



BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 1860/22)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Ms. Brianna Quinn

in the arbitration proceedings between

Mr. Paolo Giuliani

- Claimant -

represented by Mr. Juan de Dios Crespo Pérez and Mr. Alessandro Mosca,
attorneys at law,

vs.

Mr. Howard Powell Sant-Roos Olano

- Respondent -

represented by Mr. Sofoklis P. Pilavios and Ms. Christina Syrengela,
attorneys at law,

1 The Parties

1.1 The Claimant

1. Mr. Paolo Giuliani (hereinafter also referred to as “the Claimant” or the “Agent”) is an Italian FIBA and CONI licensed basketball agent.

1.2 The Respondent

2. Mr. Howard Powell Sant-Roos Olano (hereinafter also referred to as “the Respondent” or the “Player”, and together with the Claimant, “the Parties”) is a Cuban professional basketball player.

2 The Arbitrator

3. On 17 October 2022, Mr. Raj Parker, the Vice-President of the Basketball Arbitral Tribunal (the “BAT”), appointed Ms. Brianna Quinn as arbitrator (hereinafter the “Arbitrator”) pursuant to Article 0.4 and Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the “BAT Rules”). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to her declaration of independence.

3 Facts and Proceedings

4. The relevant facts and allegations presented in the Parties’ written submissions and evidence are summarised below. Additional facts and allegations will be set out, where relevant, in connection with the legal discussion that follows.

5. Although the Arbitrator has considered all the facts, allegations and evidence submitted by the Parties in the present proceedings, she refers in this Award only to those necessary to explain its reasoning.

3.1 Summary of the Dispute

6. The Player was represented by the Agent over a significant period of time including, in 2019, pursuant to the agreement which is the subject of the present dispute (and the key terms of which are set out below).
7. The Agent first commenced BAT proceedings against the Player in September 2020 (BAT 1598/20). The background to those proceedings, the findings of the arbitrator in the relevant award, and the events that followed are set out in the following sections.

3.1.1 The Agreement

8. On 23 September 2019, the Claimant and the Respondent entered into a “*Player Representation Agreement*” (the “*Agreement*”).
9. Article 1.1 of the Agreement states:

*“This is an exclusive worldwide representation agreement between the 1st party which is the **Agent Mr. Paolo Giuliani**, and the 2nd party who is the **Player Mr. Howard Sant-Ross [sic]**, for a period that shall begin on September 23rd 2019 and shall continue for a period of **24 (TWENTY FOUR)** months and will be valid until **September 23rd 2021.**”*

10. Article 6 of the Agreement provides for an exclusive agent relationship, as follows:

“The Player warrants and declares that at the time of signing this Agreement he is not subject to any other representation agreement with any other agent or agency and that, by signing this representation agreement, the Agent is the exclusive worldwide agent.”

11. Article 2 of the Agreement then stipulates the services to be provided by the Claimant:

“2.1 The Agent represents, advises, counsels and assists the Player in each and all phases related to his employment with any basketball club worldwide. The Agent introduces the Player to any basketball club which might be interested or willing to retain his services as a professional basketball player. The Agent negotiates in the Player’s name and on his behalf the relevant contract conditions, and will subsequently deal in the Player’s interest with basketball clubs in connection with all matters of any nature which may possibly arise at any time during the course of the employment relationship between the Player and any basketball club and/or related entities.

2.2 However, the Agent does not guarantee or warrant that the Player will obtain employment. Giving consideration to the market conditions, the Agent cannot guarantee that the club recommended by the Agent can and will live up to its contractual commitments. The Agent will exercise his reasonable best efforts to secure employment to the Player, ensuring the contractual obligations of clubs.”

12. With respect to the fees payable to the Agent, Article 3 of the Agreement provides:

“3.1 The Player will compensate the Agent directly in the amount equivalent of 10% (ten percent) of the GROSS total value of all Player’s contract(s) including, but not limited to, employment contracts (comprising the base salary, signing bonus, buy-out contracts, termination of employment relationships and any performance bonus, etc.), contract of image rights, etc. signed during the term of this agreement, unless in such case where the Parties mutually agree that the agent’s fee is directly collected from the club(s) and/or related entities by an agreement signed and agreed by both Parties.

3.2 The Player acknowledges that the Agent is entitled to 10% (ten percent) of the GROSS

total value of all contract(s) including, but not limited to, employment contracts (comprising the base salary, signing bonus, buy-out contracts, termination of employment relationship and any performance bonus, etc.) contracts of image rights, etc. negotiated and/or executed under the term of this Agreement and until September 23rd 2021.”

13. Article 1.3 of the Agreement additionally provides:

“The Player also acknowledges that he cannot sign any deal (including, but not limited to employment contracts, contracts of image rights, buy-out contracts, termination of employment relationships, etc.) without the involvement of the Agent, who is always and in any case entitled to the full agent’s fee as described in article 3 at all time during this Agreement, even if the Agent is not involved in the related negotiations.”

14. In respect of termination of the Agreement, Article 1.2 states:

“The Parties agrees and acknowledges [sic] that this Agreement cannot be terminated prematurely nor changed/modified in any way, unless mutually agreed by them by means of a new and separate representation agreement.”

15. Article 4 of the Agreement governs the consequences of a breach of the Agreement by the Player, and provides that:

“4.1 In case of any breach of this Agreement, besides the Agent’s fee as described in Article 3, the Parties agree that there will be an additional charge of 10% of the total value of all contracts (including, but not limited to, employment contracts, contracts of image rights, etc.) executed during the term of this Agreement.

4.2 The Agent has the right to collect a penalty fee equal to 10% of the total value of all contracts (including, but not limited to, employment contracts, contracts of image rights, etc.) signed by the Player since its execution until September 23rd 2021 no later than 15 days after these contracts has been [sic] signed by the Player. In case of dispute before

the Basketball Arbitral Tribunal, the Player commits to disclose these contracts.

4.3 Throughout the entire duration of this Agreement, the Parties acknowledge that the following actions constitute a breach of this Agreement:

- a. If one of the Parties terminates this Agreement for whatsoever reason;*
- b. If the Player lets/allows other agent(s) and/or agencies work on his behalf;*
- c. If the Player negotiates any deal without the involvement of the Agent;*
- d. If the Agent negotiates any deal without informing the Player;*
- e. If the Player signs any professional sports contract to play for any team worldwide without involving the Agent.”*

16. Finally, an entire agreement clause, set out at Article 8, states:

“This agreement sets forth the entire agreement between the parties and replaces or suspends all prior agreement between the parties related to the same matter. This agreement cannot be changed orally but only by written changes signed by both parties. [...].”

3.1.2 Background to the Agreement, the Player’s termination of the Agreement and the contracts entered into by the Player following termination of the Agreement

17. As noted, these BAT proceedings are the second proceedings brought by the Claimant against the Respondent in relation to the Agreement. The facts of those prior proceedings are well summarised in the reasoned award BAT 1598/20 and have been taken into account by the Arbitrator in these proceedings. Accordingly, the Arbitrator sets out below only those facts which are relevant to these second proceedings.

18. The Parties had a longstanding professional relationship, which started in 2009. Thus,

for over a decade (and until the events at issue in these proceedings) the Claimant represented the Player as his agent. Most relevantly, and as noted above, on 23 September 2019, the Player and the Agent entered into the Agreement, i.e. a two year exclusive agency agreement.

19. During the 2018-2019 basketball season, the Respondent played for club AEK NEA KAE 2014 (“AEK Athens”) pursuant to a contract negotiated by the Agent.
20. The Player and AEK Athens’ relationship continued into the beginning of the 2019-20 season, however at the end of 2019, the Player (through the Agent) started negotiating with the club CSKA Moscow with respect to a possible transfer.
21. On 6 January 2020, according to the Agent with no warning, the Player sent a notice of termination of the Agreement to the Agent (the “Termination Notice”) as follows:

“Dear Paolo,

Please consider this notice an official termination of our collaboration. Please remove my name from anywhere you might have me listed and refrain from speaking on my behalf as of today.”

22. The Agent objected in writing to the termination of the Agreement and informed the Player that he had instructed a legal team to deal with the case and with their future communications.
23. Over the course of January 2020, the Player signed with another agent, terminated the agreement with AEK Athens by means of a termination agreement, and signed an agreement with CSKA Moscow for the remainder of the 2019-2020 season and for the 2020-21, 2021-22 and 2022-23 seasons (with an option for unilateral termination at the

end of the 2020-21 season) (“CSKA Moscow Agreement”).

24. In April 2020, following the outbreak of the COVID-19 pandemic, the Player and CSKA Moscow signed an addendum to the CSKA Moscow Agreement by means of which they agreed on a salary reduction of 50% of the initial amounts due, for the period between April and June 2020.
25. On 21 July 2020, basketball club Panathinaikos BC (“Panathinaikos” or “Club”) announced that it had signed the Player, and the Agent immediately (on 22 July 2020, and later through legal counsel on 28 July 2020 and 7 August 2020) contacted the Player to request compensation with respect to his agreements with AEK Athens, CSKA Moscow and Panathinaikos.
26. On 14 August 2020, the Player and Panathinaikos entered into an agreement for the 2020-21 and 2021-22 seasons (the “First Panathinaikos Agreement”). The key terms of that agreement that are relevant to this dispute were as follows:
 - (a) the salary for the 2020-21 season was set out in Article 5 of the First Panathinaikos Agreement, as well as the Addendum to same, and was comprised of: (i) a regular monthly salary of EUR 726 (in the main contract);¹ and (ii) the gross amount of EUR 273,343.59 (EUR 213,208 net) in the Addendum;

¹ It appears that this was a “gross” payment, as Article 5.2 of the First Panathinaikos Agreement then stated that the amounts in that contract were “subject to legal deductions and the respective payments are made according to the applicable legislation”.

