TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2023/O/10253 Sportlink For Sport Marketing & Bauza Adrover Consultancy FZ-LLC v. Mr. Modou Barrow

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Jacob C. Jørgensen, Attorney-at-Law in Birkerød, Denmark.

In the arbitration between

Sportlink For Sport Marketing, Saudi Arabia
Represented by Mr. Mario Resino Sastre and Mr. David Sanz García, Spain

Claimant 1

and

Bauza Adrover Consultancy FZ-LLC, United Arab Emirates
Represented by Mr. Mario Resino Sastre and Mr. David Sanz García, Spain

Claimant 2

and

Mr. Modou Barrow, Sweden and Gambia
Represented by Mr. Anıl Dinçer, Nazali Law Company, Istanbul, Türkiye

Respondent

I. PARTIES

1. **Sportlink For Sport Marketing** ("Claimant 1") is a Saudi based company with its registered office in Riyadh Kingdom of Saudi Arabia. Claimant 1 is a sport marketing agency, providing services to among others football players and clubs.

2. **Bauza Adrover Consultancy FZ-LLC** ("Claimant 2") is an Emirati company, with its registered office at Ras Al Khaimah, United Arab Emirates. Claimant 2's main activity is to represent, intermediate and negotiate contracts between professional football players and clubs.

3. Claimant 1 and Claimant 2 are collectively referred to as the "Claimants" in the following.

4. **Mr. Modou Barrow** (the "Respondent" or the "Player") is a professional football player of Gambian and Swedish nationality, born on 13 October 1992.

5. The Claimants and the Respondent will be referred to collectively as "the Parties".

II. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the written submissions of the Claimants and the Respondent. This background information is given for the sole purposes of providing a synopsis of the matter in dispute. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence which are considered necessary to explain the reasoning.

7. In the seasons leading up to the FIFA winter transfer window in 2022/23, the Respondent played for the South Korean club, Jeonbuk Hyundai Motors FC ("Jeonbuk").

8. On 10 January 2023, Jeonbuk entered into an international transfer agreement (the "Transfer Agreement") with the Saudi Arabian football club, Al-Ahli Saudi Football Club ("Al-Ahli") for the transfer of the Respondent from Jeonbuk to Al-Ahli for, *inter alia,* a transfer fee of USD 800,000 and subject to certain conditions outlined in art. 2 of the aforementioned agreement.

9. On 14 January 2023, the Respondent entered into an employment contract (the "Al-Ahli Employment Contract" or the "Al-Ahli Contract"). Art. 5 of this contract stipulates as follows with respect to the remuneration of the Respondent by Al-Ahli:

Article 5. Remuneration

5.1 Fixed Monthly Remuneration

The Club shall pay the following fixed monthly remuneration to the Player (net of any taxes, bank fees, and foreign exchange charges):

Payment Type	*Currency*	*Amount*
Monthly Salary for duration from 14/01/2023 to 30/06/2023	*($) USD*	*53,760*
Monthly Salary (01/07/2023 to 30/06/2025)	*($) USD*	*50,000*

The Club shall pay to the Player each monthly salary payment by the last day of each month for the duration from 14/01/2023 to 30/06/2023 a total of fifty-three thousand seven hundred and sixty dollars, and for the duration from 01/07/2023 to 30/06/2025 a total of fifty thousand dollars.

5.2 Fixed Financial Payments

The Club shall pay the following fixed financial payments to the Player (net of any taxes, bank fees, and foreign exchange charges):

Payment Type	*Currency*	*Amount*	*Payment Deadline (DD.MM.YYYY)*
Signing-on Fee	*($) USD*	*450,000*	*14.01.2023*
Advanced Payment	*($) USD*	*450,000*	*01.09.2023*
Advanced Payment	*($) USD*	*450,000*	*01.02.2024*
Advanced Payment	*($) USD*	*450,000*	*01.09.2024*
Advanced Payment	*($) USD*	*450,000*	*01.02.2025*

5.3 Conditional Financial Payments

The Club shall, upon satisfaction by the Player of the condition(s) specified in this section, pay the following remuneration to the Player (net of any taxes, bank fees, and foreign exchange charges) within 30 days of the satisfaction by the Player of the respective condition:

Payment Type	*Currency*	*Amount*	*Condition to be Met*
No	*No*	*No*	*No*

10. It flows from this provision that the Respondent would be entitled to a total remuneration in the amount of USD 3,745,680 during his employment with Al-Ahli. The amount can be calculated as follows:

Monthly salary in the period from 14 January 2023 until 30 June 2023 (USD 53,760 x 5.5 months)	USD	295,680
Monthly salary in the period from 1 July 2023 until 30 June 2025 (USD 50,000 x 24 months)	USD	1,200,000
Sign on fee and advance payments (450,000 USD x 5)	USD	2,250,000

Total	USD 3,745,680

11. With respect to the term of the employment, Art. 4 stipulates as follows:

Article 4. Term

4.1 Start and end dates

Contract start date (DD.MM.YYYY): 14.01.2023

Contract end date (DD.MM.YYYY): 30.06.2025

4.2 Minimum duration

At a minimum, the Contract shall run until the end of the regular football season.

