us know if it is still MLS's position that Mr. Petke must withdraw his lawsuit. Additionally, please provide us with the legal authority MLS is relying on for its position, including a complete copy of MLS's Constitution. Mr. Petke will be pleased to receive, review, and consider any additional information MLS provides.

In the meantime, Mr. Petke proposes another route that may be best for everyone concerned—that is, mediation between the parties with Commissioner Don Garber serving as the mediator. Mr. Petke has substantial respect for Commissioner Garber and cannot think of anyone more capable of bringing this dispute to a successful conclusion. Mr. Petke suggests the mediation occur at MLS's offices in New York as soon as possible. In fact, Mr. Petke and his attorneys would be willing to participate in a mediation as early as next week. Perhaps conducting a mediation would result in Real Salt Lake avoiding the necessity of filing a response to the lawsuit and everyone avoiding the time, effort, and expense associated with arguing over whether the case must be litigated in a Utah court or before an arbitrator.

Again, thank you for your correspondence. As MLS can appreciate, Mr. Petke would like a quick resolution of his complaints against his former employer and to conclude a dispute he never wanted to file in the first place.

We look forward to MLS's response.

Sincerely,



Travis Koch

Enclosures

cc: Barry Johnson, Esq. (Bennett Tueller Johnson & Deere)  
Ryan Braithwaite, Esq. (Bennett Tueller Johnson & Deere)  
Clayton Bailey, Esq. (Bailey Brauer PLLC)  
Benjamin Stewart, Esq. (Bailey Brauer PLLC)

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "*Agreement*") is made and entered into effective this 30<sup>th</sup> day of September, 2017, by and between UTAH SOCCER, LLC dba REAL SALT LAKE, a Utah limited liability company (the "*Club*" or "*Company*"); and MIKE PETKE (the "*Employee*"); and is based upon the following:

### RECITALS:

A. Real Salt Lake is organized under the laws of the State of Utah. The purpose for which the Club is organized is to operate the Major League Soccer Team, Real Salt Lake and to operate Rio Tinto Stadium; and

B. After great expense in labor and other monies, Real Salt Lake has developed various methods of operation, contact information, marketing techniques, know-how, strategies, information processes, memoranda, notes, records, data, technologies, and other trade secrets and all objects associated with the foregoing, which are not in the realm of public knowledge (hereinafter collectively referred to as "*Proprietary Information*"). Said Proprietary Information was developed by or for the Club for its sole and confidential use. Real Salt Lake desires to maintain the secrecy of its Proprietary Information and to protect the same against use by others, including Employee.

C. Employee possesses unique education and skills essential to the purposes of the Club.

D. Real Salt Lake desires to engage the services of Employee in an employer-employee relationship.

E. Employee desires to be employed by the Club in the capacity of Head Coach of Real Salt Lake.

F. This Agreement shall supersede and replace that previous employment agreement signed between the Club and the Employee on March 29, 2017.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, RSL and Employee agree as follows:

ARTICLE I.

EMPLOYMENT AND DUTIES

1.01. Employment. RSL hereby employs Employee to be, and Employee accepts employment as the Head Coach of Real Salt Lake. In this regard, Employee shall have the following duties, including, but not limited to:

- A. In coordination with the Owner, General Manager, Vice President of Soccer Administration, Academy Technical Director and the Monarchs' Head Coach develop, deploy and supervise Real Salt Lake team(s) curriculum.
- B. In coordination with the General Manager, Academy Technical Director and Real Monarchs' Head Coach assist with player development planning for players from the Real Salt Lake Academy through the Real Salt Lake First Team.
- C. Conduct and supervise the Real Salt Lake First Team Practices, training camps, pre-season and training sessions.
- D. Coach the Real Salt Lake First Team in all exhibition, regular season, playoff, tournament, international and other games.
- E. Train and develop Real Salt Lake Youth players.
- F. Supervise and direct medical training and sports performance/strength training staff;
- G. Supervise and direct Real Salt Lake First Team Video Analyst
- H. Supervise and direct Real Salt Lake First Team Equipment Manager(s)
- I. Mentor and Train Real Monarchs' coaching staff
- J. Institute, Disseminate and Enforce Team and League Rules
- K. Participate in promotional, sponsorship and public relations activities requested by the Club upon reasonable prior notice, including, but not limited to, ticket, game, Team and Stadium promotions, clinics, speeches, interviews, photo sessions, public appearances, sponsor activities and participating in media programs as directed by the Club.
- L. Attend Club mandated media/public relations training.

1.02. Term. The term of this Agreement (the "Term") will commence on January 1, 2018 and will continue, unless extended or sooner terminated as provided herein, until December 31, 2020.

1.03. Fidelity and Exclusive Service. Employee covenants and agrees that throughout the Term that he will: (1) report to the Owner, General Manager and Vice President of Soccer Administration and/or such other person as directed by the Owner, (2) perform with diligence and fidelity the services and duties set forth in this Agreement on a full time, 12 month per year basis, subject to company vacation and personal time policies, and (3) comply with Company rules, regulations, policies and guidelines ("Team Rules") applicable to the coaching staff and all constitutions, bylaws, rules, regulations, policies, guidelines, directives, instructions, rulings, orders and agreements ("League Rules") of Major League Soccer ("MLS"), its Commissioner and Soccer United Marketing ("SUM") as they may exist, be adopted, supplemented, amended and modified from time to time during the Term. Without limiting the foregoing, League Rules shall include all guidelines and directives issued by the League regarding apparel and/or equipment required to be worn or used by players, the coaching staff and other members of the Team at games, practices, training camps, training sessions, clinics, while traveling for the Team and such other events as designated by the League. During the continuation of his employment by the Club hereunder, the Employee will devote substantially all of his business time, energy, attention and skill to the services of the Club and to the promotion of its interests in a professional, ethical and businesslike manner.