(b) the salary for the 2021-22 season was set out in the same provisions and was comprised of: (i) a regular monthly salary of EUR 726 (in the main contract);² and (ii) the gross amount of EUR 336,492.31 (EUR 262,464 net) in the addendum;

(c) however, according to Article 9.4 of the Addendum to the First Panathinaikos Agreement, Panathinaikos had a right to terminate the relationship at the end of the first season by providing written notice via email by 15 July 2021 and paying a buy-out fee of EUR 5,000.00.

27. On 21 August 2020, the Agent sent a further communication to the Player through counsel reiterating his prior requests for compensation. According to the Agent, the Player never responded to his various requests for compensation.

3.1.3 The First BAT Proceedings

28. On 9 September 2020, the Claimant commenced the first BAT proceedings (BAT 1598/20) (the “First BAT Proceedings”). The facts, procedure, and decision in those proceedings is available in the reasoned award and not repeated here other than as relevant to these proceedings.

29. In summary, the key issues for determination by the arbitrator in the First BAT

² As above.

Proceedings that are relevant to this Award included whether:

- a) the Respondent unlawfully terminated the Agreement, by way of the Termination Notice and, if so;
- b) the Claimant was entitled to compensation for agent's fees in connection with the CSKA Moscow Agreement, signed between the Player and CSKA Moscow on 13 January 2020;
- c) the Claimant was entitled to compensation for agent's fees in connection with the first season of the First Panathinaikos Agreement signed between the Player and Panathinaikos on 14 August 2020;³
- d) the Claimant was entitled to declaratory relief with respect to compensation for the second season of the First Panathinaikos Agreement (or generally for that season were the buy-out option to be exercised); and
- e) the Claimant was additionally entitled to a penalty in accordance with clause 4.1 of the Agreement.

30. On those questions, in the award rendered in the First BAT Proceedings (dated 12 April

³ Notably, the Agent claimed compensation only in relation to the amounts contained in the Addendum to the First Panathinaikos Agreement (i.e. he did not make any claim for the "salary" instalments due under Article 5 of the main agreement).

2021) the arbitrator held as follows:

- a) the Respondent had unlawfully terminated the Agreement;⁴
- b) as a result of the Player's termination without just cause, the Agent was to be "indemnified in such a manner that [he] be placed in the position [he] would have enjoyed had the contract remained in force' (BAT 0252/12) for its agreed term, i.e. until 23 September 2021".⁵
- c) the Agent was entitled to compensation in the amount of 10% of the Respondent's gross salary agreed under the CSKA Moscow Agreement, being USD 22,127.10.⁶ Notably, the arbitrator held that:
 - (i) (contrary to the Player's position) the Agent was entitled to compensation calculated with reference to the 'gross' amounts payable to the Player:

Article 3.2 of the Agreement clearly provides that "the Agent is entitled to 10% (ten percent) of the GROSS total value of all contract(s) [...] negotiated and/or executed under the term of this Agreement and until September 23rd 2021".

The Arbitrator sees no reason to deviate from the Parties' express agreement. In particular, the Arbitrator considers that the Player's invocation of a certain

⁴ See BAT 1598/20, at paragraphs 115-120.

⁵ Ibid, at paragraph 132.

⁶ Ibid at paragraphs 138-143.

“standard market practice”, under which agents would be generally entitled to 10% of the players’ net salary, is irrelevant. Even if such standard practice exists in the manner described by the Player, the Parties are free to depart from it in the exercise of their contractual freedom.

Additionally, contrary to what the Player states, the Agent had agreed similar fees, amounting to more than 10% of the Player’s net salary, in the past. Such was the case in the AEK Contract concluded on 11 July 2019 by the Player, represented by the Agent, and AEK Athens (Player’s salary of USD 225,000.00 net but agent fee of USD 30,000.00).⁷

- (ii) (contrary to the Player’s position) the Agent was entitled to compensation calculated with reference to the full amount of the CSKA Moscow Agreement, rather than the reduced amount that was agreed in the context of the COVID-19 pandemic:

The base for the Agent’s compensations cannot be reduced, as requested by the Player, taking into account the salary that the Player actually received as a result of the salary reduction agreed with the CSKA Moscow due to the Covid-19 pandemic. For two reasons:

- i. *As a general principle, supported by the BAT jurisprudence, “[t]he fact that an agent is paid a certain percentage of the value of the employment contract (calculated on the basis of the total salary to be paid to the employee) is standard practice” and the payment of the agent’s fees is not made contingent upon the amounts ultimately received by the players*

⁷ Ibid, at paragraphs 138-140.

or the actual length of the contracts signed (FAT 0036/09; BAT 0238/11).

- ii. *In application of the “COVID-19 Guidelines Issued on 20 April 2020 by the BAT President, Vice-President and Arbitrators” (the “BAT Covid-19 Guidelines”), the Player’s salary reduction in April 2020 is not appropriately applied to the Agent. In particular, point 11 of the BAT Covid-19 Guidelines provides that “[w]hen calculating damages for any unlawful termination not related to the COVID-19 crisis, the arbitrators will, in principle, not take into account the hypothetical impact that the COVID-19 crisis would potentially have had on the contract had it run its normal course”. The unlawful termination of the Agreement on 6 January 2020 preceded the pandemic by several months. As stated by the recent award BAT 1482/20, “[a]n argument of elemental fairness supports that a party that breached its contract should not benefit from an extraordinary and unforeseeable situation that happened only after the breach”.⁸*

- d) the Claimant was entitled to compensation in the amount of 10% of the Respondent’s gross⁹ salary agreed under the First Panathinaikos Agreement for the 2020-2021 season, being EUR 27,334.36. This amount was calculated on the basis of the amount “*determined in Article 5 of the Addendum to the contract between Panathinaikos BC and the Player, i.e. EUR 273,343.59*”.¹⁰

⁸ Ibid, at paragraph 142.

⁹ For the same reasons as developed in relation to the CSKA Moscow Agreement.

¹⁰ Ibid, at paragraph 144.

- e) the Claimant was not entitled to declaratory relief with respect to compensation for agent's fees in the 2021-22 season. The arbitrator held such claim was with respect to "a right that ha[d] not yet crystalized" and was "subject to a condition", namely Panathinaikos' right to unilaterally terminate the First Panathinaikos Agreement after the first season by paying to the Respondent a EUR 5,000 buy-out fee;¹¹
- f) the Respondent was liable to pay to the Claimant a contractual penalty of EUR 37,500.00 in accordance with clause 4.1 of the Agreement. With respect to this claim, the arbitrator held relevantly that:
- (i) penalties are considered in BAT jurisprudence as being valid in principle, and are conceptually different from compensation for lost fees:
- [...] BAT jurisprudence has consistently admitted contractual penalties as a dissuasive measure to prevent the parties from dishonouring their obligations and as a form of sanction in case of breach (FAT 0036/09; FAT 0100/10). Penalties such as the provision in Article 4 of the Agreement anticipate the consequences of a breach, by determining ex ante the sanction to be imposed to the party in breach. Such penalty is conceptually different from the compensation claimed by the Agent for lost fees.¹²*
- (ii) With that said, penalty clauses are interpreted restrictively and may be

¹¹ Ibid, at paragraph 151.

¹² Ibid, at paragraph 159.

reduced if excessive:

The BAT jurisprudence has nevertheless followed a restrictive interpretation of penalty clauses “in order not to lead to excessive results” (BAT 0306/12). Whether a contractual penalty is excessive is left to the discretion of the Arbitrator and depends on the individual circumstances of the case. As a general rule, a contractual penalty has been considered to be excessive “if it is disproportionate to the basic obligation of the debtor” (FAT 0036/09). In principle, penalties are considered excessive if and to the extent that they exceed the amount requested as principal (BAT 0233/11; BAT 0987/17; BAT 1035/17).¹³

- (iii) In application of those principles, the Player was entitled to a penalty, however the amount of the penalty fee requested by the Player (USD 22,127.10 plus EUR 27,334.36)¹⁴ was to be slightly reduced to a global amount of EUR 37,500 in the circumstances. In taking his decision, the arbitrator took into account: (a) the manifest absence of a legal basis for the Player’s termination; and (b) the Agent’s diligent pursuit of the claim after the Termination Notice and the lack of any response from the Player; but also (c) that the requested penalty amounted to 100% of the principal claimed; and (d) as a result of the COVID-19 pandemic, the Player’s

¹³ Ibid, at paragraph 160.

¹⁴ The Arbitrator understands that the currency conversion at that time meant that the USD amount under the CSKA Moscow Agreement equated to approximately EUR 18,500, meaning the total penalty potentially payable was approximately EUR 45,800.

salary had been reduced.¹⁵

- g) the Claimant was also awarded interest at the rate of 5% per annum in relation to the compensation awarded for the CSKA Moscow Agreement and the First Panathinaikos Agreement.

