



Arbitration CAS 2016/A/4556 U.C. Sampdoria SpA v. José Rodriguez Baster, award of 13 February 2017

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football

Representation contract between a players' agent and a club

Players' agent quality of party to a contract and standing to claim contractual financial commission

Methods of interpretation of ambiguous contractual clauses

1. When analysing one's quality of party to an agreement and his consequent standing to claim the enforcement of a contractual right stipulated therein, a CAS panel shall analyse the wording of said agreement and may also consider the respective behaviours of the litigating parties, notably after the conclusion of the agreement at stake.
2. In presence of ambiguous contractual terms, a CAS panel will apply Swiss law and article 18 of the Swiss Code of Obligations, which provides that the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used in error. Furthermore, and provided the situation permits it, a panel may rely on the principle *in dubio contra stipulatorem*, in accordance with which unresolved ambiguities contained in an agreement need to be resolved against the party responsible for the drafting of the ambiguous terms.

I. PARTIES

1. U.C. Sampdoria S.p.a. (the "Club") is a professional football club based in Genoa, Italy. The Club is affiliated to the Italian football federation (*Federazione Italiana Giuoco Calcio*) and plays in the top division (*Serie A*) of the Italian football league.
2. Mr. José Rodriguez Baster (the "Agent") is a Spanish players' agent. He is licensed by the Spanish football federation (*Real Federación Española de Fútbol*) as the representative of a Spanish company, Promoesport Andalucía S.L. (the "Company").

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and the evidence adduced at the hearing. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in

the present proceedings, the Sole Arbitrator refers in the Award only to the submissions and evidence he considers necessary to explain the reasoning for the decision.

Background Facts

A. *The Representation Agreement*

4. On 17 July 2014, the Agent and the Club concluded a representation agreement entitled *Contratto di Rappresentanza Standard* (the “Agreement”). The Agreement concerned the registration of the professional football player José Gómez Campaña (the “Player”) with the Club. On the date when the Agreement was signed, the Player was registered with Crystal Palace F.C., an English Premier League club.
5. The Agreement was stated to enter into force on 17 July 2014. It was signed by the Agent and also bore the official stamp of the Company. The text of the Agreement was written in Italian. According to the agreed English translation of the document, the prefatory text stated:

“The undersigned JOSÉ RODRIGUEZ BASTER (born in 12/01/1971) (hereinafter the Agent) as the representative of Promoesport with headquarters in Barcelona – Spain

And

U.C. Sampdoria s.p.a., Piazza Borgo Pila 39, 16129 Genova (registration number F.G.C. 45950) hereinafter the Club.

Hereby agree to the following representation agreement:”.

6. Clause 1 of the Agreement stipulated that the contract would be valid for a period of one month and would end on 17 August 2014.
7. Clause 2 of the Agreement dealt with the matter of remuneration. It provided as follows:

“Remuneration

The Agent shall be remunerated exclusively by the Club for the work performed related to the registration of the federative rights of the professional player CAMPANA JOSE (31 May 1993) in favour of U.C. Sampdoria s.p.a. The Agent, as a result of the aforementioned event, shall be entitled to the following commission:

- €100.000 (One hundred thousand/00) to be paid by 30.09.2014;

- €100.000 (One hundred thousand/00) to be paid by 30.09.2015”.

8. Clause 3 made provision for the Agent to receive a percentage of any transfer fee that the Club received in the event of a “definitive loan” of the Player to another team:

“BONUS

The Agent, in the event of a definitive loan to another team, shall receive 5% (five per cent) of any amount received by the Club in relation to the player over €1.200.000 (one million two hundred thousand/00 Euro). In other words, the Agent shall receive the 5% of the surplus between all the amounts received by Sampdoria and the amount of €1.200.00,00 (one million two hundred thousand/00 Euro)”.

9. Clause 4 of the Agreement was titled “Exclusivity”. It stated:

“The parties agreed that the negotiation rights shall be conferred exclusively upon the Agent”.

10. Clause 5 of the Agreement was titled “Other agreements” and provided that:

“Any other additional provisions that do not contradict the principles set out in the Football Agents Regulations must be attached to this contract and filed with the competent National Association.

The Agent state [sic] that there is no other kind of representation relationship with the player and/or with the representative and expressly releases the company from any eventual liability in relation to this situation.

The amounts stated in point 2) shall only be due if the registration continues”.

11. Clause 6 of the Agreement stated that the parties agreed to comply with the relevant provisions of public law as well as applicable international laws and treaties. Lastly, clause 7 of the Agreement contained a “Final note” that listed various persons to whom copies of the signed Agreement would be provided:

“Final note

The current contract is signed and four copies are delivered in the following manner:

- 1) National Association with which the agent is registered: Spanish Football Association.*
- 2) National Association to which the club belongs: F.I.G.C. Italian Football Association.*
- 3) The Agent: Jose Rodríguez Baster, who is authorized by the company to assign the economic and property rights derived from the present contract to Promoesport.*
- 4) U.C. Sampdoria s.p.a. – Massimo Ferrero – President and Managing Director”.*

B. The Player’s contract with the Club

12. On 22 July 2014, the Club and the Player concluded a contract (the “Player’s Contract”). The agreement stated that the “Name and Surname of the Club’s Agent” was “Rodríguez Baster José”.

13. Article 1 of the Player's Contract stated:

"The Player agrees, registered at the F.I.G.C., to provide his services of athletic and competitive activity in favour of the Club from 22/07/2014 and until 30/06/2017 with the starting point of the activities on 22/07/2014".

14. Article 2 provided that the Player's salary was €800,000 per annum.

C. The Player's transfer to the Club

15. Following the conclusion of the Agreement and the Player's Contract, the Player was formally transferred from Crystal Palace F.C. to the Club. The transfer was recorded in a FIFA TMS international transfer certificate. The certificate contained a section that recorded the "Intermediary details". The "Intermediary representing UC Sampdoria" was identified as "José RODRIGUEZ BASTER".

D. The loan agreement with FC Porto

16. A short while later, on 1 September 2014 the Club and the Portuguese professional football club FC Porto entered a loan agreement with respect to the Player (the "Loan"). Under the terms of the Loan (to which the Player was also a party) the Club lent the Player to FC Porto on a temporary basis from 1 September 2014 until 30 June 2015. The Loan also gave FC Porto a right to acquire the permanent "registration" of the Player in exchange for a payment of €3,000,000.

17. Clauses 1 to 4 of the Loan Agreement provided as follows:

- "1 SAMPDORIA hereby transfers on loan, for the period commencing on the 1st September 2014 and ending on 30th June 2015, the registration of the professional football player JOSÉ GÓMEZ CAMPAÑA to FC PORTO.*
- 2 In consideration of such temporarily [sic] transfer of the player registration FC PORTO does not have to pay any amount to SAMPDORIA.*
- 3 Following the Portuguese Football Federation request to the Italian Football Federation, SAMPDORIA is obliged to authorise the issue of the PLAYER'S International Transfer Certificate.*
- 4 Further, SAMPDORIA grants to FC PORTO an option right to acquire the registration of the PLAYER on a permanent basis against the payment of the agreed amount of €3.000.000,00 (Three Million Euros), in three equal instalments, the first within 10 (ten) days after exercising the option right, the second on 30th June 2016 and the third on 30th June 2018. Such option right can be exercised by FC PORTO until the date of 30th June 2015, by notifying SAMPDORIA by way of email (...)"*

18. The Player's temporary transfer to FC Porto was recorded in a FIFA TMS international transfer certificate dated 2 September 2014. This showed that the Player was registered with FC Porto on that date. It also confirmed the start and end dates of the Loan. The TMS certificate described the arrangement as a "Release free of payment on loan".