4.3 Maximum duration

The term of this Contract shall not run for longer than five (5) years. If the Player enters into this Contract prior to the date of his 18th (eighteenth) birthday, the term of the Contract shall not run for longer than three (3) years.

12. Finally, it should be mentioned that Art. 13 of the Al-Ahli Employment Contract entitles the club to loan the Respondent to another club subject to applicable regulations.

13. On this basis, the Respondent initiated his employment with Al-Ahli and played for this club until 28 August 2023, when he was temporarily transferred to the Turkish club, Sivasspor Kulübü Dernegi ("Sivasspor") until 30 June 2024. Within this context, on 28 August 2023, the Respondent and Sivasspor concluded an employment contract (the "Sivasspor Contract").

14. On 26 December 2022, Mr. Saglik, Mr. Yazeed Al Nemer on behalf of Claimant 1, and by Mr. Jaime Bauza Adrover on behalf of Claimant 2 signed an "Acknowledgement of Debt Agreement" (the "Agreement"). Said agreement allegedly also includes the signature of the Respondent, which is disputed by himself. This issue will be dealt with in detail below under section V concerning the jurisdiction of the CAS.

15. The Agreement as submitted during the proceedings stipulates as follows:

*"**WHEREAS***

*IF THE PLAYER, through the Agent and the intermediaries has received an offer from **Al-Ahli Saudi FC**, to register as a professional Football player for the First Division in Saudi Arabia (Second Tier).*

If the offer received by THE PLAYER consists in entering into an employment contract for two seasons and a half of a season and the total agreement amount is non-less than

***2,500,000.00 USD (Two Million and five Hundred Thousand USD)**, THE PLAYER agrees to pay the agent and THE INTERMEDIARIES the exceeding amount as a commission.*

By the foregoing the parties, AGREE:

1st. SUBJECT AND PRICE. - THE PLAYER will pay the agent and the INTERMEDIARIES as acknowledgement of fees for the intermediation between THE PLAYER and the Football Club, the following amounts:

- *The Player will pay the agent and the INTERMEDIARIES Any Amount that Exceeds **2,500,000.00 USD** in Total contract and the payment schedule should be made when the club's offer is issued, the club offer issued is a total amount of **$3,750,000**.*

- *The Player will pay the agent and the INTERMEDIARIES for the total contract and it is not subject to his stay at Al-Ahli Saudi FC, except for the case if THE PLAYER and the Agent and the INTERMEDIARIES signed a Mutual Agreement.*

- *THE Player has received a total of **$3,750,000**, the commission amount is **$1,250,000**.*

  From which the player will pay:

*(The Agent) will receive **46% = $575,000**.*

*(The FIRST INTERMEDIARY) Sportlink will receive **38% = $475,000**.*

*(The SECOND INTERMEDIARY) Bauza Adrover consultancy will receive **16% = $200,000**."*

16. Furthermore, the Agreement provides as follows with respect to dispute resolution:

"EXPRESS SUBMISSION: *The parties agree that the court of Arbitration for sports situated in Lausanne shall have jurisdiction over any disputes between the parties relative to this Agreement and that the legislation of Switzerland shall be applied during the dispute resolution. In witness thereof, in accordance with all the foregoing, the Parties hereby sign this document in duplicate in the location and on the date expressed at the beginning.*"

17. On 8 February 2023, the Respondent transferred the sum of USD 25,000 to the Claimant 2. In the bank transfer request form the Respondent stated that the relationship between the sender of the funds (*i.e.*, the Claimant) and the beneficiary (*i.e.*, Claimant 2) was: "FOOTBALL AGENT/PLAYER", that the beneficiary's business was: "FOOTBALL AGENCY" and that the purpose of the payment was: "AGENT-FEE".

18. The funds reached Claimant 2's account on 15 February 2023 and are described as "MODOU BARROW AGENT FEE" in an account statement issued by Claimant 2's bank.