3.1.4 The events following the First BAT Proceedings (and giving rise to this dispute)

3.1.4.1 Termination of the First Panathinaikos Agreement

31. The Player played the remainder of the 2020-21 season for Panathinaikos.
32. However, on 15 July 2021, Panathinaikos exercised its right to terminate the First Panathinaikos Agreement after the first season, by paying the EUR 5,000 buy-out fee. This was communicated to the Player in an email titled “Opt -Out Activation – Mr Sant Roos”, which stated:

[...] Please consider this email an official notice of termination of our contract, according to its opt-out clause. The amount of 5.000 euro has been wired to your account and we attach hereby the relevant proof of payment. As we have informed you, we have interest to negotiate a new contract, upon the provision that you will receive the Greek passport. Until then, you are more than welcome to participate in our training camp, friendly games etc if

¹⁵ Ibid, at paragraphs 154-162.

you wish to do so since you are in Athens (and if you don't find another deal elsewhere), until we have actual news on the subject of the passport. [...]

33. The Player has confirmed that he received the EUR 5,000 buy-out fee from Panathinaikos.

3.1.4.2 The Second Panathinaikos Agreement

34. On 16 August 2021, Panathinaikos and [the Player's then agent] each announced that the Player and Panathinaikos had entered into a new two-year contract.
35. On 8 September 2021, Panathinaikos and the Respondent signed an employment contract for the 2021-22 and 2022-23 seasons ("Second Panathinaikos Agreement"). The Arbitrator notes that such contract was in exactly the same format (i.e., an 'Athletic Services Contract' accompanied by an Addendum) as the First Panathinaikos Agreement.
36. Under the Second Panathinaikos Agreement, it was agreed the Respondent would receive:
- a) for the 2021-22 season: (i) a regular monthly salary of EUR 726 (in the main contract);¹⁶ and (ii) the gross amount of EUR 178,261.44 (EUR 139,043 net) (in

¹⁶ As with the First Panathinaikos Agreement, it appears that this was a "gross" payment, as Article 5.2 of the Second Panathinaikos Agreement stated that the amounts in that contract were "subject to legal deductions and the respective payments are made according to the applicable legislation".

the Addendum); and

- b) for the 2022-23 season: (i) a regular monthly salary of EUR 726 (in the main contract);¹⁷ and (ii) the gross amount of EUR 188,369.23 (EUR 146,928 net) (in the Addendum).

37. Unlike the First Panathinaikos Agreement, the Second Panathinaikos Agreement did not contain a buy-out right exercisable by Panathinaikos after the conclusion of the first season of the contract.

3.1.4.3 Termination of the Second Panathinaikos Agreement and entry into the Zaragoza Agreement

38. On 16 August 2022 (thus, relevantly for this Award, after the term of the Agreement had expired on 23 September 2021), the Respondent and Zaragoza BC entered into an employment contract for the 2022-23 and 2023-24 seasons (“Zaragoza Agreement”). The salary payable under the first season of the Zaragoza Agreement (i.e. the 2022-23 season) was EUR 200,000 net.
39. On 24 August 2022, Panathinaikos and the Player terminated the Second Panathinaikos Agreement by way of a termination agreement (“Termination Agreement”).¹⁸

¹⁷ As above.

¹⁸ Answer, exhibit 5.

40. Under Article 2 of the Termination Agreement, the only sum payable by Panathinaikos to the Player was EUR 1,253.69 which “*correspond[ed] to payroll clearance*”. Amongst other things, the Termination Agreement also provided a broad mutual release from any “*other claims, liabilities and demands, of any name, kind, nature and description whatsoever... arisen or that may arise out of or in any way connected against one another regarding the [Second Panathinaikos Agreement]*”.

3.1.4.4 The Agent’s correspondence with the Player

41. Between the issuance of the award in the First BAT Proceedings, and until September 2022, the Agent took the following measures to assert his various claims under the Agreement:

(a) The Agent requested FIBA’s assistance to enforce the award in the First BAT Proceedings, which led to a number of sanctions against the Player, including a ban on international transfers,¹⁹ a monetary fine of CHF 15,000 and a ban on participation in international competitions. Ultimately, the Player requested, and was granted, a payment plan from FIBA allowing him to repay over time the debt arising out of the award in the First BAT Proceedings (and allowing him to be transferred internationally to the Zaragoza basketball club).

(b) On 20 August 2021, following the announcement that the Player and Panathinaikos

¹⁹ Such ban not, however, applying to the Second Panathinaikos Agreement as no international transfer was necessary in order to enter into that new contract.

had entered into a new agreement, the Agent wrote to the Player requesting a copy (within five days) of his agreement with Panathinaikos “*in order to calculate the amounts owed to the Agent*”. According to the Agent, the Player neither disclosed the relevant contracts, nor responded “*within the granted deadline*”.

(c) On 12 September 2022, the Agent sent a further notice to the Player requesting disclosure of the contracts the Player had entered into with Panathinaikos, and suggesting that in case the Player failed to comply, the Agent would initiate legal proceedings.

42. Following this correspondence, the Player provided the Second Panathinaikos Agreement to the Agent, however, citing “*legitimate doubts to believe that said disclosed contract does not represent the totality of Mr. Sant-Roos’ earnings*” with respect to his engagement with Panathinaikos, the Agent commenced the present BAT proceedings.

3.2 The Proceedings before the BAT

43. On 29 September 2022, the Claimant filed a Request for Arbitration in accordance with the BAT Rules and duly paid the non-reimbursable handling fee of EUR 4,000 on the same day. The Request for Arbitration contained the Agent’s requests for relief, including a request for document disclosure as discussed further below.

44. On 17 October 2022, the BAT informed the parties that Ms. Brianna Quinn had been appointed as the Arbitrator in this matter and fixed the advance on costs to be paid by the Parties as follows:

“Claimant (Mr. Paolo Giuliani)	€ 4,000
Respondent (Mr. Howard Powell Sant-Roos Olano)	€ 4,000.”

45. On 24 October 2022, the Claimant paid his share of the advance on costs.
46. On 2 November 2022, the Respondent requested and was granted an extension to the time limit for filing his Answer until 25 November 2022.
47. On 25 November 2022, the Respondent submitted his Answer and supporting evidence, and responded to the Agent's request for production by suggesting that he had already produced sufficient relevant evidence in response to same.
48. On 28 November 2022, the Arbitrator informed the Parties that the Respondent had failed to pay the advance on costs and invited the Claimant to substitute for the Respondent's share by 8 December 2022.
49. On 29 November 2022, the Claimant paid the Respondent's share of the advance on costs.
50. On 21 December 2022, the Arbitrator invited the Claimant to file a Reply to the Answer by no later than 18 January 2023. In this Procedural Order, the Arbitrator asked the Claimant to specify whether he maintained his requests for document disclosure in view of the content of the Respondent's Answer and, if so, on what grounds. The Arbitrator also invited the Parties to correspond directly to determine whether it was possible to amicably resolve the present dispute, and update the Arbitrator on the status of any such negotiation by no later 18 January 2023.
51. On 18 January 2023, the Claimant submitted his Reply (in which he maintained his requests for document disclosure and informed the Arbitrator that no settlement had been reached by the Parties).

52. On 2 February 2023, the Arbitrator invited the Respondent to file his Rejoinder by 16 February 2023.
53. On 10 February 2023, the Respondent requested and was granted an extension to the deadline for his Rejoinder until 3 March 2023.
54. On 3 March 2023, the Respondent filed his Rejoinder, including specifically addressing the Claimant's request for document disclosure and producing a number of documents in relation (if not in direct response) to same. The Respondent further alleged that he had made a settlement offer to the Claimant in the amount of EUR 17,826 (namely 10% of the gross amounts payable to him by Panathinaikos in the 2021-22 season).
55. On 21 March 2023, by way of Procedural Order, the Arbitrator requested the Claimant to confirm, by no later than 28 March 2023, whether he continued to maintain his requests for disclosure following the information provided and documents produced by the Respondent in his Rejoinder.
56. On 28 March 2023, the Claimant submitted his reply to the Procedural Order of 21 March 2023, in which he maintained his requests for the disclosure of an extensive range of documents.
57. On 18 April 2023, the Arbitrator invited the Respondent to comment on the Claimant's position on document production, by no later than 25 April 2023.
58. On 25 April 2023, the Respondent filed his comments on the Claimant's requests for document production.
59. On 24 May 2023, by way of Procedural Order, the Arbitrator invited the Parties' counsel

to consult and explore the possibility of narrowing or withdrawing the remaining requests for production (as they had done in the First BAT Proceedings). The Arbitrator noted that this would delimit the remaining issues in dispute, and indicated that the Parties should determine whether it was possible to agree to the production of any specific documents or information that might satisfy the Claimant of the veracity of the information already provided by the Respondent. The Arbitrator requested an update on the status of the document production requests following such consultation by 5 June 2023.