E. Letters to the Club requesting payment in 2015

19. The Club did not make any commission payment to the Agent or to the Company in 2014.
20. On 13 January 2015, Mr. Paul Buscail, a lawyer in Barcelona, wrote to Mr. Alberto Bosco (the Club's Chief Financial Officer) and Mr. Massimo Lenca (the Club's Sports Secretary). The letter stated that it was written "on behalf of José Rodríguez Baster from Promoesport Andalucía, S.L. (hereinafter, the Agent)" and concerned "the Commission Agreement signed by both you and my client on 17th July 2014, by virtue of which you agreed to pay my client the outstanding amount of EUR 100.000, due on 30th September 2014". The letter went on to say that:

*"This amount is part of the commission the Agent has earned for its intervention in the transfer of the football player Mr. José Gómez Campaña from Crystal Palace FC to U.C. Sampdoria s.p.a.
To date, your club has not made the abovementioned payment of EUR 100.000 and, therefore, the amount of **EUR 100.000 remains unpaid.**"*

The Agent has spoken on several occasions with your club seeking payment of the sum that is rightfully owed for the services rendered, but the club has been unwilling to perform its contractual obligations.

The Agent has been sympathetic to the economic difficulties the club has faced in recent months and has, in good faith, remained flexible in its demands for payment under the Commission Agreement. U.C. Sampdoria's abuse of the Agent's good faith and desire to preserve the contractual relationship for over 3 months is unacceptable behavior.

*On behalf of my client, I remind you that you entered into a valid and legally binding agreement to execute the payments of the entire EUR 100.000 on 30th September 2014 and I hereby inform you that U.C. Sampdoria s.p.a. shall have a period of **7 days to pay the outstanding EUR 100.000 in full** to the bank account stipulated below:*

Account Holder: PROMOESPORT ANDALUCIA SL

[...]

*The club's failure to comply with the above mentioned payment will result in the Agent pursuing its rightful claim to the commission owed **to the fullest extent of the law** by initiating arbitration proceedings before FIFA or the competent judicial bodies to seek the amount due.*

Additionally, failure to make timely payment of the amount owed will result in the Agent promptly notifying FIFA of this failure and requesting that disciplinary sanctions commensurate with the club's actions be imposed on it in its capacity as a member of FIFA".

[Emphasis original]

21. According to the Agent, the Club did not reply to this letter.
22. On 18 February 2015, another lawyer in Barcelona, Mr. Lucas Ferrer, sent a further letter to the Club “on behalf of Mr. José Rodríguez Baster of Promoesport Andalucía, S.L”. The letter again referred to the agreement “signed by your club and my client on 17 July 2014”. It made reference to the instalments that were due to be paid on 30 September 2014 and 30 September 2015, which “constitute the commission Mr. Rodríguez has earned for his intervention in the transfer of Mr José Gómez Campaña” to the Club. The letter then went on to state that:

“The club has failed to make payment on the first installment and has thus far given no indication that it intends to pay it. Promoesport has spoken on several occasions with your club seeking payment of the sum that is rightfully owed for the services rendered and sent a fax to your club on 13 January 2015 requesting payment within 7 days (see Annex 2), but the club has yet to respond and has, in short, been unwilling to perform its contractual obligation.

On behalf of my client, I once again remind you that you entered into a valid and legally binding agreement to execute payment of the EUR 100.000 by the 30th of this past September and Sampdoria’s failure to pay this amount for almost five months without any sort of response or explanation, all the while taking advantage of Promoesport’s good faith and flexibility due to the desire to preserve the contractual relationship, is conduct in bad faith and simply unacceptable. Promoesport has been sympathetic to the economic difficulties the club has faces [sic] in recent months but shall not accept any further delay in payment.

As such, I hereby inform you that UC Sampdoria shall have a final period of 10 days to pay the outstanding EUR 100.000 in full to the bank account below:

Account Holder: PROMOESPORT ANDALUCIA SL

[...]

The club’s failure to comply with these terms within the stipulated time frame will constitute a breach of the agreement and result in Promoesport pursuing its rightful claim to the monies owed under the agreement to the fullest extent of the law by promptly filing a claim before the FIFA Player’s [sic] Status Committee”.

[Emphasis original]

23. The letter was accompanied by a Power of Attorney authorising Mr Ferrer “to represent Mr Rodríguez in any action or proceeding before FIFA and CAS” that subsequently arose in relation to “the matter of Player’s Agent José Rodríguez Baster of Promoesport Andalucía, SL v/ UC Sampdoria, S.p.A”.

F. The Agent's claim against the Club

24. On 27 March 2015, the Agent filed a claim with the FIFA Players' Status Committee against the Club. By that claim, the Agent sought payment of the first instalment of €100,000 due under clause 2 of the Agreement, together with interest on that sum at the rate of 5% per annum from 30 September 2014. In addition, the Agent stated that he reserved the right to amend the claim in the event that the Club did not pay the second instalment due under the Agreement, which would fall due on 30 September 2015.
25. The Club subsequently filed a written response to the Agent's claim. According to the decision of the Single Judge of the Players' Status Committee, the Club made the following submissions in support of its response:
- a) First, the Club argued that on 30 September 2014 – the date when the first instalment fell due under the Agreement – the Player was no longer registered with the Club, as he had been registered with FC Porto four weeks earlier, on 2 September 2014. Accordingly, the Club submitted that pursuant to clause 5 of the Agreement, the Agent was not entitled to receive the first instalment of €100,000 as he was not actually registered with the Club on 30 September 2014.
 - b) Secondly, the Club disputed FIFA's jurisdiction to adjudicate the dispute. The Club submitted that the parties had not concluded any valid arbitral clause, and therefore FIFA was not competent to hear the matter.
 - c) Thirdly, in relation to the Agent's reference to the second payment (which did not fall due until 30 September 2015), the Club stated that any requests made by the Agent in relation to the payment of this sum were premature and must therefore be rejected. In this connexion, the Club further argued that on 1 April 2015 "*the FIFA Regulations on Players' Agents had lost validity (...) and has been replaced by the FIFA Regulations on Working with Intermediaries*". Consequently, the Club considered that even if the claim in relation to the second payment had been filed at the right time, "*the FIFA Players' Status Committee would clearly not have competence to issue a decision*".
26. In his response to the Club's submissions, the Agent maintained that he was entitled to receive the first instalment of €100,000 that he claimed was due under the Agreement. He submitted that FIFA had jurisdiction to determine the dispute in accordance with the Players' Agents Regulations. In relation to the merits of the claim, he submitted that he had indisputably been involved in the Player's transfer to the Club and that the Player had indisputably been registered with the Club. Accordingly, all of the conditions contained in the Agreement were satisfied and the Agent was therefore contractually entitled to the commission specified in the Agreement.
27. In relation to the Player's transfer to FC Porto, the Agent contended that notwithstanding the transfer, the Player's Contract with Club remained in force and therefore the first instalment was due under the Agreement. The Agent added that when the Agreement was concluded the parties shared "*the clear and unequivocal intention*" to ensure that the agreed commission would only be payable if the Player remained in a contract with the Club. This meant that if the Player was

permanently transferred to another club, the Club would not be required to pay the remaining instalments due under the Agreement. The Agent submitted that this was “*common practice in this type of deals [sic]*”. Since the Player had not been permanently transferred to another Club, but had merely been loaned on a temporary basis to FC Porto, the Agent submitted that all of the conditions for payment of the first instalment of commission had been fulfilled and the Club was therefore under an obligation to pay him that sum.