1.04. MLS Jurisdiction. Employee expressly acknowledges that Employee is subject to the jurisdiction of the League Commissioner and that the Commissioner and Club may impose sanctions and other disciplinary measures, including, without limitation, suspending Employee (with or without pay) and imposing fines for violations of this Agreement or for actions (including on-field actions) that the Commissioner or Club, in their absolute discretion, determines to be contrary to the best interests of the League or the Club. Employee expressly acknowledges that the Club may deduct, and the League may cause to be deducted, from any amounts due Employee under this Agreement, any fines or penalties so levied against Employee. Without limiting the foregoing, Employee expressly acknowledges and agrees that he shall be subject to discipline by the League, including, without limitation, fines, suspension (with or without pay) or termination of this Agreement, if:

- A. He (or any person acting in association with him) is involved with any attempt to fix, throw or otherwise improperly affect the outcome of any soccer game.
- B. He (or any person acting in association with him) gives or offers to give a bribe or gambles on the outcome of any soccer match.
- C. He fails to report to the League and Club, his knowledge of any attempt by any person to give or receive a bribe or to fix, throw or otherwise improperly affect the outcome of any soccer game.
- D. He uses alcohol or drugs in a manner that interferes with the performance of his duties hereunder.
- E. He makes a statement or engages in conduct that is prejudicial to the interests of the League or engages in a course of deliberate insubordination or a single egregious act of insubordination.

The League, as applicable, shall determine in good faith and at its sole discretion, whether Employee has engaged in any of the above-listed behavior.

1.05. Location. Employee shall work out of an office established by the Club in either Sandy, Utah or Herriman, Utah.

## ARTICLE II.

### COMPENSATION

2.01. Compensation. For all services rendered by Employee under this Agreement, Club shall pay Employee a salary and bonuses (the "Compensation"), identified in SCHEDULE A, payable in twenty-four (24) installments according to the Club's regular pay schedule. All Salary compensation shall be subject to such customary withholding and other employment taxes as are required by law with respect to compensation paid by an employer to an employee.

2.02. Car Stipend. Employee shall receive a stipend in the amount of \$12,000 annually (\$500 per pay period) during the Term to be used for an automobile or related expenses.

2.03. Housing Loan. Employee may elect to take a housing loan of up to One Hundred Thousand and No/100 (\$100,000). Such loan shall be subject to that separate and distinct loan agreement and Promissory Note. The loan shall be forgiven on the following schedule should Employee remain employed with the Club through December 31, 2020:

- A. \$33,000 of the loan principal shall be forgiven on December 31, 2018
- B. \$33,000 of the loan principal shall be forgiven on December 31, 2019
- C. The remaining \$34,000 of the loan principal shall be forgiven on December 31, 2020.

2.05. Airline Tickets. Employee shall be permitted four (4) round trip airline tickets for him and his family anywhere in the United States annually.

2.06. Coaching Courses and Certifications. Subject to approval by the General Manager, the Club shall pay for costs associated with required and recommended coaching certifications annually, including, but not limited to the MLS Pro coaching course.

2.07. Club Tickets. Each season during the Term, Club shall provide Employee, at Club's expense, eight (8) season tickets for Real Salt Lake, Real Monarchs and Real Salt Lake Academy home games. Employee shall be responsible for any taxes (Federal, Sales, and State) on the tickets. The location of the seats represented by such tickets shall be determined by the Club and the use of such tickets shall be subject to Club rules and regulations.

2.08. Other Benefits. Employee shall be entitled to medical insurance, vacation days, holiday and personal days, cell phone stipend and such other employee benefits as are offered by the Club to its employees.

2.09. Reimbursement of Expenses Incurred by Employee. Club shall reimburse Employee for all business expenses, including travel and entertainment, incurred by Employee in the course of his employment provided that:

- A. Each such expenditure is reasonable and budgeted, and is incurred in accordance with the adopted policies of the Club;
- B. Each such expenditure is of a nature qualifying it as an expense deduction on Club's federal and state income tax returns; and
- C. Employee furnishes Club with adequate records and other documentary evidence required by federal and state statutes or regulations issued by the appropriate taxing authorities for the substantiation of each such expenditure as an income tax deduction.

### ARTICLE III.

#### TERMINATION OF EMPLOYMENT

3.01. Termination. This Agreement shall be deemed to be terminated prior to the expiration of the Term upon the death of the Employee. In addition, the Club may terminate this Agreement upon written notice by Club to Employee in the event of the occurrence of any of the following:

- A. Disability of the Employee that renders him incapable of performing his services for at least sixty (60) days out of any 12-month period.
- B. Employee's willful failure, neglect or refusal to render services hereunder as directed, or any material breach of this Agreement by Employee.
- C. Employee's gross negligence or willful misconduct in performing his duties, hereunder.
- D. Employee's arrest for any drug, alcohol or sex related incident.
- E. Employee's conviction of or plea of guilty or nolo contendere to any felony or to a misdemeanor involving a crime of moral turpitude.
- F. Employee's commission of any action or involvement in any occurrence that brings Club or Employee into public disrepute, scandal or ridicule, or reflects in a material adverse manner on the integrity or reputation of the Club or the Owner, including, without limitation, dishonest, fraudulent, unethical or inappropriate conduct;

- G. Employee's breach of fiduciary duty (including loyalty) to the Club or engaging in any activity that is in conflict with, adverse to, or materially injurious to the business interests or goodwill of the Club;
- H. Employee engages in any activity set forth in Section 1.04 above.
- I. Employee's failure to comply with Team Rules or League Rules.
- J. Club is directed by the League Commissioner to terminate or suspend this Agreement, including, without limitation, because Employee engages in any activity set forth in Section 1.04 above.
- K. Club may also terminate this Agreement upon written notice to Employee for any reason other than as set forth in Sections 1.04 and 3.01 above.