60. On 5 June 2023, the Claimant replied to the Arbitrator's Procedural Order confirming that the Parties had been unable to reach agreement, submitting further arguments on document production, and maintaining his requests for document production.
61. On 27 June 2023, the Arbitrator circulated the Claimant's position on document production to the Respondent and, in light of the developments in same, invited the Respondent to comment on such submission by 4 July 2023.
62. On 30 June 2023, the Respondent filed his comments in reply to the Claimant's submissions on document production, in which he continued to oppose the Claimant's request for document disclosure.
63. On 10 August 2023, the Arbitrator requested the Respondent to clarify, by 24 August 2023, the content of certain statements that Panathinaikos had submitted in these proceedings (such statements were in support of the Respondent's position that the documents submitted in the proceedings reflected the entire agreement between the Player and Panathinaikos).
64. On 24 August 2023, the Respondent filed his reply to the Procedural Order of 10 August 2023, in which, *inter alia*, he confirmed he had not signed any agreements with

Panathinaikos for the 2021-2022 season other than those already submitted. The Respondent also submitted a new statement from Panathinaikos confirming no other agreements were executed between the Club and the Player in relation to his engagement with the Club for the 2021-2022 season.

65. On 27 September 2023, by way of Procedural Order, the Arbitrator invited the Claimant to file his comments, limited to the content of the Respondent's submission and evidence of 24 August 2023 only, by no later than 4 October 2023.
66. On 4 October 2023, the Claimant provided his comments on the Respondent's submission.
67. On 12 October 2023, by way of Procedural Order, the Arbitrator informed the parties that she had decided not to order production of the further documents requested by the Claimant in these proceedings and informed the Parties that the reasons for her decision would be set out in the present Award (see, in this respect, Section 6.2 below). The Parties were also invited to submit their final closing submissions based on the documents already on file, by no later than 18 October 2023 (together with their account of costs).
68. On 18 October 2023, both Parties submitted their closing submission and account of costs.
69. On 26 October 2023, the BAT acknowledged receipt of and circulated the Parties' respective final submissions and account of costs.

4 The Positions of the Parties

70. This section of the Award does not contain an exhaustive list of the Parties' contentions, its aim being to summarise the Parties' main arguments. In considering and deciding upon the Parties' claims, the Arbitrator has accounted for and carefully considered all the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the findings below.

4.1 The Claimant's Position

71. The Claimant submits the following in substance:

72. The award issued in the First BAT Proceedings should be considered final and binding, and what was established in such award is *res judicata*. More specifically, the Claimant submits:

- a) the doctrine of *pacta sunt servanda* is the principle by which the Arbitrator should examine the merits of the claim;²⁰
- b) the Respondent unlawfully terminated the Agreement;²¹
- c) the Claimant is entitled to receive fees upon the mere conclusion of a contract

²⁰ With reference to BAT 1598/20, at paragraph 110.

²¹ *Ibid.*, at paragraph 120.

without his involvement within the term of the Agreement, regardless of whether he was involved in the negotiations;²²

d) the Claimant is entitled to receive ten percent of the gross total value of the Player's contracts (including the Second Panathinaikos Agreement).²³

73. The Claimant submits that he is entitled to receive the fees stipulated in the Agreement regardless of whether the Player was paid before the expiration of the Agreement, as the Second Panathinaikos Agreement was entered into on 8 September 2021, i.e. prior to the expiry of the term of the Agreement (23 September 2021). The Claimant further suggests, with reference to BAT jurisprudence, that he shall be entitled to compensation calculated on the total value of the contract, irrespective of the duration.
74. The Claimant relies on both Article 3 of the Agreement and BAT jurisprudence to suggest that, with respect to the amount of compensation he should receive, he should be put "*in the same situation [he] would have enjoyed had the Contract remained in force*" and that this amounts to 10% of the Player's gross compensation under any and all contracts entered into during the term of the Agreement.
75. As to the precise quantum of his request for compensation, in his Request for Arbitration the Claimant submitted a number of alternative calculations being: (i) 10% of the gross total value of the Player's contracts signed with Panathinaikos, to be quantified once (if)

²² Ibid, at paragraph 132-137.

²³ Ibid, at paragraphs 138, 139, 142, 143 and 145,

Panathinaikos and the Player had disclosed further documents; or (ii) EUR 97,600 in the event the Player failed to disclose requested documents (such amount calculated with reference to the gross amount reported to be payable to the Player under the Second Panathinaikos Agreement);²⁴ or (iii) the amount of EUR 36,663.07 in the event the Second Panathinaikos Agreement was the only document to be taken into account in calculating damages;²⁵ or (iv) the amount the Arbitrator deemed appropriate in the circumstances.

76. In his Request for Arbitration dated 29 September 2022, the Claimant requested the following relief:

Preliminary:

a. To order the Respondent and Panathinaikos BC to disclose:

i. any and all contracts (including the related documents, schedules, addendum, annexes, etc.) and documents (including, but not limited to emails, messages, WhatsApp conversations, etc.) related to the termination and/or buy-out of the Panathinaikos Contract and the New Panathinaikos Contract

ii. Confirmation that no bonuses were paid by Panathinaikos BC (and/or its related entities) to the Player (and/or his agent or other third parties) including, but not limited to, for winning the 2021 Greek championship and cup

²⁴ The Agent based his calculations on internet sources, the salaries of “similar small forwards”, the amount the Player had earned under the First Panathinaikos Agreement, and the reported budget of Panathinaikos for the season in question.

²⁵ The Agent based his calculations on 10% of the amounts payable for both the 2021-22 (EUR 178,261.44 gross) and 2022-23 (EUR 188,369.23 gross) seasons.

iii. *the new 2-year contract/s (including the related documents, schedules, addendum, annexes, contract of image rights, etc.) and documents (including, but not limited to emails, messages, WhatsApp conversations, etc.) signed with Panathinaikos BC and/or its related entities, as announced by both Panathinaikos BC and the Player's new agent on 16 August 2021*

iv. *the whole and entire correspondence (emails, WhatsApp, messages, etc) exchanged between the Respondent (and/or his agent or other third parties) and Panathinaikos BC (and/or its agent or other third parties) when negotiating the relevant documents and/ or contracts requested above in order to verify the consistency between the negotiations, the offers, the acceptances and the agreements ultimately signed, demonstrating that nothing has been concealed and/or circumvented in the disclosed document*

v. *the payment proofs and payslips of all the payments made by Panathinaikos BC and/or its related entities to the Respondent and/or his related parties regarding the 2021-2022 sporting season, as well as the Respondent's 2021 tax return in order to check the consistency with the disclosed document*

On the merits:

b. *To accept this claim;*

c. *To decide, as a consequence of the Player's employment relationship with Panathinaikos BC as announced on 16 August 2021, that the Respondent shall pay the Claimant compensation:*

i. in the amount of 10% (ten percent) of the gross total value of all the Player's contract/s including, but not limited to, employment contracts (comprising the base salary, signing bonus, buy-out contracts, termination of employment relationships and any performance bonus, etc.), and contract of image rights, signed with Panathinaikos BC and/or its related entities as announced by Panathinaikos BC and the Player's new agent on 16 August 2021, to be quantified once the Respondent and Panathinaikos BC disclose the requested documents, as compensation due to the Player's termination of the Contract without just cause, plus (5%) per annum

interest rate from 16 August 2021 until its effective and entire payment,

Alternatively

ii. in the amount of EUR 97,600.00 in case the Respondent's fails to disclose the requested documents and/or he provides simulated contracts, as compensation due to the Player's termination of the Contract without just cause, plus (5%) per annum interest rate from 16 August 2021 until its effective and entire payment:

Alternatively,

iii. in the amount of EUR 36,663.07 in case the New Panathinaikos Contract as disclosed by the Player is the only document taken into account by the Arbitrator to calculate damages, as compensation due to the Player's termination of the Contract without just cause, plus (5%) per annum interest rate from 16 August 2021 until its effective and entire payment.

Alternatively

iv. in the amount the Arbitrator deemed appropriate, as compensation due to the Player's termination of the Contract without just cause, plus (5%) per annum interest rate from 16 August 2021 until its effective and entire payment.

d. Further to article 17.3 of the BAT Arbitration Rules to decide that the Respondent shall bear the entirety of the costs of this arbitration;

e. Further to article 17.4 of the BAT Arbitration Rules to decide, besides the payment of the non-reimbursable handling fee, that the Respondent shall pay the Claimant's legal fees with respect to this procedure in the total amount of EUR 7,500.00

Total amount in dispute: 10% gross total value of any contract signed by the Respondent with Panathinaikos BC as announced on 16 August 2021, or EUR 97,600.00 or EUR 36,663.07 (there are no interest or late payment penalties sought for periods prior to the filing of the Request for Arbitration), plus 5% p.a. interest rate on the amounts of compensation from 16 August 2021 until effective and entire payment

77. During the course of the exchange of submissions in these proceedings, and in response to Procedural Orders issued by the Arbitrator and the Parties' responses to same, the Claimant amended his position and as such his requests for relief.
78. Notably, in his Reply of 18 January 2023, the Claimant added two elements to his requests for compensation, ostensibly "*as a consequence of the documents disclosed by the Respondent in its Answer*", namely: (i) EUR 500, representing 10% of the amount received by the Player from Panathinaikos when it exercised its right to terminate the First Panathinaikos Agreement; and (ii) EUR 1,597.20 as additional compensation based on the "salary" amounts payable to the Player under Article 5 of the Second Panathinaikos Agreement (as opposed to solely the amounts payable in the Addendum to same).²⁶ Thus, the Agent's request for compensation (if document production was not ordered and only the Second Panathinaikos Agreement was taken into account) increased to EUR 38,760.27 in total.
79. The Agent also argued in his Reply that:
- (a) the Player's settlement offer (see below) was not a realistic proposal, thus he was entitled to proceed with the arbitration;
 - (b) the Agent's claim is clearly not time-barred when considering consistent BAT