28. On 18 September 2015, the Club filed a further document in which it repeated its previous arguments. In addition, the Club submitted that:
 - a) The Agent was not a party to the Agreement – The Club argued that the Agreement had been concluded between the Club and the Company, rather than between the Club and the Agent. According to the Club, the Agent “*act[ed] as the representative of the company*” and accordingly “*no rights or obligations arising from the Agreement*” were applicable to the Agent. In support of this submission, the Club adduced several items of correspondence and noted that (i) the power of attorney provided by the Agent mentioned the Company; and (ii) it was the Company that had paid the advance of costs to FIFA.
 - b) No standing to bring proceedings before the Players’ Status Committee –The Club submitted that the Company was neither a member of FIFA, a player, a coach, nor a licensed match or players’ agent. The Company was therefore unable to be a party to proceedings before the FIFA Players’ Status Committee.
 - c) Effect of the ‘suspension’ of the Player’s Contract – The Club submitted that the Player’s Contract was “*suspended for the duration of the loan*” to FC Porto. Accordingly, “*even if the commission would have been agreed payable [sic] if the player is under contract with [the Club] on the relevant date or something similar, the suspension of the contract would mean that no commission would be payable and in any case in accordance with the jurisprudence of FIFA*” (Single Judge’s decision, para 28).
29. On 13 October 2015, the Agent amended his claim and sought payment of the second instalment of €100,000, which he contended had fallen due on 30 September 2015, together with interest at 5% per annum from that date. The Club accepts that it did not pay any sum to either the Agent or the Company under the Agreement.
30. On 9 and 20 November 2015, the Club filed further submissions rejecting the Agent’s amended claim. The Club asked FIFA not to take into account the Agent’s “*unsolicited submission*” in accordance with Article 9(4) of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (2015 edition). The Club submitted that the amendment of the claim was premised on events that occurred after the conclusion of the investigation phase by FIFA. Consequently, the Club contended that there was “*no reason for why the new claim based on events that took place after the closure of the investigation phase should be admitted on file in the present proceedings*”.
31. In addition, the Club submitted that:

- a) FIFA did not have jurisdiction to decide on the amendment of claim, which had been lodged after the *“FIFA Regulations concerning Players’ Agents had already been abolished”*, and therefore FIFA *“no longer had competence to deal with claims of players’ agents against football clubs”* (Single Judge’s decision, para 32).
- b) In any event, on 23 July 2015 the Player was loaned to AD Alcorcon, a Spanish professional football club, and was therefore not registered with the Club on 30 September 2015. Accordingly, the Club submitted that the Agent’s claim in respect of the second instalment was without merit.

G. Decision of the Players’ Status Committee

- 32. By a decision dated 26 January 2016, the Single Judge of the FIFA Players’ Status Committee held that FIFA had jurisdiction in respect of the dispute. The Single Judge then went on to uphold the Agent’s claim and to order the Club to pay €200,000 plus interest and costs to the Agent.

1. Jurisdiction

- 33. The Single Judge began his decision by noting that the March 2015 edition of the *Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber* (“the FIFA Procedural Rules”) were applicable to the case. He then went on to explain that, in accordance with Article 39 of the 2008 edition of the Players’ Agents Regulations (“the 2008 Regulations”) those Regulations were applicable to the dispute.
- 34. The Single Judge noted that the matter before him concerned a dispute between a players’ agent licenced by the *Real Federación Española de Fútbol* and an Italian football club regarding an allegedly outstanding commission. The Single Judge stated that pursuant to Article 30(2) of the 2008 Regulations and Article 6(1) of the FIFA Procedural Rules, the Single Judge was *“competent to hear a dispute between the players’ agent and a club in case of an international dispute arisen [sic] from the activity of the players’ agent in question irrespective of the fact that the written agreement at the basis of the controversy included an arbitral agreement between the parties concerned in favour of FIFA or not”* (Single Judge’s decision, para 8).
- 35. In relation to the Club’s argument that FIFA did not have jurisdiction to address the dispute concerning the second instalment, the Single Judge noted that on the date when the Agent lodged his claim (27 March 2015), the 2015 edition of the Procedural Rules was still in force. The Judge also emphasised that when the claim was lodged, the Agent expressly reserved the right to amend his original claim in the event that the Club failed to pay the second instalment once it became due on 30 September 2015.
- 36. In view of these matters, the Single Judge concluded that he was competent to hear the entire claim lodged by the Agent, including the claim concerning the second commission payment that allegedly fell due on 30 September 2015. The Single Judge rejected the Club’s objections to

the amendments to the Agent's claim, explaining that, *"it was fair and reasonable to take into account the amendment of the claim of the Claimant as well as the response of the Respondent thereto when deliberating on the present matter, although both submissions had been lodged after the investigation phase in the dispute at stake had already been closed by FIFA"* (Single Judge's decision, para 11).

2. *The Agent's ability to lodge a claim on his own behalf in respect of the Agreement*

37. In relation to the Agent's standing to enforce the Agreement, the Single Judge observed that the Agent was *"clearly mentioned"* in the Agreement as one of the parties to the contract. The Single Judge concluded that notwithstanding that the Agreement referred to the Agent as the representative of the Company, the Agreement had in fact been concluded by the Agent *"on his own behalf and not as a representative of [the Company]"*. In reaching this conclusion, the Single Judge noted that:

- a) The Agent was expressly named *"in person"* as one of the parties to the Agreement.
- b) The Agent had personally signed the Agreement.
- c) The Agreement provided for the remuneration to be paid to the Agent, not to the Company.

38. In light of those factors, the Single Judge concluded that, *"in spite of the fact that the agreement referred to [the Agent] as the representative of the company (...) the document in question had been concluded by the [Agent] on his own behalf and not as a representative of the company Promoesport"* (Single Judge's decision, para 16). Accordingly, he rejected the Club's objection and held that the Agent was entitled to bring a claim before FIFA on the basis of the Agreement.

3. *The merits of the claim*

39. In relation to the merits of the claim, the Single Judge noted that the wording of the Agreement provided for the Agent to receive from the Club two instalments of €100,000 on 30 September 2014 and 30 September 2015 respectively, if the Player remained registered with the Club. It was not disputed that the Player was loaned to FC Porto in 2014 and to AD Alcorcon in 2015. The Single Judge emphasized that, *"during the loan period of a player to a club, the contract between the player in question and his original club is suspended but not terminated, i.e. the contractual relationship between the parties continues and the player remains contractually bound to his club of origin"* (Single Judge's decision, para 23).

40. In the Single Judge's opinion, *"the intention of the relevant clause included in the agreement must have been to ensure that the commission due to the [Agent] was payable to the latter as long as the [Club] and the player continued having a valid contractual relationship"*. The Single Judge stated that in view of the fact that *"the aim of a players' agent introducing players to clubs is to negotiate or renegotiate a possible employment contract between them in exchange for an agent fee"* any other interpretation of the relevant clause was *"unrealistic"* and *"would never have been accepted by the [Agent] when concluding the agreement as the latter had an interest in receiving his entire commission"* (Single Judge's decision, para 24).

41. On that basis, the Single Judge held that in view of the fact that the Player “*had only been loaned and not definitively transferred to the clubs FC Porto and AD Alcorcon*” it followed that, “*the condition for the payment of both the first and second instalment had in casu been met*” (Single Judge’s decision 25). Accordingly, applying the principle of *pacta sunt servanda*, the Single Judge held that the Club was required to pay the Agent a total of €200,000 under the Agreement.
42. The Single Judge went on to hold that, in the absence of any specific contractual provision concerning interest for late payments, the Club should pay 5% per annum interest to the Agent on each outstanding instalment as from the day after the payments respectively fell due.
43. Lastly, the Single Judge held that since the Club was the party at fault, it must pay the entire costs of the FIFA proceedings. The Single Judge determined the costs of the proceedings to be CHF 20,000. The Club was therefore directed to pay that sum.
44. On 9 February 2016, FIFA notified the Club of the Single Judge’s decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