3.02. Effect of Termination.

- A. Upon termination under Sections 1.04 and/or 3.01(a)-(j) above or upon Employee's termination of this Agreement, all of the rights and obligations of the parties hereunder shall forever cease, except that Club shall remain obligated to pay Employee any portion of the Compensation that has been earned by Employee, but remains unpaid upon the date of termination.
- B. Upon termination under Section 3.01(k), all of the rights and obligations of the parties hereunder shall forever cease, except that Club shall only remain obligated to pay: (1) Employee any portion of the Compensation that has been earned by Employee, but remains unpaid upon the date of termination; and (2) Employee's remaining base Compensation, not including any unearned bonuses, car stipend, per diem, or unfilled reimbursements, through the end of the then existing term. For example, if Employee's employment is terminated pursuant to Section 3.01(k) on July 31, 2018, the Club would owe employee any earned but unpaid Compensation, bonuses, car stipend, per diem and filed reimbursements up to the July 31, 2018 termination date and Club would also owe Employee unearned base salary from July 31, 2018 through the end of the Term.
- C. If Employee's employment is terminated under Section 3.01(k) and Employee subsequently performs services with another Employer during the remainder of the Term, amounts earned or received by Employee for those services shall reduce any amounts owed under Section 3.02(B) above by the amount earned. For example, if Employee is terminated on July 31, 2020 and is owed \$250,000 by the Club in unearned base salary, pursuant to Section 3.02(B), through the end of 2020 Term, but Employee obtains another coaching position on August 1, 2020 paying \$100,000 through the end of the 2020 Term, Club shall only owe Employee, \$150,000 through the end of the 2020 Term.

3.03 Effect on Other Provisions. Employee's obligation to perform under any and all of the remaining provisions of this Agreement and specifically Article IV shall remain in full force and effect as set forth in this Agreement after the termination of employment.

3.04. Exit Interview. Immediately prior to the termination of Employee's employment hereunder, for whatever reason and whether by Employee or Club, Employee agrees to submit to an exit interview with an appropriate officer of Club for the purpose of determining Employee's present and future compliance with Article IV below.

3.05. Return of Property. Upon termination of his employment, Employee shall immediately return to the Club any and all Club property, including any copies of any material in any form or medium within Employee's possession, use or control.

#### ARTICLE IV.

##### NON-DISCLOSURE AND CONFIDENTIALITY

In consideration of the employment and benefits granted Employee hereunder, Employee specifically agrees to be bound under the terms of this Article IV.

4.01. Non-Disclosure. Employee will acquire and create information respecting the intimate and confidential affairs of the Club in the various phases of its operations. Accordingly, Employee agrees that he shall not at any time use for himself nor disclose to any person not employed by the Club any such knowledge or information acquired during the term of his employment hereunder. Furthermore, Employee expressly agrees to disclose to Club any and all information, discovered by Employee or otherwise available to him, that may be relevant to Club's activities, existing or contemplated, all of which shall be the sole and exclusive property of the Club.

4.02. Proprietary Information. Employee agrees that all Proprietary Information shall be Club's sole and exclusive property. Employee shall not, except for Club use, copy or duplicate any Proprietary Information, nor remove the same (or any portion thereof) from the Club's facilities, nor use any information concerning the Proprietary Information except for the Club's benefit, either during his employment or thereafter. Employee agrees that he will deliver all of the Proprietary Information that may be in his possession to the Club on termination of his employment, or at any other time at the Club's request, together with his written certification of compliance herewith. Employee shall take such action, including without limitation, the storing of Proprietary Information in a secure location as may be necessary to maintain the confidentiality and prevent the inadvertent disclosure of the Proprietary Information entrusted to or otherwise within his possession or control.

4.03. Continuation of Obligations. Employee's obligations of confidentiality and cooperation set forth in this Article IV are ongoing in nature and shall not terminate upon termination of Employee's employment hereunder, but shall continue for a period of five (5) years after such employment terminates.

#### ARTICLE V.

## NON- SOLICITATION, COMPETITIVE PLANNING OR DISPARAGEMENT

5.02. No Solicitation Other Employees. During the term of Employee's employment hereunder and for a period of one (1) year thereafter, Employee agrees not to influence or attempt to influence any other active employee or agent of the Club to terminate his or her employment or work with the Club or to work for or on behalf of any competitor or potential competitor of the Club, including without limitation, Employee himself or any other entity controlled or organized by Employee or in which Employee is an officer, a director or agent.

5.03. No Competitive Planning. During the term of his employment with Club hereunder, Employee agrees not to undertake any planning or planning activities relating to business interests outside of Club that would be competitive in nature with the activities of the Club, or any of Club's subsidiary or related entities.

5.03. Non-Disparagement. Employee agrees that during the Term and for one (1) year thereafter, he shall refrain from making any disparaging remarks regarding the Club or the Team, its players, management, ownership, employees, or fans.

5.04. Specific Enforcement. Employee agrees that the violation of any of the covenants set forth in this Article V would cause irreparable injury to the Club and that any remedy at law for breach of such provision would, therefore, be inadequate and that in addition to any other remedy provided by law, a court of competent jurisdiction may issue an injunction enjoining the Employee from further action in violation of the terms of such provision and that Club may enforce any other legal right it has or may have or may obtain a judgment for any damages it obtains by reason of a breach of any such provision.

5.05 Covenants Upon Termination of Club. If the Club dissolves, terminates operations, or otherwise ceases to do business for any reason, then the Employee is relieved of the covenants of this Article V.

## ARTICLE VI.

### ADDITIONAL ACTIVITIES

6.01. Additional Activities. During the Term, Employee will have the right to make public appearances, accept speaking engagements, participate in films or radio, television, internet programs, and appear in commercials or advertisements or endorse products, services or companies (the "Additional Activities"); provided however that: (1) Employee may not undertake any Additional Activities without the prior written consent of the Club, such consent shall not be unreasonably withheld; and (2) such Additional Activities shall: (a) not unreasonably interfere with Employee's duties hereunder, (b) be consistent with Team Rules and League Rules, as well as the image desired to be portrayed by the Club, the League and SUM, (c) not conflict with the rights and interests of the Club, League or SUM sponsors and licensees, and (d) unless otherwise consented to by Club, the Stadium Operator, the League or SUM, as applicable, Employee may not utilize any marks, insignia, logos, uniforms, name or other intellectual property of the Team,

the Stadium, the League or SUM. Other than providing his services as head coach of the Team hereunder and Additional Activities in accordance with this Article, Employee shall not engage in any other business activities during the Term, without the prior written consent of the Club, which shall not unreasonably be withheld. Notwithstanding the foregoing, Employee may (a) make investments (active or passive) that do not unreasonably interfere with Employee's duties and (b) engage in charitable, religious or civic activities that do not unreasonably interfere with Employee's duties. Furthermore, during the Term, Employee shall not: (1) engage in discussions with any other professional soccer team regarding employment by such team, or (2) enter into any oral or written agreement with, or accept any payment from, any Club player or member of Club staff for the provision of any services.