²⁶ With respect to this claim, the Agent suggested that it was confirmed for the first time in a statement from Panathinaikos (submitted with the Player's Answer) that the Player's income included both the monthly salary set out in Article 5 of the Agreement as well as the amounts set out in the relevant Addendum.

jurisprudence on the *verwirkung* principle;

- (c) the Agent's claim does not constitute unjust enrichment or undue profiting, but rather is based on the "*crystal clear terms of the [Agreement]*";
- (d) an agent is entitled to receive the full fee even if the relevant player and club terminate their agreement before its natural expiry, and this in fact occurred previously between the Parties with respect to the AEK Athens Agreement. Moreover, the Agent is entitled to receive compensation with respect to the 2022-23 season (as well as the 2021-2022 season) in this case because, unlike the First Panathinaikos Agreement, the Second Panathinaikos Agreement did not contain a buy-out clause and the Player and Panathinaikos instead terminated their relationship by mutual agreement.
- (e) finally, the duty to mitigate does not apply in the case at hand, in line with BAT jurisprudence (with reference to 1638/20 and BAT 0815/16 specifically). The duty to mitigate is based on the principle of not allowing a party to receive more compensation than what they are effectively entitled to, and in the case at hand the Agent was prevented from mitigating his damages due to the Player's decision to terminate his Agreement and cease using his services.

80. Following the Arbitrator's decision not to order the production of further documents in these proceedings, the Claimant's Requests for Relief as set out in his Final Comments of 18 October 2023 were as follows:

The Claimant herein respectfully requests that the BAT issues a decision as follows:

- a. *To accept this claim:*
- b. *To decide, as a consequence of the Player's employment relationship with*

Panathinaikos BC as announced on 16 August 2021, that the Respondent shall pay the Claimant compensation:

i. in the amount of EUR 38,760.27, as compensation due to the Player's termination of the Contract without just cause, plus (5%) per annum interest rate from 16 August 2021 until its effective and entire payment

Alternatively,

ii. in the amount the Arbitrator deemed appropriate, as compensation due to the Player's termination of the Contract without just cause, plus (5%) per annum interest rate from 16 August 2021 until its effective and entire payment.

c. Further to article 17.3 of the BAT Arbitration Rules to decide that the Respondent shall bear the entirety of the costs of this arbitration.

d. Further to article 17.4 of the BAT Arbitration Rules to decide, besides the payment of the non-reimbursable handling fee in the amount of EUR 4,000.00, that the Respondent shall pay the Claimant's legal fees with respect to this procedure in the total amount of EUR 7,500.00.

81. Generally, the Claimant contends that the present claim would not exceed the purposes of restitution, and would not result in a grossly unfair and punitive effect for the Respondent, as it is based on the terms of the Agreement and consistent with previous fees paid to the Respondent in the past.

82. The Claimant further contends that any compensation awarded to him in the present proceedings should not be reduced further as, *inter alia*, he has not claimed a penalty (in addition to compensation for agent's fees) in these proceedings, and the penalty in the First BAT Proceedings was held to be conceptually different to compensation for agent fees (and was in any case reduced by the arbitrator in those proceedings). The Claimant therefore argues that such penalty should not be "*taken into consideration when deciding the case at hand*". Additionally, the Claimant argues that no *force majeure* or financial

hardship situation should be considered by the Arbitrator in assessing compensation (as per the award in the First BAT Proceedings).

83. Finally, the Agent claims that, on the basis of well-established BAT jurisprudence, he should be entitled to interest at a rate of 5% per annum on any compensation ultimately awarded in these proceedings, from the date of 16 August 2021 (when the Player and Panathinaikos first announced the new agreement) until effective and entire payment.

4.2 Respondent's Position

84. The Respondent submits the following in substance:
85. Whilst he does not dispute the finding in the First BAT Proceedings that the Agreement was unjustifiably terminated, the award in that case did not contain a binding ruling in favour of the Agent's entitlement to receive additional compensation in relation to the 2021-22 season or beyond. Indeed, the arbitrator in the First BAT Proceedings dismissed the request for declaratory relief in that respect, and the award thus does not produce *res judicata* with respect to the present claims.
86. The Respondent contends that the Agent has been "adequately compensated" for the unilateral termination of the Agreement by the amounts awarded to him in the First BAT Proceedings (in particular given the penalty awarded). Further payments in relation to the Second Panathinaikos Agreement would exceed the purposes of restitution and would result in a grossly unfair and punitive effect on the Player.
87. The Respondent considers that the amounts awarded in the First BAT Proceedings were excessive and disproportionate, particularly when considering his actual earnings in the same period. He notes that the aggregate amount awarded to the Claimant in the First

BAT Proceedings represented a proportion of nearly 25% of his real net earnings for the same period. The Respondent further submits that the cumulative award of a penalty fee in the amount of EUR 37,500 in the First BAT Proceedings resulted in the Claimant receiving undue financial profits on top of compensation for agent's fees.

88. As such, the Respondent contends that the amounts awarded to the Claimant in the First BAT Proceedings should also be taken into consideration in the present dispute and that strict compliance with the terms of the Agreement would produce a result contrary to *ex aequo et bono* principles. He further submits that, according to BAT jurisprudence, *“contractual provisions for financial penalties or compensation in damages should be interpreted and applied in accordance with basic considerations of equity and justice, in order to prevent disproportionate or unfair results”*.
89. With respect to the quantum of any compensation payable in these proceedings, the Respondent submits that in the event the Arbitrator decides in favour of the Claimant, any compensation should be calculated only in relation to the Second Panathinaikos Agreement, and specifically to the Player's total net annual salary, for season 2021-2022 only:
- (a) the Respondent contests any suggestion that agreements exist in addition to the Second Panathinaikos Agreement. He relies on the multiple statements from Panathinaikos in this respect, including: *“[t]his was the sole contractual document between our Club and the Player that reflected our entire agreement concerning the terms of the Player's employment with our Club for this period. There was no other contractual agreement in force concerning any other source of income, or form of payment to the Player”*. He further submits that (with respect to his reduced salary in the 2021-22 season), he could not benefit from the (more favourable) terms of the First Panathinaikos Agreement given the Club's exercise of the buy-out option and,

to the contrary, the Club proposed a new package which was reduced because he could not obtain a Greek passport and in view of its budgetary cutbacks.

- (b) the Respondent repeats the argument made in the First BAT Proceedings that any amount of compensation should be based only on the “net” amounts in the contract, in line with “*standard practice in professional basketball*”. He refers in this respect to BAT 0768/15, which discussed this issue briefly.
- (c) the Respondent also repeats his position from the First BAT Proceedings that the penalty clause in the Agreement was not sufficiently discussed or negotiated between the Player and the Agent.
- (d) with respect to the additional compensation claimed by the Agent in his Reply (i.e. in relation to the EUR 5,000 buy-out fee and the monthly salary payable under the Agreement, the Player argues that bringing such claim only in the Reply was an “*unacceptabl[e] modification*” of his claims in these proceedings.
- (e) finally, the Respondent submits that, as he and Panathinaikos mutually terminated their relationship prior to the 2022-23 season, the Agent’s request for compensation in relation to that season is baseless. He argues that the amounts agreed under the Second Panathinaikos Agreement for this additional season are “*no longer relevant*” and that, as the original term of the Agreement expired on 23 September 2021, the Agent would not be entitled to receive additional payments for the 2022-23 season unless the Agreement’s term was extended. The Player contends that the Agent could have had “*no reasonable expectation*” in the normal course of events to receive fees in relation to the 2022-23 season, for a contract negotiated and signed at the very end of the two-year term of the Agreement.

90. The Player suggests that any amount of compensation should also be reduced by application of the Agent's duty to mitigate his damages. He notes that the Second Panathinaikos Agreement was concluded 20 months following the termination of the Agreement and that the Agent could be expected "*in the interim to take steps to substitute his lost income*". The Player suggests that in all cases of contractual breach, the injured party must take steps to mitigate their damages, and that mitigation was clearly feasible in the case at hand because, being freed of his duties for the Player, the Agent could devote his time, resources and personal work to other players and thereby maximise his business opportunities.
91. Finally, the Player suggests that the Agent's claim is an abuse of right, and that he filed the present arbitration in "*manifest bad faith*" considering that the Player had made a realistic settlement proposal. He therefore argues that he should not bear any liability for the arbitration costs and expenses, in particular as the Agent's "*hypothetical*" calculation of damages (despite having the Second Panathinaikos Agreement) increased the costs associated with the present proceedings. He further argues that the proceedings are "*on the borderline*" of being time-barred, but does not go as far as to suggest that the Agent's claims are actually time-barred.
92. In his Answer dated 25 November 2022, the Respondent requested the following relief:

In light of the above, the Respondent respectfully requests the BAT Arbitrator to rule as follows:

- (i) The Request for Arbitration filed by Mr. Paolo Giuliani on 29 September 2022 is dismissed in its entirety;*
- (ii) Alternatively, and only in the event the BAT Arbitrator decides that the Claimant is entitled to further compensation, Mr. Paolo Giuliani is not entitled to the full amounts he requests with his Request for Arbitration and that his compensation in*

agent fees shall be reduced to:

- a) *EUR 13.904,30 namely an amount equal to 10% of the Player's annual net salary from 30.09.2021 until 30.06.2022 under his employment with Panathinaikos BC.*
or, subsidiarily [sic],
- b) *to any other reduced amount that the Arbitrator may deem appropriate on the basis of the ex aequo et bono considerations;*
- (iii) *Mr. Paolo Giuliani shall bear the entire costs of this arbitration, or at least a substantial part thereof;*
- (iv) *Mr Paolo Giuliani shall not be entitled to any contribution towards his legal expenses, and he shall reimburse the Respondent for all legal costs and attorney's fees incurred in connection with this arbitration, which shall be submitted upon request of the BAT Arbitrator.*

93. In his final submissions, the Respondent ultimately requested:

The Respondent respectfully requests the BAT Arbitrator to rule as follows:

- (i) *The Request for Arbitration filed by the Claimant on 29 September 2022 and the requests for relief (titled as "on the merits points b-e") are dismissed in their entirety;*
- (ii) *The requests for relief contained in the Claimant's Reply of 18 January 2023 (titled as "on the merits points be") are dismissed in their entirety;*
- (iii) *Alternatively, and only in the event the BAT Arbitrator decides that the Claimant is entitled to compensation, the Claimant is not entitled to the full amounts he requests and this compensation shall be reduced to:*
 - a. *EUR 13.904.00, namely an amount corresponding to 10% of the Player's annual net salary for season 2021 -2022 as set out in Article 5 of the*

Addendum of the Employment Contract with Panathinaikos BC. dated 8.09.2021, namely 10% on the amount of EUR 139.043,92

or alternatively

b. EUR 17.826.00 namely an amount corresponding to 10% of the Player's total gross salary for season 2021-2022 as set out in Article 5 of the Addendum of the Employment Contract with Panathinaikos BC. dated 8.09.2021, namely 10% on the amount of EUR 178.261,44

or alternatively

c. any other reduced amount that the Arbitrator may deem appropriate on the basis of the ex aequo et bono considerations for the Player's earnings in season 2021-2022;

- (iv) Any amounts awarded shall bear no default interest;*
- (v) The Claimant shall bear all costs and expenses of this arbitration, or at least a reasonable part thereof;*
- (vi) The Claimant shall bear entirely all legal costs and attorney's fees he has incurred in connection with the present proceedings;*
- (vii) The Claimant shall reimburse the Respondent entirely, or partially, for the legal costs incurred in connection with this arbitration, which shall be submitted upon request of the BAT Arbitrator.*

5 The jurisdiction of the BAT

94. Pursuant to Article 2.1 of the BAT Rules, “[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland”. Hence, this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).

95. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.
96. The Arbitrator finds that the dispute referred to her is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.²⁷
97. The jurisdiction of the BAT in the present case results from the arbitration clause contained under article 7 of the Agreement, which reads as follows:

“Governing law of this Agreement is covered by FIBA. Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law, irrespective of the parties’ domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono.”

98. The Agreement is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
99. With respect to substantive validity, the Arbitrator considers that there is no indication in the file that could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA).

²⁷ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

100. The jurisdiction of BAT over the Claimant's claims arises from the Agreement. The wording "[a]ny dispute arising from or related to the present contract [...]" covers the present dispute. Moreover, the Respondent has fully engaged in the proceedings and has not at any point objected to the Arbitrator's jurisdiction.
101. For the above reasons, the Arbitrator has jurisdiction to adjudicate the Claimant's claim.

6 Other Procedural Issues

6.1 Hearing

102. In accordance with Article 13.1 of the BAT Rules, and as neither party requested a hearing in these proceedings, the Arbitrator decides the matter based on the written submissions and the evidence on record.

6.2 Document Production

103. As is clear from the above developments, the Claimant's requests for document production were a highly contested issue in these proceedings. Whereas the Agent submitted that the Player appeared not to have disclosed all relevant agreements between he and Panathinaikos in relation to the Second Panathinaikos Agreement (alleging, in particular, that the Player's salary under that contract appeared to be well below what he could have expected to be paid and (much later in the proceedings) that Panathinaikos had been sanctioned due to breaches of its financial fair play obligations), the Player maintained that the agreement submitted in these proceedings was the sole and entire agreement existing between he and Panathinaikos in relation to his engagement with the Club in 2021 and 2022.

104. The Claimant's requests for production were therefore filed to, essentially, test the veracity of the Respondent's position and establish whether any further relevant agreements existed between the Player and Panathinaikos.
105. As per the Procedural Order of 12 October 2023, the Arbitrator dismissed the requests for production and sets out herein the reasons for her decision:
- (a) The BAT Rules do not contain specific provisions regarding requests for document production. The Arbitrator shall, therefore, determine in her sole discretion the procedure in the proceedings before her (Article 3.1 of the BAT Rules). She may also issue any Order of Procedure, in particular, she may order the production of – additional – evidence (Article 12.2 of the BAT Rules). In assessing whether to order production, the Arbitrator may be guided by the “IBA Rules on the Taking of Evidence” which (in Article 3.3) require that (i) a request for document production be specific; (b) the documents be relevant to the case and material to its outcome; (c) the documents are not in the possession, custody or control of the requesting party, but in the possession of the other party; and finally (d) that the production of the documents shall not be unreasonably burdensome for the other party.
 - (b) In applying these guidelines, the Arbitrator considers that the Claimant did not establish his principal assertion, i.e., that there were serious doubts that the Second Panathinaikos Agreement was the sole agreement governing the Player and Panathinaikos' relationship. The Arbitrator notes in particular that the Second Panathinaikos Agreement took the exact same form as the First Panathinaikos Agreement and that Panathinaikos itself submitted multiple statements confirming that no further agreements existed between the Parties. Further, the Respondent explained why he was offered, and accepted, the reduced salary in the Second Panathinaikos Agreement, specifically that the Club had exercised its buy out option,

the Player did not receive a Greek passport (which had been central to his negotiations with the Club), and the Club made budgetary cutbacks in season 2021-2022. The Arbitrator considers this explanation to be sufficiently compelling, particularly where the Agent's position was based largely on speculations and media sources.

(c) Thus, the Arbitrator considers that the Respondent provided sufficiently responsive documents together with his Answer (and other submissions) and that, whilst the Claimant may have had suspicions that the Player in fact received further payments from Panathinaikos in the 2021-22 season, he failed to establish that these were anything more than speculative (and would thus warrant an order on document production to test the veracity of the Respondent's evidence).

106. On that basis, the Arbitrator considered the Agent's requests for production to be insufficiently relevant and material to the outcome of the case and, therefore, unreasonably burdensome. Moreover, the Arbitrator noted that certain of the documents requested by the Claimant (specifically any further agreements between the Player and Panathinaikos) appear not to exist, and there is insufficient doubt concerning the veracity of the Player's (and Panathinaikos') position to order production of further, extensive, documents to test that position.

107. Having said that, the Arbitrator regrets that the issue of document production could not be resolved between the Parties in these proceedings. Whilst the Claimant failed to establish a sufficient basis to order document production, the Player could equally have reduced the time spent on this procedural issue by agreeing on limited production of certain documents.

108. As a result of the Arbitrator's decision on document production, the Agent's request for

compensation is assessed on the basis of the First Panathinaikos Agreement and Second Panathinaikos Agreement only, in the following sections.

7 Discussion

7.1 Applicable Law – ex aequo et bono

109. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the parties may authorize the Arbitrators to decide “*en équité*” instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

“the parties may authorize the arbitral tribunal to decide ex aequo et bono”.

110. Under the heading “Applicable Law”, Article 15 of the BAT Rules reads as follows:

“15.1 The Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law.

15.2 If, according to an express and specific agreement of the parties, the Arbitrator is not authorised to decide ex aequo et bono, he/she shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to such rules of law he/she deems appropriate. In both cases, the parties shall establish the contents of such rules of law. If the contents of the applicable rules of law have not been established, Swiss law shall apply instead.”

111. Article 7 of the Agreement expressly provides that the Arbitrator shall decide the dispute *ex aequo et bono*.

112. Consequently, the Arbitrator shall decide *ex aequo et bono* the issues submitted to her in this proceeding.

113. The concept of “*équité*” (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l’arbitrage²⁸ (“Concordat”)²⁹, under which Swiss courts have held that arbitration “*en équité*” is fundamentally different from arbitration “*en droit*”:

*“When deciding ex aequo et bono, the Arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.”*³⁰

114. This is confirmed by Article 15.1 of the BAT Rules *in fine*, according to which the Arbitrator applies “*general considerations of justice and fairness without reference to any particular national or international law*”.

115. In light of the foregoing considerations, the Arbitrator makes the findings below.

²⁸ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

²⁹ P.A. Karrer, Basler Kommentar, No. 289 ad Art. 187 PILA.

³⁰ JdT 1981 III, p. 93 (free translation).

7.2 Findings

7.2.1 Admissibility and liability

116. As an initial matter, the Arbitrator confirms that the Agent's claims in these proceedings are not time-barred (by application of the principle of *verwirkung* or otherwise). The Agent made clear at all times that he intended to claim compensation from the Player in relation to the 2021-22 season, in fact he sought declaratory relief for precisely such claims in the First BAT Proceedings, and followed this up with correspondence to the Player once his re-signing with Panathinaikos had been announced.