45. On 14 April 2016, the Club filed its statement of appeal with the CAS Court Office in accordance with Article R47 *et seq* of the Code of Sports-related Arbitration (the “Code”). In its statement of appeal, the Club requested that this procedure be referred to a Sole Arbitrator.
46. On 27 April 2016, the Club filed its Appeal Brief with the CAS Court Office in accordance with Article R51 of the Code.
47. On 3 May 2016, the CAS Court Office notified the parties that the President of the CAS Appeals Arbitration Division, upon consideration of the Club’s request and the Agent’s silence, decided to submit the case to a Sole Arbitrator in accordance with Article R50 of the Code.
48. On 24 May 2016, the CAS Court Office notified the parties that the CAS Secretary General President of the Appeals Arbitration Division appointed Professor Petros C. Mavroidis as Sole Arbitrator in the dispute.
49. On 14 June 2016, the Agent filed his Answer in accordance with Article R55 of the Code.
50. On 13 and 20 September 2016, respectively, the Agent and Club signed and returned the Order of Procedure in this case.
51. On 28 September 2016, a hearing was held in Lausanne, Switzerland. The Sole Arbitrator was assisted at the hearing by Mr. Brent J. Nowicki (Counsel to the CAS) and Mr. Edward Craven (Ad hoc clerk), and was joined by the following:

For the Club:

- Mr. Pekka Aho, counsel
- Mr. Massimo Diana, counsel
- Mr. Riccardo Pecini – Director of the Club’s Academy
- Mr. Alberto Bosco –Chief Financial Officer (testifying by telephone)

For the Agent:

- Ms. Matilde Costa Dias, counsel
- Mr. Jan Kleiner, counsel
- Mr. Jose Baster Rodriguez, Agent
- Mr. Paul Buscail –General Director of the Promoesport group of companies

IV. SUBMISSIONS OF THE PARTIES

52. The parties’ submissions, in essence, may be summarized as follows.

The Club

53. The Club’s Appeal Brief dated 14 April 2016 requests the CAS to grant the following relief:

“1) Declare the present appeal admissible

2) Set aside the decision of the Single Judge of the FIFA Players’ Status Committee under appeal

3) Decide that [the Club] has no payment obligation towards [the Agent] under the [Agreement] of 17 July 2014

4) Decide that [the Club] has no payment obligation to any third party under the [Agreement] of July 2014

5) Decide that [the Agent] is not a party to the [Agreement] of 17 July 2014

6) Decide that the FIFA Players’ Status Committee did not have competence to decide on the claim of [the Agent]

Alternatively

7) Decide that the [Company] is not a party to [the Agreement] of 17 July 2014

8) Decide that [the Company] cannot have any claims towards [the Club] on the basis of [the Agreement] of 17 July 2014

9) Decide that *[the Agent]* is liable to pay to FIFA costs of the proceedings before the FIFA Players' Status Committee in the amount of CHF 20.000,00.

Alternatively

10) Decide that *[the Agent]* shall reimburse to *[the Club]* the costs payable by *[the Club]* to FIFA related to the proceedings before the FIFA Players' Status Committee

11) Decide that *[the Agent]* is liable to compensate to *[the Club]* the legal costs incurred by *[the Club]* in the proceedings before the FIFA Players' Status Committee

12) Award any further or other relief to *[the Club]* as the Panel deems fit

13) Decide that *[the Agent]* must bear all the costs of the present arbitration

14) Decide that *[the Agent]* must compensate *[the Club]* for the legal costs incurred in the present proceedings

15) Decide that any amounts payable by *[the Agent]* to *[the Club]* shall be subject to interests *[sic]* for late payments at the rate of 5% p.a. from the date on which the amounts become due".

54. In overview, the Club submits that:

- a) The Single Judge adopted an erroneous construction of the Agreement. On a proper interpretation of the Agreement, the Club was not required to make any commission payment in the event that the Player was on loan to another Club on the relevant dates specified in Clause 2 of the Agreement.
- b) The parties to the Agreement were the Club and the Company. The Agent only acted as a legal representative of the Company; he was not himself a party to the Agreement. Accordingly the Agent has no right to seek to enforce the Agreement against the Club.
- c) As a "subsidiary" argument, the Club states that if the Sole Arbitrator concludes that the Agent has rights under the Agreement, the Sole Arbitrator should provide "express confirmation" that "[the Company] and/or any other legal or natural persons do not have any claims towards [the Club] on the basis of" the Agreement.

Issue 1: The correct interpretation of the obligation to pay the commission payments under the Agreement

55. The Club submits that under the terms of the Agreement it was only obliged to make commission payments if the Player was "registered" with the Club on the relevant dates specified in clause 2 (30 September 2014 and 30 September 2015). In this regard, the Club submits that, "it is uncontested between the parties that the Player was not registered with Sampdoria on either of the dates indicated in the Agreement relative to the Commission" (Appeal Brief, para 41).

56. The Club disputes the Single Judge's interpretation of the Agreement, which it contends was founded on an erroneous understanding of how football agents carry out their business. The Club submits that its interpretation of the Agreement reflects "*a consistent contractual practice between football agents and clubs*". In the Club's view, the Single Judge's interpretation of the Agreement effectively set aside the clear wording of the contract.

57. In support of the Club's position, the Appeal Brief explains that in Italy professional footballers' contracts are contained in standard form four-page documents provided by the *Federazione Italiana Giuoco Calcio*. The standard form contract is "*strictly regulated*" and "*the form may not be modified*". The Club states that in "*the vast majority of cases*" the parties to a standard form contract only insert the salary of the player into the standard form agreement. Accordingly, against the backdrop of those highly prescriptive rules, the Club submits that it has no business need to pay an agent of a different nationality €200,000 to negotiate a contract on the Club's behalf. Further, the Club states that it "*employs on a fixed basis several persons who routinely deal with players contracts*". In these circumstances, the Club "*does not need to pay the disproportionate amount of EUR 200.000,00 to anyone for negotiating a contract with a player*" (Appeal Brief, paras 50-51).

58. In its written submissions, the Club goes on to contend that: "*In reality, football players' agents receive commissions from clubs because they control the players. When a club wants a certain player, the agent who controls the player imposes the payment of a commission as a condition for the transfer of the player. The club has the option to either pay the agent or see the player sign for a competitor*" (Appeal Brief, para 52). The Club states that because a football club only benefits from the services of a player if they remain registered with the club, "*it is only natural for a club to wish to tie the payment of the commission to the registration remaining with the club*". According to the Club, therefore, an agent will choose to accept a limitation of this nature because "*he knows that he will receive a commission from another club in the event that the player is transferred*" (Appeal Brief, para 57).

59. The Club goes on to submit that, "*it would be the definition of easy money for the agent*" if an agent could receive a commission payment for bringing a football player to one club and then to receive a further commission payment a few months later if the player is transferred to another club. Accordingly, it is "*completely logical and normal, not to mention realistic, for the commission being tied [sic] to the registration of the player*" as this "*ensures that the agent receives only one commission for the same period of registration of the player*" (Appeal Brief, paras 62 – 64).

60. Consequently, the Club submits that on a proper construction of the Agreement, the Club's obligation to make commission payments was conditional upon the continued registration of the Player on the dates specified in clause 2. The Club further submits that, since the Player was on loan to another football club on those dates, this condition was not fulfilled and therefore the Club is not under required to make any commission payments under the Agreement.

61. In support of this argument, the Club refers to rule 5.4 of the *Regolamento per I servizi di procuratore sportiva* (the "Italian Intermediary Rules"). According to the English translation provided by the Club, this provides that: "*The effects of the Representation Agreement signed between a Club and a Sports Agent for the registration of a Football Player automatically cease if the latter – for any reason – is no longer*

registered with the Club". The Club submits that this provision "*has the exact same effect*" as clause 5 of the Agreement (Appeal Brief, para 68).

62. The Club seeks to draw further support for its argument by referring to other agreements concluded by the Club with various other players' agents. The Club submits that those agreements reflect a "*default presumption in agent contracts (...) that the commission is payable only in the event that the player remains registered with the club*". In the Club's submission, therefore, "*If the commission is to be payable even in the event that the player is loaned to a third club, the parties must conclude an express agreement to derogate from the rule*" (Appeal Brief, para 72).