## ARTICLE VII

### MISCELLANEOUS

7.01. Notices. Any notices to be given by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices are to be addressed to the parties at the addresses below:

If to Club:

Utah Soccer, LLC.  
Attn: Dell Loy Hansen  
9256 South State Street  
Sandy, Utah 84070

If to Employee:

Mike Petke  
6559 SOUTH CANYON COVE PLACE  
HOLLADAY, UT 84121

Either party may change its address by written notice in accordance with this Section 7.01. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of the date of mailing.

7.02. Office Facilities. Club shall operate and maintain facilities, and shall provide furnishings, equipment, and other supplies as suitable to Employee's position and adequate for the performance of his duties.

7.03. Records and Files. All Club records shall belong to and remain the property of Club. Upon termination of his employment hereunder, Employee shall not be entitled to keep or reproduce any of Club's records.

7.04. Rights and Obligations of Successors. This Agreement shall be assignable and transferable by the Club to any subsidiary or affiliate of the Club and shall inure to the benefit of and be binding upon the Employee, his heirs, personal representative, and assigns. As to the Employee, however, his rights and obligations hereunder are personal in nature and shall not be transferred or otherwise assigned.

7.05. Waiver. A waiver by any party of any provision hereof, whether in writing or by course of conduct or otherwise, shall be valid only in the instance for which it is given, and shall

not be deemed a continuing waiver of said provision, nor shall it be construed as a waiver of any other provision hereof.

7.06. Paragraph Headings. The paragraph headings of this Agreement are inserted only for convenience and in no way define, limit or describe the scope or intent of this Agreement nor affect its terms and provisions.

7.07. Preparation of Agreement. The parties hereto acknowledge that they have both participated in the preparation of this Agreement and, in the event that any question arises regarding its interpretation, no presumption shall be drawn in favor of or against any party hereto with respect to the drafting hereof.

7.08. Governing Law. This Agreement, and all matters relating hereto, including any matter or dispute arising out of the Agreement, shall be interpreted, governed, and enforced according to the laws of the State of Utah, and the parties hereto consent to the jurisdiction of any appropriate court in the State of Utah to resolve such disputes.

7.09. Amendments. This Agreement may be amended at any time upon mutual agreement of the parties hereto, which amendments must be reduced to writing and signed by both parties in order to become effective.

7.10. Entire Agreement. This Agreement constitutes and represents the entire agreement of the parties hereto with respect to the subject matter hereof, and all other prior agreements, covenants, promises and conditions, verbal or written, between these parties are incorporated herein. No party hereto has relied upon any other promise, representation or warranty, other than those contained herein, in executing this Agreement.

7.11. Further Instruments. The parties hereto agree that they will execute any and all other documents or legal instruments that may be necessary or required to carry out and effectuate all of the provisions hereof.

7.12. Counterparts. This Agreement may be executed in one or more counterparts, each of which, including facsimiles or .pdfs thereof, shall be deemed an original, but all of which together shall constitute one and the same Agreement.

7.13. Attorney Fees. In the event that either party seeks to enforce this Agreement, whether by the filing of a legal action or otherwise, the parties hereby agree that each party shall be liable to pay their own attorney fees, court costs, and other related costs and expenses incurred in connection with prosecuting or defending any such claim.

7.14. Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

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

**CLUB:**

UTAH SOCCER, LLC  
A Utah Limited Liability Company

By   
Dell Loy Hansen, President

**EMPLOYEE:**

  
Mike Petke

**SCHEDULE A  
Compensation Schedule**

	<u>2018</u>	<u>2019</u>	<u>2020</u>
<b>SALARY</b>	400,000	450,000	500,000
<b>HOUSING LOAN FORGIVENESS</b>	33,000	33,000	34,000
<b>CAR STIPEND</b>	12,000	12,000	12,000
<b>EIGHT SEASON TICKETS</b>	6,960	6,960	6,960
<b>FOUR (4) ROUND TRIP TICKETS HOME ANNUALLY</b>	<u>2,000</u>	<u>2,000</u>	<u>2,000</u>
<b>Total Annual Compensation</b>	<b>453,960</b>	<b>503,960</b>	<b>554,960</b>
<b><u>Total Guaranteed Compensation Value</u></b>		<b>1,512,880</b>	

  
 \_\_\_\_\_  
 Dell Loy Hansen  
 President  
 Utah Soccer, LLC

  
 \_\_\_\_\_  
 Mike Petke  
 Head Coach  
 Real Salt Lake

**BONUS TRANCHES**

**MLS**

Host Playoff Game (Per Game)	10,000	10,000	10,000
Appear in MLS CUP	15,000	15,000	15,000
Win MLS CUP	25,000	25,000	25,000
Win Supporter's Shield	10,000	10,000	10,000

**US OPEN CUP**

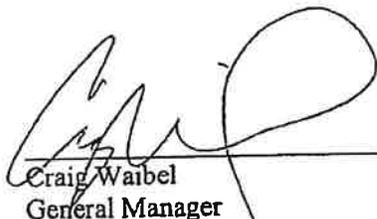
Win Home Open Cup Match	10,000	10,000	10,000
Win Open Cup	25,000	25,000	25,000

**CONCACAF**

Host a Home Game	10,000	10,000	10,000
Advance to Quarterfinals	10,000	10,000	10,000
Advance to Semifinals	10,000	10,000	10,000
Advance to Final	10,000	10,000	10,000
Win CCL	30,000	30,000	30,000

**YOUTH DEVELOPMENT**

Monarchs Performance (USL Playoffs)	7,500	7,500	7,500
30 MLS Starts for U-24 Players (per year)	5,000	5,000	5,000
40 MLS Starts for U-24 Players (per year)	7,500	7,500	7,500
50 MLS Starts for U-24 Players (per year)	10,000	10,500	10,500

  
\_\_\_\_\_  
Craig Waibel  
General Manager  
Utah Soccer, LLC

  
\_\_\_\_\_  
Mike Petke  
Head Coach  
Real Salt Lake

## Violation of Club Policy

Pursuant to your employment contract and based on actions taken by you on July 24, 2019 during the Leagues Cup, Real Salt Lake v. Tigres UANL match, including but not limited to aggressive behavior towards the referees at the end of the match, offensive language towards the referees at the end of the match, premeditated writing of offensive language on a piece of paper after the match, aggressive behavior towards the referees in the back hallway after the match, and offensive language towards the referees and Major League Soccer staff in the hallway after the match, you are being subject to the following team levied sanctions in addition to any punishment levied by the League:

1. You will be suspended from all Club activities, without pay, for two (2) weeks

During this two-week period, you will be suspended from all Club activities, including, but not limited to, coming on club property, calling or assisting your coaches in any way, attending matches at any Club level. This is a true suspension for two weeks with no participation in Club work or activities. For any questions whether an action violates this call, immediately call Rob Zarkos or Craig Waibel.