117. Secondly, the Arbitrator considers that the issues in dispute are necessarily narrower in scope in these proceedings than in the First BAT Proceedings, as a result of the findings in that first award. Indeed, the Arbitrator agrees with and adopts the following conclusions:

- (a) the Player terminated the Agreement without just cause, and was liable to compensate the Agent as a result;³¹
- (b) the Agreement contained clear provisions relating to compensation in situations such as the present, including that such compensation was to be based on the gross amounts in all of the Player's contracts entered into within the term of the Agreement,

³¹ It is in fact not disputed in these proceedings that the Player unlawfully terminated the Agreement. Indeed, the Player has expressly stated that he "*may not raise any argument in connection to the circumstances surrounding the termination of the [Agreement]*".

irrespective of whether the Agent was involved in the negotiation of same. With respect to the Respondent's revival of the argument that a "*standard practice*" in BAT arbitration is to pay agents based on "net" amounts, the Arbitrator considers that the Respondent did not prove his assertion and that, to the contrary, as noted by the arbitrator in the First BAT Proceedings, the Parties had in fact agreed similar fees, amounting to more than 10% of the Player's net salary, in the past.³²

(c) the Agreement provided for a contractual penalty, which is conceptually different to compensation for agent fees.

118. As a result, the Agent is, in principle, entitled to claim 10% of the gross value of any contracts entered into by the Player – with or without the Agent's involvement – during the term of the Agreement, as well as a contractual penalty.

119. The specific issues to consider are therefore:

(a) whether the Claimant is entitled to compensation with respect to the buy-out fee under the First Panathinaikos Agreement, as well as compensation calculated on the basis of the Second Panathinaikos Agreement (for both the 2021-22 and 2022-23 seasons); and

(b) if so, whether the compensation payable to the Agent should be reduced (on

³² BAT 1598/20, at paragraphs 138-140.

equitable grounds or otherwise, including the duty to mitigate).

120. On these points, the Arbitrator finds as follows.

7.2.2 Quantum of compensation

121. The Agent's claim is comprised of three distinct compensation claims: (i) EUR 500 as 10% of the EUR 5,000 buy-out fee paid under the First Panathinaikos Agreement; (ii) EUR 1,597.20 as compensation based on the "salary" amounts payable to the Player under Article 5 of the Second Panathinaikos Agreement; and (iii) EUR 36,663.07 with respect to the amounts set out in Article 5 of the Addendum to the Second Panathinaikos Agreement.

122. The Arbitrator addresses each of these claims in turn, followed by a global assessment of the claims in these proceedings (including whether any amounts payable in principle are to be reduced).

7.2.2.1 Buy-out fee under the First Panathinaikos Agreement

123. First, the Arbitrator notes that the Claimant's request for compensation based on the buy-out fee in the First Panathinaikos Agreement was brought forward for the first time in his Reply.

124. The Respondent has objected to this, stating that it was an "*unacceptabl[e] modification*" of the Agent's claims in these proceedings.

125. On this claim, the Arbitrator accepts that the Claimant validly requested compensation

with respect to the buy-out fee for the first time in his Reply. Indeed, the Claimant requested documents in his Request for Arbitration that would evidence whether or not a buy-out fee was ultimately paid to the Player, and learned for the first time in the Respondent's Answer that a buy-out fee was in fact paid. The Arbitrator therefore considers that it was appropriate and acceptable for the Claimant to modify his requests for relief in respect of this claim.

126. As the buy-out fee represents compensation payable to the Player under the First Panathinaikos Agreement, and for the same reasons set out in detail in the award in the First BAT Proceedings, the Arbitrator considers that the Agent is, in principle, entitled to compensation in the amount of EUR 500 with respect to the buy-out fee paid to the Player.

7.2.2.2 Salary under the Second Panathinaikos Agreement

127. The Claimant's request for compensation with reference to Article 5 of the Second Panathinaikos Agreement itself (as opposed to the Addendum to same) was also brought forward for the first time in the Claimant's Reply.
128. The Respondent has also objected to this as an "*unacceptabl[e] modification*" of the Agent's claims.
129. The Arbitrator tends to agree. It was readily evident from the Second Panathinaikos Agreement itself that the salary under the main agreement formed part of the compensation payable to the Player. The Claimant was in possession of the Second Panathinaikos Agreement when filing his claims, and there was no compelling reason that this claim could not and should not have been included in the Request for Arbitration.

130. On the other hand, the Arbitrator notes that there was no material procedural disadvantage caused to the Player by the Claimant bringing this claim only in his Reply, as the Player had sufficient opportunity to respond during later submissions but elected not to engage on the merits of this claim.
131. On balance, the Arbitrator has decided to admit the claim considering that: (i) the Player had an opportunity to respond on the merits but did not; (ii) the additional amounts claimed by the Agent only slightly raise the total compensation claimed under the Second Panathinaikos Agreement from EUR 36,663 to EUR 38,260.20; and (iii) in any event, the slight increase to the global compensation payable under the Second Panathinaikos Agreement would not change the outcome of the Arbitrator's assessment of the compensation payable – whether the Arbitrator were to include the salary amounts under Article 5 of the Agreement in her assessment or not, the amount of compensation payable to the Agent would be the same (see Section 7.2.2.4 below).

7.2.2.3 Compensation based on the Second Panathinaikos Agreement (including the Addendum)

132. Turning then to the Claimant's request for compensation based on the amounts payable under the Second Panathinaikos Agreement, the Agent relies on the express provisions in Articles 1 and 3 of the Agreement, which provide as follows:

(a) Article 1.3:

“The Player also acknowledges that he cannot sign any deal (including, but not limited to employment contracts, contracts of image rights, buy-out contracts, termination of employment relationships, etc.) without the involvement of the Agent, who is always and in any case entitled to the full agent's fee as described in article 3 at all time during this Agreement, even if the Agent is not involved in the related negotiations.”

(b) Article 3:

“3.1 The Player will compensate the Agent directly in the amount equivalent of 10% (ten percent) of the GROSS total value of all Player’s contract(s) including, but not limited to, employment contracts (comprising the base salary, signing bonus, buy-out contracts, termination of employment relationships and any performance bonus, etc.), contract of image rights, etc. signed during the term of this agreement, unless in such case where the Parties mutually agree that the agent’s fee is directly collected from the club(s) and/or related entities by an agreement signed and agreed by both Parties.

3.2 The Player acknowledges that the Agent is entitled to 10% (ten percent) of the GROSS total value of all contract(s) including, but not limited to, employment contracts (comprising the base salary, signing bonus, buy-out contracts, termination of employment relationship and any performance bonus, etc.) contracts of image rights, etc. negotiated and/or executed under the term of this Agreement and until September 23rd 2021.”

133. On that basis the Agent has argued, and the Arbitrator accepts, that the Agreement clearly provides he is entitled to the gross value of all contracts signed (or negotiated) during the term of the Agreement.³³

134. Moreover, the Agent has referred to jurisprudence, which the Respondent has not specifically contested, providing that:

(a) *“the duration of [agency agreements] do not correspond to putative playing*

³³ For completeness, the Agent further suggests that the Arbitrator’s award should (as the arbitrator in the First BAT Proceedings found) indemnify him *“in such a manner that [he] be placed in the position [he] would have enjoyed had the contract remained in force’ (BAT 0252/12) for its agreed term, i.e. until 23 September 2021”* (with reference to BAT 1598/20 at paragraph 132).

contracts. Thus, by way of example, if Agency had found a three-year contract for player just before the end of the lifetime of the Agreement, Player's argument would, taken to its logical conclusion, mean that only a small sliver of fees would be payable";³⁴ and

(b) whether a player and club terminate an agreement prior to its natural term cannot have a detrimental impact on the compensation payable to the relevant agent.³⁵

135. The Arbitrator accepts these arguments in principle, and finds that the Agent is entitled to 10% of the gross compensation set out in the Second Panathinaikos Agreement, being EUR 38,260.20.³⁶

136. This is not, however, the end of the Arbitrator's assessment.

³⁴ BAT 1149/18 at paragraph 54.

³⁵ The Player referred in his submissions to BAT 1719/21 and BAT 1851/22 to support this argument. Whilst the awards in those proceedings are not publicly available, the Arbitrator accepts that there is BAT jurisprudence to the effect that the early termination of an agreement by a player (or their club) should not be to an agent's detriment save in exceptional circumstances. See, e.g. BAT 0146/13 *"The Agency's claim for the 2012-2013 agent fee remains unaffected by the Player's termination of the Player Contract because such termination was caused by the Club's breach. It would be unfair to burden the Agency with the negative consequences arising out of a contract termination that was provoked solely by the Club's misbehaviour, i.e. by the Club's failure to fulfil its payment obligations vis-à-vis the Player. The Agency has provided the services it owed under the Player Contract, and the Club's actions that lead into the early termination of the agreement cannot go to the Agency's detriment"*.

³⁶ Such amount comprised of 10% of the gross compensation for 2021-22 (EUR 17,826 under the Addendum, plus EUR 798 salary as per the Agent's uncontested calculations) and 10% of the gross salary for 2022-23 (EUR 18,837 under the Addendum, plus EUR 798 salary as per the Agent's uncontested calculations). As noted, this is only slightly higher than the amount of EUR 36,663 payable under the Addendum alone.