Issue 2: The Agent's right to enforce the terms of the Agreement against the Club

63. In its Appeal Brief, the Club reiterates the argument that it advanced unsuccessfully before the Single Judge regarding the Agent's standing to enforce the Agreement.
64. The Club submits that the Agreement was concluded exclusively between the Club and the Company. According to the Club, the Agent only acted as the representative of the Company and did not acquire any personal rights or obligations under the Agreement. In support of this argument, the Club relies on the definition of the parties in the Agreement. The English translation of that definition refers to:

"The undersigned JOSÉ RODRIGUEZ BASTER (born 12/01/1971)(hereinafter the Agent) as the representative of Promoesport with headquarters in Barcelona-Spain".

65. In addition, the Club draws further support for its argument from the content of subsequent correspondence in 2015 regarding the Agreement. The Club states that the letter from Mr. Buscail dated 13 January 2015 "*made reference to [the Company] and request[ed] payment to be made to the company, not to the Agent in person*". Similarly, it states that the letter from Mr. Ferrer to the Club dated 18 February 2015 also made reference to the Company and requested payment to be made to the Company, rather than the Agent.
66. The Club disputes the reasoning of the Single Judge, who held that the Agent was a party to the Agreement. The Club submits that the Single Judge ignored the existence of the Company. According to the Club, the Single Judge's decision leaves it unclear whether he considered that the Company was a party to the Agreement. If the Single Judge did not consider that the Company was a party, it is entirely unclear why it was nonetheless expressly named in the Agreement and what its actual role was in relation to that contract.
67. The Club invokes provisions of Swiss law in support of its position. It notes that Article 814 of the Swiss Code of Obligations provides:

"Article 814 (IV. Representation)

[...]

5. The persons authorised to represent the company must sign on its behalf by appending their signature to the business name”.

68. The Club submits that under Swiss law a company cannot sign an agreement in the name of itself. A natural person only can lawfully represent a company, and may sign the agreement on its behalf. Accordingly, the fact that a natural person’s name appears on a contract should not automatically mean that the person is an independent party to the contract, since he/she could equally be signing the document on behalf of the company.

69. The Club also refers to CAS 2007/A/1274, where the CAS stated:

“22. (...) The fact that the Rules governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (art. 6 para. 1) allow only a licensed agent – and not a company – to file a claim before the FIFA Players’ Status Committee regarding agent fees, cannot lead to the conclusion that an agent has the right to bring before the said body and under his own name a claim that belongs to companies of which he is a member, a shareholder or even the only owner; it is rather for the owner of the right, i.e. the legal entity, to seek judicial protection before the competent (state or arbitral) tribunals”.

70. In addition, the Club refers to CAS 2008/A/1726, where the CAS Panel stressed that agents should ensure they are expressly named as parties to agreements to ensure they are not inadvertently precluded from claiming payment under such agreements:

“In particular, the Panel draws attention on the fact that the agent should ensure that he/she is a party to the contract so he/she is able to enforce his/her rights under it. Using words such as ‘on behalf of’ or ‘representative of’ could be very damning as it could leave the agent outside of the contract and unable to claim any compensation under it”.

71. On the basis of those principles, the Club submits that the Agent has no personal right to bring a claim under the Agreement since he acted purely as a representative of the Company and is not a party to the Agreement.

The Agent

72. In his Answer Brief, the Agent requests the CAS to make an order which:

“1. Rejects the appeal filed by [the Club], against the decision of the FIFA Players’ Status Committee on 26 January 2016 (reference nr. 15-00999/lza), whose grounds were notified to the Parties on 9 February 2016.

2. Confirm the FIFA PSC decision and accordingly to condemn U.C. Sampdoria to pay [the Agent] as a commission for his intervention in the Player’s transfer the amount of EUR 200.000 (two hundred thousand euros) plus interest as follows:

- 5% per annum over the amount of EUR 100.000 as from 1 October 2014 until the effective date of payment;

- 5% *per annum* over the amount of EUR 100,000 as from 1 October 2015 until the effective date of payment;
- As well as the CHF 3,000 granted by FIFA as costs of the proceedings before the Player's Status Committee;
- 3. Fix a minimum sum of 20,000 CHF to be paid by [the Club] as a contribution to [the Agent's] legal fees and costs.
- 4. Condemn [the Club] to pay the entire amount of CAS administration and the Sole Arbitrator fees".

Issue 1: The correct interpretation of the obligation to pay the commission payments under the Agreement

73. The Agent disputes the Club's interpretation of the relevant provisions of the Agreement. He contends that the interpretation adopted by the Single Judge of the Players' Status Committee was correct. Accordingly, he submits that under clause 2 of the Agreement the Club is under a binding legal obligation to pay the sum of €200,000 (plus interest for late payment) to the Agent. The Agent contends that the Club's appeal to the CAS is merely a tactic designed to prevent the Club having to comply with its obligations under the Agreement in a timely fashion.
74. In support of his case regarding the construction of the Agreement, the Agent refers to Article 18(1) of the Swiss Civil Code (Part 5: Obligations), which provides:

"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement".
75. The Agent relies on the decision in CAS 2008/A/1518, where the CAS Panel referred to Article 18 of the Swiss Civil Code and explained that, *"under this provision, the parties' common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention. This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them"*. The Agent also relies on CAS 2005/A/871, which established that CAS may also take into account, as complementary means of interpretation, *"the behavior of the parties, their respective interest in the contract and its goal"*.
76. Further, the Agent states that it was the Club who drafted the Agreement. Accordingly, he relies on the CAS jurisprudence that establishes that, in the case of an ambiguous contractual term, the ambiguity shall be resolved by construing the provision against the party responsible for drafting it. (The Agent relies in particular on CAS 2013/A/3237, CAS 2009/A/1773 and CAS 2009/A/1774).
77. Applying those principles of interpretation, the Agent submits that, on a proper analysis, clauses 2 and 5 of the Agreement reflect a common intention of the parties that the Club would pay

the Agent if (a) he secured the conclusive transfer of the Player to the Club; and (b) the Player was registered with the Club. The Agent submits that both of those conditions were satisfied and he is therefore entitled to be paid €200,000 in accordance with clause 2 of the Agreement.

78. In support of his case, the Agent submits that, on the Club's analysis, the payment obligations under the Agreement would effectively have been left to the entire discretion of the Club. If the Club is right, then it could choose to prevent the Agent receiving any commission by unilaterally deciding to transfer the Player to another football club before 30 September 2014. As a result, the fulfilment and performance of the obligation to pay the Agent's commission would be left to the entire will and discretion of the Club. The Agent submits that it is inconceivable the parties would have intended this unbalanced and illogical outcome.
79. In his Answer Brief, the Agent responds to some of the specific points contained in the Club's Appeal Brief. In particular:
 - a) The Agent stresses that pursuant to the FIFA Regulations on the Status and Transfer of Players, a loan is a form of transfer whereby a professional player is temporarily engaged by another football club while he is still in a valid contract with the releasing club. A player's contract with the releasing club remains in force for the duration of the loan. Accordingly, during the period when the Player was on loan from the Club, the Player was still bound to the Club under a valid contract. Therefore the Club cannot rely on the Loan to invalidate or escape the payment obligations contained in clause 2 of the Agreement.
 - b) The Agent submits that the Italian Intermediary Regulations are irrelevant to the dispute, since they are inapplicable to the facts of the present case.
 - c) The Agent notes that the terms of the Agreement are consistent with Article 20.5 of the FIFA Players' Agents Regulations 2008, which states that: "*A players' agent who has been contracted by a club shall be remunerated for his services by payment of a lump sum that has been agreed upon in advance*".
80. In sum, the Agent submits that the clear and unequivocal intention of the Parties, reflected in the unambiguous text of the Agreement, was to ensure that the agreed commission would be payable "*as far as the Player was still transferred on a definitive basis and registered with*" the Club (Answer Brief, para 69). Since that condition was fulfilled on 30 September 2014 and 30 September 2015, the Agent contends that the Club is under a legally binding obligation to pay a total of €200,000 in commission under the Agreement.