As stated above, you are suspended without pay, this shall total:

\$18,750.01 in Salary

\$500.00 in Car Allowance

\$40.00 in Cell Phone Allowance

\$19,290.01 will be withheld for the duration of this suspension

2. You will attend mandatory anger management counseling, with a therapist chosen by Real Salt Lake

The Club will assign an anger management counselor. You will be required to attend sessions as assigned. The Club will be allowed all session notes and counseling plans in order to ensure that you are following your treatment plan. The Club will also determine when and whether counseling is complete.

3. You will be required to issue a written apology to the Commissioner, Todd Durbin and to the four referees who worked the RSL v Tigres match.

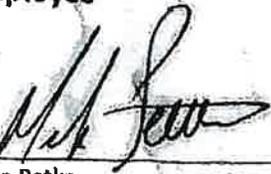
A copy of these written apologies shall be provided to the Club.

We hold everyone in our organization - particularly the leadership - to the highest standards and expect them to treat everyone with dignity and respect. We, as a Club, should have the utmost respect for the referees, PRO and Major League Soccer and will be working with the League to ensure that everyone in our organization treats all referees, players, coaches and fans with the dignity, respect, civility and professionalism that is consistent with our values going forward. Although we appreciate your passion and drive to win, it should never come at the expense of those values.

Any further violations of these policies will result in immediate termination for cause under your employment contract.

Executed as to understanding and agreement of the above sanctions and penalties

**Employee**

By:   
Mike Petke  
Head Coach  
Real Salt Lake

Date: 7/29/19

**Real Salt Lake**

By:   
Robert Zarkos  
EVP of Soccer Operations  
Real Salt Lake

Date: 7/29/19

# ATTACHMENT

2

## Clayton Bailey

---

**From:** Geveda, Ashley <ashley.geveda@mlsoccer.com>  
**Sent:** Friday, September 27, 2019 4:49 PM  
**To:** 'travis@kukerlaw.com'  
**Cc:** 'bjohnson@btjd.com'; 'rbraithwaite@btjd.com'; Clayton Bailey; Ben Stewart; Danias, Anastasia  
**Subject:** Response RE: Petke Dispute  
**Attachments:** Letter RE. Petke 9.27.19 .pdf; Commissioner Authority.pdf

Mr. Koch,

Please see the attached response from Anastasia Danias in regard to the Petke dispute.

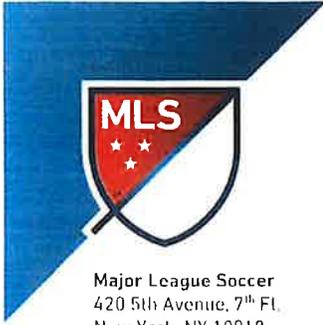
Thank you,  
Ashley

---

**Ashley Geveda**  
Executive Assistant  
Major League Soccer  
O: 212-450-1210  
E: [Ashley.Geveda@MLSoccer.com](mailto:Ashley.Geveda@MLSoccer.com)



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Major League Soccer  
420 5th Avenue, 7<sup>th</sup> Fl.  
New York, NY 10018

MLSsoccer.com  
212.450.1200

September 27, 2019

Mr. Travis Koch, Esq.  
Overstreet Homar & Kuker  
508 East Eighteenth Street  
Cheyenne, WY 82001

**Re: Mike Petke v. Utah Soccer, LLC, Civil No. 190907265, Third Judicial District Court, Salt Lake County**

Dear Mr. Koch:

Thank you for your letter of September 25, 2019. We have reviewed the letter and employment agreement and appreciate you following up. While we also appreciate the spirit in which your client requests a prompt mediation, we must nonetheless insist that Mr. Petke immediately withdraw his complaint in Utah state court in order for us to move forward with mediation. As noted in our September 24 letter, the MLS Constitution gives Commissioner Garber (or his designee) full and exclusive jurisdiction to arbitrate and resolve disputes in circumstances like this one.

Section 2.D.3 of the MLS Constitution provides:

"Dispute Resolution. Subject only to the terms of the Collective Bargaining Agreement with respect to a dispute involving one or more Players, the Commissioner has full and (subject to Section 2.F) exclusive jurisdiction and authority to arbitrate and resolve:

3. any dispute between any Member and any employee of such Member if the dispute relates to such Member's MLS-related business;"

Per your request, a copy of the relevant provisions of the MLS Constitution are enclosed with this letter.

MLS further notes that in Mr. Petke's employment agreement, Mr. Petke both (1) "covenant[ed] and agree[d]" that he would "comply with . . . all constitutions, bylaws, rules, regulations, policies, guidelines, directives, instructions, rulings, orders and agreements . . . of Major League Soccer ("MLS"), its Commissioner and Soccer United Marketing" during the term of the agreement and (2) "expressly acknowledge[d] that [he] is subject to the jurisdiction of the League Commissioner." See Petke Employment Agreement §§ 1.03 and 1.04.

We do not read Section 7.08 of Mr. Petke's employment agreement to undermine in any way the Commissioner's full and exclusive jurisdiction to arbitrate the matter. That provision requires that the agreement be interpreted using Utah law and provides the parties' consent to personal jurisdiction in a case filed in Utah. It does not give Utah courts exclusive jurisdiction over every dispute that arises from the agreement, and could not do so in light of Sections 1.03 and 1.04 of the agreement, which require compliance with the MLS Constitution and acknowledgement of the Commissioner's authority.