7.2.2.4 The Arbitrator's global assessment of the compensation payable to the Claimant

137. Whilst the Agent may be entitled to the amount of EUR 38,760.20³⁷ in principle, the Arbitrator agrees with the Respondent that an *ex aequo et bono* assessment of the compensation payable in these proceedings requires the Arbitrator to take into account all of the circumstances, including the content of the award in the First BAT Proceedings (and in particular that the Player was sanctioned with a penalty in the amount of EUR 37,500 in addition to the compensation payable).
138. The Arbitrator notes in this respect that the Claimant himself submitted that the present proceedings are to be decided *ex aequo et bono*, with the result that “[c]ases to be decided *ex aequo et bono*, overrides the strict rule of law and requires instead a decision based on what is fair and just under the given circumstances” and “[s]omething to be decided *ex aequo et bono* is something that is to be decided by principles of what is fair and just. A decision-maker who is authorized to decide *ex aequo et bono* is not bound by legal rules but may take account of what is just and fair”.
139. Based on a global assessment of all of the circumstances in these proceedings, the Arbitrator does not consider it “*just and fair*” that the Claimant be entitled to the entire amount that she has found to be payable, in principle, in these proceedings.

³⁷ Comprised of the compensation payable for the buy-out fee and the respective amounts payable under the Second Panathinaikos Agreement.

140. In coming to this conclusion, the Arbitrator has taken into account that:

- (a) the Agent has already been awarded approximately EUR 45,800, in relation to two agreements that were signed during the course of the Agreement (i.e. the CSKA Moscow Agreement and the First Panathinaikos Agreement).
- (b) the Agent was awarded the full amount payable under the CSKA Moscow Agreement despite the impact that the COVID-19 pandemic had on same. Whilst the Arbitrator accepts that this was considered by the relevant arbitrator when setting the first penalty, she nevertheless takes it into account again in the context of a global assessment of this case.
- (c) the Agent was awarded a significant penalty in the First BAT Proceedings which, whilst conceptually different from compensation for agent's fees and whilst slightly reduced, almost doubled the amount payable for breach of the Agreement. The Arbitrator cannot exclude that the arbitrator in the First BAT Proceedings might have approached the penalty differently if, at the same time, he had been asked to award significant compensation also with respect to the Second Panathinaikos Agreement.
- (d) this is particularly so where the Agent seeks compensation for the gross total of the Player's salary for a further two seasons, in relation to a contract (the Second Panathinaikos Agreement) entered into at the very end of the natural expiry of the Agreement. Indeed, the Arbitrator considers that when placing the Agent in "*the position [he] would have enjoyed had the contract remained in force*",³⁸ there is an

³⁸ With reference to the award in the First BAT Proceedings and also the Claimant's submissions in these proceedings.

inherent uncertainty as to what the Agent would have negotiated (including, in particular, whether a second season was subject to a buy-out clause or not) and accepted (i.e. whether the Agent would have insisted that the Player compensate him for the entire agency fee in relation to a contract that was terminated early by mutual consent).

- (e) whilst the Arbitrator accepts that the Agent has not sought an additional penalty in these proceedings, she considers that to be a reasonable approach on the Agent's part given that, in her assessment, the Agent has been – and will be with the addition of the amounts ordered in these proceedings – adequately compensated (and the Player adequately penalised) for the Player's unlawful termination.
- (f) finally, and whilst the Arbitrator accepts that there is BAT jurisprudence to the effect that the duty to mitigate may not apply to agents,³⁹ she nevertheless takes into account (in her global assessment) the amount of time that passed between the Player's unlawful termination and his entry into the Second Panathinaikos Agreement, and the opportunities that that gave to the Agent to seek out replacement clients.

³⁹

See BAT 1638/20 at paragraphs 68-70: *“What has been established in BAT jurisprudence is that the nature of the services provided by agents and players fundamentally differ. A basketball player can render his playing services only to one club at a time. This is the primary justification for the policy to deduct new income from his salary compensation claim through the principle of mitigation. Without that deduction, the Player would effectively earn two salaries while offering his services only once, and would benefit from a true windfall without any justification. The situation is different for agencies, at least in cases – as the present one – where the focus of the agency's service is the brokerage of a contract between a basketball player and a club. [...] Unlike for a player, it is possible for an agency to render its brokering services more than once for the same period of time”.*

141. Taking all of those circumstances into account, and on an *ex aequo et bono* basis, the Arbitrator considers it appropriate, and “*fair and just in the circumstances*”, to award a global sum of EUR 30,000 in compensation to the Agent in these proceedings.⁴⁰

7.2.3 Interest

142. Finally, the Claimant has claimed interest, on “*the amount the Arbitrator deemed appropriate*” at a rate of 5% from 16 August 2021 (i.e. the date on which the Player and Panathinaikos announced their new contract) until its effective and entire payment.

143. The Arbitrator accepts that payment of interest is a customary and necessary compensation for late payment and there is no reason why it should not be awarded in this case. Moreover, the Arbitrator considers that a rate of 5% per annum is in accordance with well-established BAT jurisprudence and an *ex aequo et bono* assessment.

144. With that said, the Arbitrator does not consider it appropriate to award interest from the date of 16 August 2021 given that, whilst the Agent raised his claim immediately, he did not actually pursue it until the following year.

145. The Arbitrator therefore considers it appropriate, on an *ex aequo et bono* assessment,

⁴⁰ Which equates to an reduction of just under 50% of the amounts payable, in principle, to the Agent for the 2022-23 season under the Second Panathinaikos Agreement, whether or not the “salary” under Article 5 of the Second Panathinaikos Agreement is taken into account.

that interest commence from 29 September 2022, i.e. the date that the Claimant filed his Request for Arbitration.

8 Costs

146. In respect of determining the arbitration costs, Article 17.2 of the BAT Rules provides as follows:

“At the end of the proceedings, the BAT President shall determine the final amount of the arbitration costs, which shall include the administrative and other costs of the BAT, the contribution to the BAT Fund (see Article 18), the fees and costs of the BAT President and the Arbitrator, and any abeyance fee paid by the parties (see Article 12.4). [...]”

147. On 31 January 2024, the BAT Vice-President determined the arbitration costs in the present matter to be EUR 8,000.00.

148. As regards the allocation of the arbitration costs as between the Parties, Article 17.3 of the BAT Rules provides as follows:

“The award shall determine which party shall bear the arbitration costs and in which proportion. [...] When deciding on the arbitration costs [...], the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties.”

149. Considering that the Agent was the prevailing party in this arbitration, it is consistent with the provisions of the BAT Rules that the fees and costs of the arbitration be borne by Player. With that said, the Arbitrator notes that the Agent’s claim was not awarded in full, and that his insistence on (extensive) document production requests greatly increased the costs of these proceedings.

150. Given that the Agent paid the entire Advance on Costs in the amount of EUR 8,000.00,

the Arbitrator rules that the Player shall reimburse EUR 6,000.00 (i.e. 75% of such costs) to the Agent.

151. In relation to the Parties' legal fees and expenses, Article 17.3 of the BAT Rules provides that:

“as a general rule, the award shall grant the prevailing party a contribution towards any reasonable legal fees and other expenses incurred in connection with the proceedings (including any reasonable costs of witnesses and interpreters). When deciding [...] on the amount of any contribution to the parties' reasonable legal fees and expenses, the Arbitrator shall primarily take into account the relief(s) granted compared with the relief(s) sought and, secondarily, the conduct and the financial resources of the parties.”

152. Moreover, Article 17.4 of the BAT Rules provides for maximum amounts that a party can receive as a contribution towards its reasonable legal fees and other expenses.

153. Both the Claimant and the Respondent claimed the maximum amount of EUR 7,500 in these proceedings, and the Claimant additionally claims for the expense of the non-reimbursable handling fee.

154. Taking into account the factors required by Article 17.3 of the BAT Rules, the fact that the non-reimbursable handling fee in this case was EUR 4,000.00, and the specific circumstances of this case as set out above with respect to the arbitration costs, the Arbitrator holds that a total of EUR 7,750.00 (including the non-reimbursable handling fee) represents a fair and equitable contribution by the Respondent to the Claimant in this regard.

155. In summary, therefore, the Arbitrator decides that in application of Articles 17.3 and 17.4 of the BAT Rules:

(i) The Player shall pay EUR 6,000.00 to the Claimant as a contribution to the costs



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of the arbitration; and

- (ii) the Player shall pay to the Claimant EUR 7,750.00 (4,000.00 for the non-reimbursable fee plus 3,750.00 for legal fees), representing the amount of his reasonable legal fees and other expenses.

9 AWARD

For the reasons set forth above, the Arbitrator decides as follows:

- 1. Mr. Howard Powell Sant-Roos Olano shall pay Mr. Paolo Giuliani EUR 30,000 as compensation for agent's fees, together with interest at a rate of 5% per annum on any outstanding balance (as may be the case from time to time) thereof from 29 September 2022 until complete payment.**
- 3. Mr. Howard Powell Sant-Roos Olano shall pay Mr. Paolo Giuliani an amount of EUR 6,000.00 as reimbursement for his arbitration costs.**
- 4. Mr. Howard Powell Sant-Roos Olano shall pay Mr. Paolo Giuliani an amount of EUR 7,750.00 as reimbursement for his legal fees and expenses.**
- 5. Any other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 6 February 2024

Brianna Quinn
(Arbitrator)