Issue 2: The Agent's right to enforce the terms of the Agreement against the Club

81. The Agent rejects the Club's argument that he lacks standing to enforce the Agreement because he was not a party to the contract. The Agent makes a number of points in response to the Club's submissions:

- a) First, the Agent points out that he was expressly named in, and personally signed, the Agreement.
 - b) Second, the Agent contends that the two letters dated 13 January and 18 February 2015 were not sent by the Company, but were instead clearly sent on his behalf. He emphasises that each of the letters began with the words, *“I write to you on behalf of José Rodríguez Baster from Promoesport Andalucía SL (...)”*.
 - c) Third, the Agent points out that while the FIFA TMS report named the Agent as the intermediary representing the Club, it made no reference to the Company.
 - d) Fourth, the Agent notes that under the Agreement the Club expressly undertook to remunerate the Agent and not the Company (clause 2) and expressly attributed the mediation rights to the Agent personally (Clause 4). In addition, clause 7 provided that the Agent *“is authorized by the company to assign the economic and property rights derived from the present contract to the company Promoesport”*.
82. In these circumstances, the Agent submits there is no doubt that he was personally a party to the Agreement with the Club.

Testimony of the Parties’ witnesses

Riccardo Pecini

83. Mr Pecini is the director of the Club’s academy. He is responsible for international transfers and negotiations at the Club. Mr Pecini gave evidence in person at the hearing.
84. At the outset of his oral testimony, Mr Pecini was asked to explain why the Club includes provisions such as clause 5 of the Agreement in the contracts that it concludes with football players’ agents. Mr Pecini explained that since the Club only wants to remunerate agents who bring the Club good players, this type of clause is intended to ensure that agents are only remunerated if they procure the transfer of players who actually go on to play for the Club. In his experience, this type of clause usually does not prevent the agent from receiving commission, since it is rare for a player not to stay in the team for a reasonable period following their transfer to the Club.
85. Mr Pecini went on to explain that the present case was one of the rare cases where a player did not remain with the team following their transfer. Mr Pecini stated that the Player had not thrived after arriving at the Club in the summer of 2014. As a result, he had been loaned to another club a short while after he joined. The Player did not do well during the season on loan and therefore the Club had to loan him again to a lower club, before ultimately transferring him on a permanent basis to another club for free. Mr Pecini confirmed that the Player never played a professional game for the Club, notwithstanding the fact the Club paid €1.2m in respect of the transfer.

86. During cross-examination, Mr Pecini explained that whenever the Club is looking to obtain a new player, he usually contacts an agent and negotiates directly with them about the possible terms of a transfer. Once an agreement is reached in principle, Mr Pecini will send the agent the Club's standard contract. If the agent signs and returns it, the Club will then sign the document and the contract will be concluded.
87. Mr Pecini was asked whether the Club usually signed players with a view to them playing for the Club or whether it ever signed players in order to sell them on to other clubs. Mr Pecini stated that if the Club signs a player who does not go on to play for the Club, then it has made a wrong investment. The Club signs players in the expectation they will play for the Club; it does not sign them with a view to immediate re-transfer to another team.
88. In answer to questions from the Sole Arbitrator, Mr Pecini confirmed that he had been personally involved in the Player's transfer to the Club. In addition to negotiating with the Agent, Mr Pecini had also negotiated with the Agent's colleague, Christian Wein. Mr Pecini stated that, in his recollection, he had initially contacted Mr Wein who then put him in contact with the Agent. According to Mr Pecini, the Agent, Mr Wein and Mr Pecini all attended a meeting where the terms of the Agreement were negotiated.

Alberto Bosco

89. Mr Bosco is the Club's Chief Financial Officer. Mr Bosco gave evidence at the hearing by telephone.
90. At the outset of his oral evidence (which was relatively brief) Mr Bosco explained that clause 5 of the Agreement was a standard clause in contracts of this nature. He stated that the Club always inserts this clause into representation contracts. As a result of this clause, in a number of cases the Club has delayed making a payment to an agent after a player who has been transferred to the Club has subsequently been loaned to another team.
91. Mr Bosco reiterated that the clause in question is a standard clause in contracts of this nature. A draft contract is always sent to the agent for discussion before the contract is signed. During cross-examination, Mr Bosco explained that he was not working for the Club on the date when the Agreement was concluded with the Agent in the present case. As a result, he did not have first-hand knowledge of the discussions that took place between the Agent and the Club prior to the conclusion of the Agreement.

José Rodríguez Baster (The Agent)

92. The Agent began by explaining that he has worked as a players' agent for 21 years and has worked for the Company since he founded it in February 2002. According to the Agent, he has been involved in more than 1,000 player transfers during his career.
93. The Agent went on to describe the circumstances in which the Player's transfer to the Club in 2014 was negotiated and arranged. The Agent explained that he had spoken to Mr Pecini about

the type of player that the Club was looking to recruit. Mr Pecini informed the Agent that the Club was looking to sign an offensive midfielder. The Agent responded by suggesting the Player's name. Mr Pecini confirmed that he knew of the Player. He instructed the Agent to seek to procure the Player's transfer to the Club. Pursuant to those instructions, the Agent spoke directly to the Club and to the agent for the Player and successfully facilitated a transfer agreement between the Player, the Club and Crystal Palace F.C. He added that the Club had approached him personally and that he was responsible for discussing the transfer with the Club and the Player's agent.

94. The Agent stated that he concluded the Agreement with the Club on his own behalf, not on behalf of the Company. He considered that the commission payments were due to him personally and not the Company. The Agent stated that the President of the Club had asked if the commission of €200,000 could be paid in two instalments. The Agent considered this to be a reasonable request and therefore he agreed that the commission could be paid in two tranches of €100,000. This was the reason why clause 2 was drafted as it was; it was intended to establish a two-stage payment plan. The Agent maintained that he had performed all of his obligations under the Agreement and was therefore entitled to be paid €200,000 under the Agreement.
95. During his evidence, the Agent was asked by the Sole Arbitrator to explain how the Company operates. The Agent explained that the entity "Promoesport" comprises nine different legal entities, each of which has a different legal structure. One of those entities is Promoesport Andalusia (the Company). The Agent confirmed that he is the sole shareholder of the Company.
96. The Agent explained that individual agents who are members of the Company have control over specific players. The structure of the Company enables agents who are the agents of individual footballers to have discussions with other agents who are acting on behalf of football clubs. The Agent stressed that he was not, and never had been, the agent of the Player. Instead, as the TMS made clear, the agent of the Player was David Garcia.
97. The Sole Arbitrator inquired about the agent of the Player. In response, the Agent explained that the Player's agent, Mr Garcia, was remunerated separately. He added that Mr Wein also works with the Company (although he does not own any shares in the Company).
98. The Sole Arbitrator asked the Agent to explain the purpose of clause 7.3 of the Agreement, which states that: *"The Agent: José Rodríguez Baster, who is authorized by the company¹ to assign the economic and property rights derived from the present contract to Promoesport"*. The Agent stated that this clause was included in the Agreement at his request for fiscal reasons. According to the Agent, in Spain a lower tax rate applies to invoices raised by a legal person than invoices raised by a natural person. Consequently, it was possible to reduce the tax liabilities arising under the Agreement by ensuring that payments due to the Agent were invoiced through the Company, rather than by the Agent himself.

¹ During the hearing the Agent's lawyer confirmed that the reference to *"the company"* in clause 7.3 was a typographical error and was clearly meant to refer to *"the Club"*.