We appreciate Mr. Petke's interest in seeking a prompt resolution of this matter and his request that Commissioner Garber mediate the parties' dispute. Consistent with past practices and Section 2.E of the MLS Constitution, we note that the Commissioner's participation in the mediation shall be without prejudice to the right of the Commissioner (or his designee) to arbitrate and resolve the dispute pursuant to Section 2.D.3. We would ask Mr. Petke to reaffirm his understanding of this provision prior to any mediation.

We look forward to continuing to discuss this matter with you in a productive manner and to discussing dates for a mediation with the parties. MLS continues to reserve all of its rights.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Anastasia Schmidt', written in a cursive style.

Anastasia Danias Schmidt

**Enclosure**

CC: Barry Johnson, Esq.  
Ryan Braithwaite, Esq.  
Clayton Bailey, Esq.  
Benjamin Stewart, Esq.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Section 2. Commissioner's Authority**

Pursuant to Article 6.1.4 of the MLS LLC Agreement, MLS employs a Commissioner who serves as the chief executive officer of MLS and the principal public spokesperson for the League. The Commissioner reports to the Board of Governors and is charged with managing the overall business of MLS, protecting the integrity of MLS and preserving public confidence in the League.

A. **General Authority of the Commissioner.** The Commissioner has responsibility for the general supervision and direction of all business and affairs of MLS and all such other authority as may be necessary or appropriate to fulfill his responsibilities. The Commissioner is responsible for the coordination and general supervision of policy matters.

B. **Authority of the Commissioner.** The Commissioner's authority and duties include, but are not limited to, the authority specified in the MLS LLC Agreement, this Constitution and other League Rules, and any other authority or duties that may be granted or assigned to the Commissioner by the Board of Governors from time to time.

1. **Policy and Procedures.** The Commissioner may establish League Rules unless any such League Rule directly contradicts an express provision of any Governing Document. All decisions, interpretations and enforcement of League Rules by the Commissioners shall be final, binding, conclusive and not subject to any appeal or other review, unless a decision by the Commissioner has a material adverse financial impact on Team value, in which case, the decision will be subject to reversal by the Board of Governors by a Super Majority Vote, and any such decision by the Board of Governors shall be final, binding, conclusive and not subject to any appeal or other review.

2. **Appointment of Staff.** The Commissioner may, subject to the approved budget, hire a League Office staff. The Commissioner will determine the duties, compensation and terms of employment of the League Office staff.

3. *Financial Matters.* The Commissioner will present the Board of Governors with an annual budget for its approval. Subject to the approved budget, the Commissioner may incur expenses on behalf of MLS in order to conduct the business and affairs of MLS, including, but not limited to, the leasing of office space and hiring of employees, outside legal counsel and other professional assistance. The Commissioner may also establish and maintain bank accounts and credit facilities on behalf of MLS and approve payment of all proper charges.

4. *Contracting Authority.* The Commissioner may arrange for and negotiate on behalf of MLS all ordinary business, including, without limitation, contracts with Players, media partners, sponsors, licensees, stadia, consultants and other soccer leagues, teams and associations.

5. *Scheduling and Approvals.* The Commissioner has the right to set the date and time of all MLS Games, including playoff games, and approve all games involving one or more Teams consistent with the obligations of MLS and SUM under their media contracts, the availability of stadium facilities and, in the Commissioner's judgment, the best interests of the League.

6. *Officials.* The Commissioner is responsible for selecting and appointing the game officials and all other League officials, other than officials required to be appointed by the United States Soccer Federation or the Professional Referee Organization.

C. Disciplinary Powers.

1. Subject only to the limitations expressly set forth in Section 3 below, the Commissioner has full and complete authority to discipline any Member (including all Team Operators), any Owner, and any officer, director, manager, Governor, Alternate Governor, president, general manager, coach or other employee of any Team Operator or any employee of MLS, in each case, in the manner he determines to be in the best interests of the League. The Commissioner also has full and complete authority to discipline any Player, subject only to the terms and conditions of the Collective Bargaining Agreement.

2. In all matters involving the integrity of the game of soccer or public confidence in the League, the Commissioner's determinations under this Section 2 shall be final, binding, conclusive and not subject to any appeal or other review.

D. Dispute Resolution. Subject only to the terms of the Collective Bargaining Agreement with respect to a dispute involving one or more Players, the Commissioner has full and (subject to Section 2.F) exclusive jurisdiction and authority to arbitrate and resolve:

1. any dispute that involves two or more Members or two or more Owners (regardless of whether such Owners are Owners of the same Member or Owners of different Members);
2. any dispute between any Player and any Member;
3. any dispute between any Member and any employee of such Member if the dispute relates to such Member's MLS-related business;
4. any dispute between or among Players, other employees of MLS, or coaches or other employees of any Member (unless the dispute is unrelated to and does not affect MLS); and

5. any dispute involving any Member, any Player or any other employee of MLS or any Team Operator that in the Commissioner's opinion is detrimental to the reputation and public image of MLS, any Team or the game of soccer or involves or affects League policy.

E. Mediation. The Commissioner may, in his sole discretion, require the parties involved in any dispute that is subject to arbitration by the Commissioner pursuant to Section 2.D to first participate in a mediation conducted by the Commissioner in accordance with procedures to be determined by the Commissioner in his sole discretion. Notwithstanding the foregoing, participation in the mediation by the Commissioner and the parties involved in the dispute shall be without prejudice to the Commissioner's authority to arbitrate and resolve the dispute (or any other dispute) under Section 2.D and no party shall assert that the mediation precludes, prohibits or otherwise affects in any manner the Commissioner's right, jurisdiction and authority to arbitrate and resolve the dispute (or any other dispute) in his sole and absolute discretion (whether as a result of any delay caused by such mediation or otherwise).