19. On 28 November 2023, the Claimants' representatives sent a default notice to the Respondent, stating *inter alia,* that the intermediation activities of the Claimants had resulted in the Al-Ahli Contract being executed, which entitled the Respondent to a total remuneration of USD 3,750,000; that the Agreement consequently obligated the Respondent to pay Claimant 1 a fee of USD 475,000 and Claimant 2 a fee of USD 200,000; that the Respondent, however, had only made one partial payment of USD 25,000 to Claimant 2; and that the Respondent was therefore requested to pay the outstanding fees in accordance with the Agreement in the amount of USD 475,000 to Claimant 1 and USD 175,000 to Claimant 2 within 7 days.

20. As the Respondent did not make the requested payments, the Claimants initiated this arbitration.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 26 December 2023, the Claimants submitted their Request for Arbitration and initiated this present arbitration with the Court of Arbitration for Sport (the "CAS") in accordance with Article R38 et seq. of the Code of Sports-related Arbitration (the "Code") against the Respondent.

22. In the Request for Arbitration, the Claimants submitted that the President of the CAS Ordinary Arbitration Division should be requested to determine the number of arbitrators pursuant to Article R40.1 of the Code, bearing in mind that the Claimants were willing to proceed with a Sole Arbitrator.

23. By letter dated 29 December 2023, the CAS Court Office acknowledged receipt of the Request for Arbitration and transmitted a copy hereof to the Respondent via courier, inviting the Respondent to file an Answer to the Request for Arbitration within 20 days and granting the Respondent a deadline of 15 days to state whether the Respondent agreed with the Claimants' suggestion concerning the appointment of a Sole Arbitrator. Further, the CAS Court Office noted that the Request for Arbitration had been filed in English and stated that unless the Respondent within 5 days filed an objection with respect to English being the procedural language, the proceedings would be conducted in English.

24. By letter dated 1 January 2024, the CEO of Al-Ahli informed the CAS Secretariat that

the Respondent had been transferred on loan to Sivasspor.

25. By letter dated 23 January 2024, the CAS Court Office informed the Parties that the President of the CAS Ordinary Arbitration Division would decide on the number of arbitrators, noting that the Respondent had not, within the 15-day deadline, provided any comments in this regard in response to the CAS Court Office's letter of 29 December 2023. Furthermore, the CAS Court Office confirmed that the procedural language would be English pursuant to Article R29 of the Code since the Respondent had not filed any objections in this regard within the provided deadline.

26. By letter dated 25 January 2024, the CAS Court Office informed the Parties that the Respondent had not filed an Answer to the Request for Arbitration within the 20-day deadline set out in the CAS Court Office's letter of 29 December 2023, and invited the Respondent, within 3 days, to provide evidence that an Answer to the Request for Arbitration had in fact been filed, if that were the case.

27. By letter dated 29 January 2024, sent both by courier and by e-mail, the CAS Court Office informed the Parties that the President of the CAS Ordinary Arbitration Division had decided to submit the case to a Sole Arbitrator and invited the Parties to jointly nominate a Sole Arbitrator by 13 February 2024. The CAS Court Office noted that in the absence of such an agreement, a Sole Arbitrator would be appointed by the President of the CAS Ordinary Arbitration Division.

28. By letter dated 7 February 2024, the CAS Court Office, referring to its letter of 25 January 2024, informed the Parties that the Respondent had not provided any evidence that an Answer to the Request for Arbitration had been filed, noting that the letter of 25 January 2024 had been received on 27 January 2024 at the Respondent's home address and on 31 January 2024 at the address of Sivasspor. Accordingly, the CAS Court Office concluded that no Answer to the Request for Arbitration had been filed in this matter.

29. On 12 February 2024, the Claimants paid their share of the Advance of Costs.

30. On 13 February 2024, the Claimants informed the CAS Court Office that no agreement had been reached with respect to the appointment of a Sole Arbitrator since the Respondent had not reacted to the Claimant's letter of 12 February 2024, and requested that the President of the CAS Ordinary Arbitration Division appoint a Sole Arbitrator.

31. By letter dated 13 February 2024, Mr. Anıl Dinçer, informed the CAS Court Office that he would be representing the Respondent in this matter. Mr. Dinçer attached a power of attorney to this effect along with this letter and stated that he agreed that a Sole Arbitrator should be appointed by the President of the CAS Ordinary Arbitration Division and that the proceedings should be conducted in English.

32. On 6 March 2024, and pursuant to Article 40.3 of the Code, the Parties were informed by the CAS Court Office that the President of the CAS Ordinary Arbitration Division had appointed Mr. Jacob C. Jørgensen, CAS Arbitrator, as Sole Arbitrator. The file was transmitted to the Sole Arbitrator that same day.

33. On 9 March 2024, the Claimants paid the Respondent's share of the Advance of Costs, noting that the Respondent had failed to do so.

34. On 12 April 2024, the Claimant filed its Statement of Claim with accompanying exhibits.

35. By letter dated 15 April 2024, the CAS Court Office transmitted a copy of the Statement of Claim by e-mail to the Respondent and invited the Respondent to file its Response within 30 days pursuant to Articles R44.1 and R44 of the Code.