99. The Agent stated that in 21 years he has never previously experienced a situation where a club bought a footballer and then loaned them to another club within a matter of weeks. From the Agent's perspective, his obligations under the Agreement with the Club were fulfilled the moment that the TMS was issued. At that point in time, the Club became the owner of the Player and the Agent's obligations were completed. The Agent added that, as a matter of common sense, if work has been done then he is entitled to be paid for it.

Paul Buscail

100. Mr Buscail is the General Director of Promoesport. He has worked for Promoesport since 2008.
101. Mr Buscail explained that Promoesport consists of football agents together with a team of employees who are in charge of administrative services. Mr Buscail further explained that if an agent of a Promoesport company concludes an agency contract or a commission agreement, the money due under the contract belongs to the agency personally and not to the company. For fiscal and legal reasons, however, invoices are issued and sent by Promoesport and not by individual agents.
102. Mr Buscail went on to explain that the final registration of a player transfer is completed when the TMS is finalised and the international transfer certificate has been issued. At that moment, the player is formally registered and the contractual obligations of the agent are fulfilled. The agent's entitlement to payment of the contractual commission crystallises upon this event. In this regard, Mr Buscail stated that in his understanding the expression "*if registration continues*" in clause 5 of the Agreement was intended to refer to the process of perfecting the transfer of the Player.
103. During his evidence, Mr Buscail was questioned about the letter he had sent to the Club regarding the outstanding commission payments. Mr Buscail insisted that he had sent the letter on behalf of the Agent, not on behalf of the Company.
104. Mr Buscail was also questioned about the financial turnover of Promoesport. He declined to answer that question on grounds of commercial confidentiality. He did explain, however, that Promoesport's turnover is generated by work done directly by agents who form part of Promoesport. Mr Buscail also confirmed that Promoesport was not listed on the stock exchange.

IV. JURISDICTION

105. Article R47 of the CAS Code provides:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".

106. Article 66 of the FIFA Statutes provides:

“1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, Clubs, Players, Officials, Intermediaries and licensed match agents.

2. The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

107. In its Appeal Brief the Club submits that CAS has jurisdiction to hear this appeal. The Agent likewise states in his Answer Brief that CAS has jurisdiction in respect of this case. In light of Article R47 of the Code and Article 66 of the FIFA Statutes, and the explicit consent of the parties to the dispute, the Sole Arbitrator is satisfied that CAS has jurisdiction over the Club’s appeal.

V. ADMISSIBILITY

108. Article R49 of the Code provides as follows:

“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late”.

109. Article 67 of the FIFA Statutes provides:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question”.

110. The Club states that the decision of the Single Judge is a final decision passed by a legal body of FIFA. The appeal was lodged with CAS on 14 April 2016, within 21 days of the date when the Club was notified of the decision on 24 March 2016. The Agent has not raised any objection to the admissibility of the appeal.

111. In these circumstances, the Sole Arbitrator is satisfied that the appeal is admissible.

VI. APPLICABLE LAW

112. Article R58 of the Code states:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according

to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

113. The Club’s Statement of Appeal and Appeal Brief do not specifically address the issue of applicable law. Nevertheless, the Appeal Brief does refer to various provisions of Swiss law (implying thus, that the Club considers Swiss law to be applicable to the dispute).
114. In his Answer, the Agent contends that the FIFA Regulations are applicable to the merits of the dispute and, since FIFA is an association governed by Swiss law, Swiss law applies subsidiarily according to Article R58 of the Code.
115. In the circumstances and having regard to the terms of Article R58 of the Code, the Sole Arbitrator concludes that FIFA Regulations and Swiss law are applicable to the present appeal against the decision of the FIFA Players’ Status Committee.

VII. MERITS

116. The issues that arise for determination by the CAS Panel in this appeal may be summarised as follows:
 - (A) Does the Agent have a right to bring a claim to enforce the terms of the Agreement against the Club?
 - (B) Under the terms of the Agreement, was the Club under an obligation to make commission payments totalling €200,000 in circumstances where the Player was registered with the Club on 28 June 2014, but was on temporary loan to another football club on the dates specified in clause 2 of the Agreement?
117. The Sole Arbitrator will address separately the two principal disputed issues concerning the interpretation and effect of the Agreement.

A. The Agent’s right to enforce the terms of the Agreement against the Club

118. The Sole Arbitrator considers it appropriate to begin by addressing the Agent’s standing to enforce the Agreement, before proceeding to consider the interpretation of the relevant contractual provisions concerning the payment of commission in respect of the Player’s transfer to the Club.
119. Having given careful consideration to the parties’ respective submissions, the Sole Arbitrator agrees with the Single Judge’s conclusion that the Agent was a party to the Agreement and is entitled to bring an action against the Club to enforce its terms. The Sole Arbitrator considers that it is clear from the text of the Agreement and the relevant context in which it was concluded that the Agent was intended to be a party to the Agreement.

120. First, the Sole Arbitrator notes that the terms of the Agreement expressly state that it is the Agent who is entitled to the remuneration due under the Agreement. In particular:
 - a) Clause 2 states that, *“The Agent shall be remunerated exclusively by the Club (...)”,* and that, *“The Agent (...) shall be entitled to the following commission”*.
 - b) Clause 3 states that, *“The Agent, in the event of a definitive loan to another team, shall receive 5%”* and that, *“In other words, the Agent shall receive 5% of the surplus (...)”*.
121. The fact that the Agreement expressly provides that the remuneration is due to the Agent, rather than the Company, provides a strong indication that the parties intended the Agent to be a party to the Agreement.
122. Second, the Sole Arbitrator notes that two other clauses in the Agreement expressly confer rights (or recognise the conferral of rights) on the Agent:
 - a) Clause 4 states that, *“the negotiations rights shall be conferred exclusively upon the Agent”*.
 - b) Clause 7(3) states that, *“The Agent (...) is authorized by the company [sic] to assign the economic and property rights derived from the present contract to Promoesport”*.
123. In the Sole Arbitrator’s view, it would be counterintuitive for a contract to expressly confer certain rights on a person who was *not* intended to be a party (e.g. the Agent), while not expressly conferring any rights on a person who *was* intended to be a party (e.g. the Company). The Sole Arbitrator considers that clause 4 and clause 7.3 provide strong support for the conclusion that the Agent is a party to the Agreement, and that the parties intended he should be able to enforce its terms directly against the Club.
124. Third, with the exceptions of the words *“as the representative of Promoesport with headquarters in Barcelona – Spain”* in the opening line of the Agreement, and the reference to the Company in clause 7(3), the terms of the Agreement refer exclusively to the Agent. In the Sole Arbitrator’s view, the two brief references to *“Promoesport”* (which do not even specify which particular Promoesport entity they are intended to refer to) are insufficient to displace the clear effect of clauses 2, 3, 4 and 7(3) of the Agreement. This is reinforced by the fact that the signature page of the Agreement included a space for the signature of *“The Agent”* without any accompanying text that suggested he was signing the document on behalf of another person.
125. Fourth, the parties’ subsequent conduct following the conclusion of the Agreement is consistent with Agent being a party to the Agreement. In particular, the letters sent to the Club in January and February 2015 seeking payment of the commission allegedly due under the Agreement were expressly written on behalf of the Agent and made it clear that it was the Agent, rather than the Company, who was entitled to the commission payments. There is no evidence than the Club disputed the Agent’s entitlement to enforce rights under the Agreement until after he had lodged a claim seeking to enforce the Agreement before the Players’ Status Committee.

126. In this regard, the Sole Arbitrator notes that the Agent has provided a clear and reasonable explanation of why the correspondence with the Club requested the commission to be paid into the Company's bank account. In light of that explanation, which we have quoted in its entirety supra, the Sole Arbitrator does not consider that the references to the Company's bank account have any legal significance when ascertaining whether the Club and the Agent intended the Agent to be a party to the Agreement. Nor is any of the Club's other conduct at the time when the Agreement was concluded inconsistent with the Agent being a party to the Agreement.
127. The Sole Arbitrator therefore considers that the relevant conduct of the Agent and the Club following the conclusion of the Agreement provides further support for the analysis set out above.
128. For these reasons, the Sole Arbitrator agrees with the conclusion of the Single Judge of the Players' Status Committee that the Agent is a party to the Agreement.