F. Right to Designate or Decline. Notwithstanding the foregoing, the Commissioner may, in his sole discretion, (i) designate any individual of his choosing to exercise any portion of his authority under Sections 2.C, 2.D and 2.E, including his authority to conduct any mediation or arbitration proceeding and to resolve any dispute that is within his authority under Section 2.D, in which case all references in Sections 2.C, 2.D and 2.E to the Commissioner shall include any individual so designated in writing by the Commissioner, and (ii) decline to arbitrate and resolve any dispute that is otherwise within his authority under Section 2.D if the Commissioner determines that such dispute should not be arbitrated or resolved by the Commissioner for any reason.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# ATTACHMENT

3

## Clayton Bailey

---

**From:** Travis W. Koch <travis@kukerlaw.com>  
**Sent:** Tuesday, October 1, 2019 4:02 PM  
**To:** Danias, Anastasia  
**Cc:** 'bjohnson@btjd.com'; 'rbraithwaite@btjd.com'; Clayton Bailey; Ben Stewart; Christina R. Woodhouse; Geveda, Ashley  
**Subject:** RE: Response RE: Petke Dispute  
**Attachments:** 191001 Letter to A. Schmidt.pdf

Ms. Schmidt,  
Please see the attached response to your September 27, 2019 letter.  
Sincerely,  
Travis

## Travis Koch

Attorney  
508 East Eighteenth Street  
Cheyenne, Wyoming 82001  
307.274.4444 office  
307.274.4443 facsimile



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**From:** Geveda, Ashley <ashley.geveda@mlssooccer.com>  
**Sent:** Friday, September 27, 2019 3:49 PM  
**To:** Travis W. Koch <travis@kukerlaw.com>  
**Cc:** 'bjohnson@btjd.com' <bjohnson@btjd.com>; 'rbraithwaite@btjd.com' <rbraithwaite@btjd.com>; 'cbailey@baileybrauer.com' <cbailey@baileybrauer.com>; 'bstewart@baileybrauer.com' <bstewart@baileybrauer.com>; Danias, Anastasia <Anastasia.Danias@MLSsoccer.com>  
**Subject:** Response RE: Petke Dispute

Mr. Koch,

Please see the attached response from Anastasia Danias in regard to the Petke dispute.

Thank you,  
Ashley

---

**Ashley Geveda**  
Executive Assistant  
Major League Soccer  
O: 212-450-1210

E: [Ashley.Geveda@MLSsoccer.com](mailto:Ashley.Geveda@MLSsoccer.com)



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JEFFREY M. BOLDT+  
TRAVIS W. KOCH\*  
" OF COUNSEL  
± SPECIAL COUNSEL



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October 1, 2019

Anastasia Danias Schmidt, Esq.  
Executive Vice President & General Counsel  
Major League Soccer  
420 5th Avenue, 7th Floor  
New York, NY 10018

*Via electronic mail and U.S. mail*

Re: *Mike Petke v. Utah Soccer, LLC, d/b/a Real Salt Lake*, Civil No. 190907265, in the Third  
Judicial District Court, Salt Lake County, State of Utah

Dear Ms. Schmidt:

Thank you for your letter and accompanying three page document circulated last Friday evening, September 27, 2019. Mr. Petke appreciates your quick response to his previous correspondence dated September 25, 2019, but he is disappointed that MLS has decided, at this time, to link mediation to Mr. Petke withdrawing his lawsuit against his former club and submitting the dispute to arbitration before the Commissioner.

Waiving a right to a jury trial before one's peers is a big decision, which requires full and complete disclosure of information concerning the arbitration process before a decision can be made to either accept or reject arbitration. While Mr. Petke appreciates MLS providing a redacted portion of the MLS Constitution affixed to the letter you issued last Friday evening, both Mr. Petke and his attorneys need to review the entire document to fully understand the extent of the Commissioner's and League's authority with respect to Mr. Petke. Based on the limited and incomplete information provided, we remain uncertain whether Constitution § 2.D.3 is applicable to Mr. Petke's lawsuit against RSL pending in a Utah state court.

Based on the redacted document received last Friday evening, coupled with Mr. Petke's claim that he has neither seen nor been provided a copy of the MLS Constitution, Mr. Petke and his counsel assume MLS believes its Constitution is highly confidential because it contains proprietary information about the League's structure, its relationship with the various teams, and how MLS operates. Mr. Petke and his legal team also assume MLS will likely not permit Petke or his attorneys to see the confidential MLS Constitution without entering into a non-disclosure agreement ("NDA") or other confidentiality agreement. If these assumptions are correct, please forward a form NDA MLS would like us to review before both Mr. Petke and his attorneys will be given a complete copy of the MLS Constitution. Conversely, if a NDA is unnecessary, please forward a complete copy of the MLS Constitution to me as soon as possible.

Anastasia Danias Schmidt, Esq.  
October 1, 2019  
Page 2

Additionally, please provide me with any documentation in MLS's possession, custody or control demonstrating that Mr. Petke has previously received the MLS Constitution and/or had an opportunity to previously review the Constitution.

In the meantime, and in order to possibly relieve RSL from preparing a responsive pleading, Mr. Petke remains willing, able, and ready to participate in a mediation with Commissioner Garber to resolve this dispute assuming no strings are attached. Mr. Petke believes that a quick, complete, and quiet resolution of this matter is beneficial to everyone concerned including, most importantly, the fans.

Again, Mr. Petke appreciates your anticipated quick action in response to this request. Thank you!

Sincerely,



Travis Koch

cc: Barry Johnson, Esq. (Bennett Tueller Johnson & Deere)  
Ryan Braithwaite, Esq. (Bennett Tueller Johnson & Deere)  
Clayton Bailey, Esq. (Bailey Brauer PLLC)  
Benjamin Stewart, Esq. (Bailey Brauer PLLC)

# ATTACHMENT

4

## Clayton Bailey

---

**From:** Danias, Anastasia <Anastasia.Danias@MLSsoccer.com>  
**Sent:** Thursday, October 3, 2019 10:47 AM  
**To:** Travis W. Koch  
**Cc:** 'bjohnson@btjd.com'; 'rbraithwaite@btjd.com'; Clayton Bailey; Ben Stewart; Christina R. Woodhouse; Geveda, Ashley  
**Subject:** RE: Response RE: Petke Dispute  
**Attachments:** MLS Constitution 2017.pdf

Travis-

Thanks for your letter. I will review your letter and respond more fully in due course, but in the meantime wanted to get you a copy of the MLS Constitution. The Constitution is available to those bound by it and does not require an NDA. Please don't hesitate to contact me with any questions.