B. The correct interpretation of the obligation to pay the commission payments under the Agreement

129. Having concluded that the Agent is a party to the Agreement, the Sole Arbitrator must now turn to consider the interpretation of the relevant contractual terms concerning the payment of commission to the Agent under clauses 2 and 5 of the Agreement.
130. The Sole Arbitrator begins by noting that there is a degree of ambiguity in the wording of clauses 2 and 5 of the Agreement, which when read together are, to the say the least, inelegant and obscurely drafted. At the hearing, neither party sought to suggest that the terms of the Agreement were entirely clear; indeed, both sides recognised that the drafting was obtuse. In these circumstances, the Sole Arbitrator considers it helpful to refer to Article 18 of the Swiss Code of Civil Obligations, which provides that, "*the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used in error*".
131. In addition, since it is undisputed that the Agreement was produced according to the Club's standard terms, and since there does not appear to be any dispute that clause 2 was inserted by the Club at the Club's request, the Sole Arbitrator notes that in accordance with established CAS jurisprudence, the principle *in dubio contra stipulatorem* calls for any unresolved ambiguity to be resolved against the party responsible for drafting the ambiguous term (see, for example, CAS 2009/A/1773 and CAS 2009/A/1774. In this case, any lingering ambiguity in respect of the interpretation of clauses 2 and 5 should therefore be resolved against the Club.
132. The Sole Arbitrator notes that the Club's obligation to pay commission to the Agent is contained in clause 2 of the Agreement. This states that the Agent "*shall be remunerated exclusively by the Club for the work performed related [sic] to the registration of the federative rights*" of the Player. The clause goes on to say that "*as a result of the aforementioned event*" (i.e. the registration of the federative rights) the Agent "*shall be entitled to the following commission*". In the Sole Arbitrator's view, this clause makes it reasonably clear that the Agent's right to receive the commission (and the Club's

obligation to pay it) is conditional upon the successful completion of the Player's registration with the Club. On the face of clause 2, nothing more than that is required to trigger the Club's obligation to pay the sums specified in that clause.

133. The question, therefore, is whether clause 5 – which must be read alongside clause 2 – qualifies that obligation in any way. Clause 5 states that: *"The amounts stated in point 2) shall only be due if the registration continues"*. It is clear that this provision is intended to supplement the conditions in clause 2. The expression *"if the registration continues"* is, however, ambiguous.
134. The Club submits that clause 5 means that the Agent is only entitled to be paid commission if on the dates specified in clause 2 the Player is registered with the Club and has not been loaned on a temporary basis to any other football clubs.
135. In the Sole Arbitrator's view, the interpretation advanced by the Club could give rise to a number of surprising outcomes, which it seems unlikely the parties would have intended and which are difficult to reconcile with their respective professional and commercial objectives. For example, if the Club's interpretation is correct, then if the Player was on loan to another club on the two dates specified in clause 2 of the Agreement, the Club would be under no obligation to make any payment at all to the Agent, even if the durations of the relevant loans were extremely short (e.g. one week) and even if the loans had the sole purpose of enabling the Club to avoid having to make any payment to the Agent under clause 2.
136. On the Club's analysis, the parties intended to give the Club power to unilaterally negate the Agent's right to receive any commission payment under the Agreement, notwithstanding the fact that the Agent has fulfilled all of his obligations to the Club and the Club remains in a valid contractual relationship with the Player. On this view, the parties intended that (a) the Agent could potentially receive no payment under the Agreement despite carrying out all of his obligations towards the Club; and (b) the Agent's right to remuneration would be entirely conditional upon the Club's future actions in respect of the Player – actions over which the Agent would be unlikely to have any meaningful influence or control. In the Sole Arbitrator's opinion, there is no evidence beyond the ambiguous wording of clause 5 to suggest that the parties intended the Agreement to produce this unusual and counterintuitive effect. The Sole Arbitrator therefore does not accept the interpretation of the Agreement advanced by the Club.
137. In the Sole Arbitrator's opinion, the expression *"if the registration continues"* in clause 5 could mean either:
 - a) If the Player's transfer is fully executed so that the Player is registered on a permanent basis with the Club; or
 - b) If the Player's transfer is fully executed so that the Player is registered on a permanent basis with the Club *and* the Player has not been permanently transferred to any other football club by the dates specified in clause 2 (*viz.* 31 September 2014 and 31 September 2015).

138. The Sole Arbitrator notes that the Italian text of the final clause of Article 5 states: *“Gli importi di cui il punto 2) saranno dovuti esclusivamente in continuità d tesseramento”* This language is consistent with an intention to make payment of the commission conditional upon the continued existence of a contractual relationship between the Player and the Club.
139. The Sole Arbitrator considers that, on its proper construction, the Agent’s entitlement to receive the commission of €200,000 accrued on the date when the Player was formally registered with the Club. It was, however, subject to the condition that the two tranches of €100,000 would only be due if the Player remained in a valid contractual relationship with the Club on the dates specified in clause 2. Accordingly, the sums would cease to be due to the Agent in the event that the Player was permanently transferred to another Club prior to 30 September 2014 or 30 September 2015.
140. In this regard, the Sole Arbitrator notes that clause 3 made provision for the Agent to be remunerated in the event that the Player was *“definitive[ly] loan[ed]”* (which the Sole Arbitrator (and parties) considers must mean permanently transferred) to another club for more than the amount that the Club paid to acquire him from Crystal Palace F.C. Accordingly, the interpretation of clauses 2 and 5 outlined above would mean that the Agent would receive remuneration if either:
 - a) The Player was not permanently transferred to another Club before 31 September 2014; or
 - b) The Player was permanently transferred to another Club before 31 September 2014, but the fee received by the Club in respect of that transfer was greater than the sum that the Club paid to acquire the Player in July 2014.
141. Since the parties must have considered it very unlikely that, within two months of acquiring him, the Club would sell the Player to another club for less than the amount they had paid to Crystal Palace F.C., in practical terms this meant that the Agent was very likely to be remunerated for his services performed under the Agreement. The Sole Arbitrator therefore considers that this interpretation of clauses 2 and 5 is more likely to reflect the parties’ mutual intentions when they signed the Agreement. In particular:
 - a) It is unlikely that the parties intended it to be possible for the Agent to receive no remuneration under the Agreement despite the Agent fulfilling all of his obligations to the Club and despite the Club retaining ultimate ownership of the Player on the dates when the commission was due to be paid.
 - b) It is unlikely that the parties intended it to be possible for the Club to avoid having to make any payment for the Agent’s service by the simple expedient of ensuring that the Player was on a short-term loan to another club on the two dates specified in clause 2.
142. For very similar reasons as the Single Judge, the Sole Arbitrator considers that the conditions that triggered the Club’s obligation to pay commission to the Agent were made out in this case. The Agent fulfilled all of his obligations to the Club in respect of the transfer and registration

of the Player. Moreover, by loaning the Player to FC Porto (on 1 September 2015) and to AD Alcorcon (on 23 July 2015) the Club did not terminate the Club's ownership rights over the Player and did not sever the contractual link between the Player and the Club, which subsisted until the Player was permanently transferred to another team several years later.

143. In these circumstances, the Club is under a clear contractual obligation to pay the sum of €200,000 to the Agent in accordance with the terms of the Agreement. The principle of *pacta sunt servanda*, which underpins all representation agreements of this nature, requires the Club to honour this obligation forthwith.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by U.C. Sampdoria SpA on 14 April 2016 is dismissed.
2. The decision of the Single Judge of the FIFA Players' Status Committee dated 26 January 2016 is upheld.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.