-Anastasia

---

Anastasia Danias Schmidt  
212-450-1212  
[Anastasia.Danias@MLSsoccer.com](mailto:Anastasia.Danias@MLSsoccer.com)

**From:** Travis W. Koch <travis@kukerlaw.com>  
**Sent:** Tuesday, October 1, 2019 5:02 PM  
**To:** Danias, Anastasia <Anastasia.Danias@MLSsoccer.com>  
**Cc:** 'bjohnson@btjd.com' <bjohnson@btjd.com>; 'rbraithwaite@btjd.com' <rbraithwaite@btjd.com>; 'cbailey@baileybrauer.com' <cbailey@baileybrauer.com>; 'bstewart@baileybrauer.com' <bstewart@baileybrauer.com>; Christina R. Woodhouse <christina@kukerlaw.com>; Geveda, Ashley <ashley.geveda@mlssoccer.com>  
**Subject:** RE: Response RE: Petke Dispute

Ms. Schmidt,  
Please see the attached response to your September 27, 2019 letter.  
Sincerely,  
Travis

## Travis Koch

Attorney  
508 East Eighteenth Street  
Cheyenne, Wyoming 82001  
307.274.4444 office  
307.274.4443 facsimile



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**From:** Geveda, Ashley <[ashley.geveda@mlsoccer.com](mailto:ashley.geveda@mlsoccer.com)>  
**Sent:** Friday, September 27, 2019 3:49 PM  
**To:** Travis W. Koch <[travis@kukerlaw.com](mailto:travis@kukerlaw.com)>  
**Cc:** 'bjohnson@btjd.com' <[bjohnson@btjd.com](mailto:bjohnson@btjd.com)>; 'rbraithwaite@btjd.com' <[rbraithwaite@btjd.com](mailto:rbraithwaite@btjd.com)>; 'cbailey@baileybrauer.com' <[cbailey@baileybrauer.com](mailto:cbailey@baileybrauer.com)>; 'bstewart@baileybrauer.com' <[bstewart@baileybrauer.com](mailto:bstewart@baileybrauer.com)>; Danias, Anastasia <[Anastasia.Danias@MLSsoccer.com](mailto:Anastasia.Danias@MLSsoccer.com)>  
**Subject:** Response RE: Petke Dispute

Mr. Koch,

Please see the attached response from Anastasia Danias in regard to the Petke dispute.

Thank you,  
Ashley

---

**Ashley Geveda**  
Executive Assistant  
Major League Soccer  
O: 212-450-1210  
E: [Ashley.Geveda@MLSsoccer.com](mailto:Ashley.Geveda@MLSsoccer.com)



**MAJOR LEAGUE SOCCER**

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# EXHIBIT C

# KIRTON | McCONKIE

Cameron M. Hancock  
chancock@kmclaw.com  
801.323.5916

October 14, 2019

VIA EMAIL & U.S. MAIL  
Dgarber@MLSsoccer.com

Don Garber, Commissioner  
Major League Soccer  
420 5<sup>th</sup> Avenue, 7<sup>th</sup> Floor  
New York, NY 10018

**Re: Demand for Arbitration**  
*Mike Petke v. Utah Soccer, LLC d/b/a Real Salt Lake*

Dear Commissioner Garber:

This firm represents Utah Soccer, LLC d/b/a Real Salt Lake (“RSL”). As you are aware, a dispute has arisen between RSL and its former head coach, Mike Petke (“Mr. Petke”) regarding RSL terminating Mr. Petke’s employment for cause. On or about September 30, 2017, RSL and Mr. Petke entered into an Agreement that provided that Petke would serve as RSL’s head coach through the 2020 MLS season (the “Agreement”). A copy of the Agreement is enclosed. On or about September 16, 2019, Mr. Petke file a Complaint in the Third Judicial District Court, Salt Lake County, State of Utah, *Mike Petke v. Utah Soccer, LLC, d/b/a Real Salt Lake*, Civil No. 190907265 (the “Complaint”), contesting his termination for cause under the Agreement. A copy of the Complaint is also enclosed. On September 26, 2019, you sent Mr. Petke’s attorneys a letter requesting Mr. Petke to withdraw the complaint. Mr. Petke has not withdrawn his complaint as of the date of this letter.

As the League Commissioner, you have the exclusive jurisdiction to: (a) determine if Mr. Petke’s claims asserted in the Complaint are subject to arbitration; and (b) if subject to arbitration, to resolve the claims in arbitration. Your exclusive authority to determine if Mr. Petke’s claims are subject to arbitration and, if so, to then arbitrate Petke’s claims are established by the terms of the Agreement and the terms of the MLS Constitution and the recent United States Supreme Court’s decision in *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 139 S.Ct. 524, 530 (2019).

Mr. Petke, as an employee of RSL, expressly acknowledges that [he] is subject to the jurisdiction of the League Commissioner.” (Agreement, § 1.04.) Mr. Petke also covenanted and agreed that he will “comply with . . . **all constitutions**, bylaws, rules, regulations, policies, guidelines, **directives**, instructions, **rulings, orders** and agreements . . . of Major League Soccer

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801.426.2100 *tel* 801.426.2101 *fax*  
435.574.5672 *tel* 385.501.4989 *fax*

Don Garber, Commissioner  
Major League Soccer  
October 14, 2019  
Page 2

("MLS")." (*Id.*, § 1.03 (emphasis added).) The rules and regulations in the Constitution apply to all Owners and Mr. Petke as an RSL Employee. (MLS Const.).

Pursuant to the MLS Constitution you have been delegated the authority to manage the overall business of MLS. As part of such delegation of authority, you also have the "full and complete authority" to discipline any "coach" or "Owner", in the manner you determine to be in the best interest of the League. Moreover, you have the "full" and "exclusive jurisdiction and authority" to arbitrate and resolve the dispute between Mr. Petke and RSL. (MLS Const., §§ 2.A; 2.D). (MLS Const., § 2.D.)

RSL hereby requests, pursuant to Section 2.D. of the MLS Constitution, that you immediately exercise your exclusive jurisdiction and authority and: (1) issue an order ruling that the Mr. Petke's claims asserted in the Complaint are subject to arbitration; and (2) issue an order commencing arbitration by setting a schedule to conduct the arbitration.

Please contact me if you have any questions.

Sincerely,

KIRTON McCONKIE



Cameron M. Hancock

Enclosures

cc: Barry Johnson  
Ryan Braithwaite