36. On 3 June 2024, the Respondent filed its Response, which the CAS Court Office forwarded to the Claimants on 4 June 2024. The CAS Court Office noted the jurisdictional objection presented by the Respondent and invited the Claimants to provide their comments in this respect by 11 June 2024. Also, the Parties were invited to comment on whether they preferred a hearing to be held in this matter.

37. On 10 June 2024, the Respondent informed the CAS Court Office that the Respondent preferred to have a hearing in this case through videoconference.

38. On 12 June 2024[1], the Claimants informed the CAS Court Office that the Claimants preferred to have an in-person hearing in Lausanne in this matter.

39. On 21 June 2024, the Claimants filed their Reply to the Respondent's Jurisdictional Objection with exhibits.

40. On 5 July 2024, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing in this matter, which would be held at the CAS Court Office's Headquarters in Lausanne, Switzerland.

41. Following a number of written exchanges between the Parties concerning a date for the hearing and the need for further submissions prior to the hearing, the CAS Court Office on 16 July 2024 informed the Parties that the Sole Arbitrator would be available for a hearing on 14 October 2024, and invited them to advise the CAS Court Office as to their availability on that date and finally invited the Claimant's to file their further submission in the form of a Reply by 5 August 2024, following which the Respondent would also be given an opportunity to file a further submission in the form of a Rejoinder.

42. On 22 July 2024 both Parties informed the CAS Court Office that they would be available for a hearing on 14 October 2024, and by letter dated 23 July 2024 the CAS Court Office confirmed that a hearing would be held on said date from 9:30 (CET) at the CAS Headquarters in Lausanne, Switzerland and invited the Parties to provide, by 30 July 2024, the CAS Court Office with the names of all persons, including witnesses and experts, if any, who would be attending the hearing.

43. On 30 July 2024, Mr. Dinçer, on behalf of the Respondent informed the CAS Court Office that the Respondent would attend the hearing through video conference. On even

[1] The letter is erroneously dated 12 May 2024

date, counsel for the Claimants informed the CAS Court Office that Mr. Mario Resino Sastre and Mr. David Sanz García would attend the hearing in person whereas the witnesses, Mr. Mohamed Alruwaite and Mr. Yazeed Alnemer would attend the hearing by video conference.

44. On 15 August 2024, the Claimants filed their Reply with the CAS Court Office.

45. On 19 August 2024, the CAS Court Office invited the Respondent to file its Rejoinder.

46. Mr. Dinçer forwarded a power of attorney, signed by the Respondent on 14 September 2024, to the CAS Court Office, authorizing several lawyers from the law firm Bichara e Motta Advogados in São Paulo (Brazil), to assist the Respondent in these present proceedings. The power of attorney also stipulated that Mr. Dinçer continued to represent the Respondent in these proceedings.

47. On 24 September 2024, the Respondent filed his Rejoinder.

48. On 25 September 2024, the CAS Court Office forwarded an Order of Procedure, which the Parties were requested to sign and return.

49. On 25 September 2024, the Respondent signed the Order of Procedure.

50. On 2 October 2024, the Claimants signed the Order of Procedure.

51. On 14 October 2024, a hearing was held in Lausanne, Switzerland, at the CAS Headquarters. The Sole Arbitrator was assisted by Ms. Lia Yokomizo, Counsel to the CAS.

52. The Sole Arbitrator and Ms. Yokomizo were joined by:

    i. The Claimants' attorneys, Mr. Mario Resino Sastre and Mr. David Sanz García (both in person);

    ii. The Respondent's attorney, Mr. Anil Dinçer (in person);

    iii. The Claimants' witnesses, Mr. Mohamed Alruwaite and Mr. Yazeed Alnemer (both via video conference); and

    iv. The Respondent, Mr. Modou Barrow (via video conference).

53. Following the opening statements, the Sole Arbitrator heard witness testimonies via video conference of the Claimant's witnesses and of the Respondent himself who were all duly instructed by the Sole Arbitrator that they had a duty to tell the truth under penalty of perjury under Swiss law.

54. After the closing arguments, and rebuttals, during which the Parties' attorneys reiterated the arguments raised in their respective written submissions (summarized below under section IV) the Parties were invited to express whether or not they had been given a fair

chance to present their respective arguments and evidence, which they both confirmed had been the case.

55. During the rebuttals, both Parties addressed the issue of whether the Respondent had actually received the remuneration stated in the Al-Ahli Contract. On this basis, and with reference to the following stipulation in the Agreement: "*THE Player has received a total of $3,750,000, the commission amount is $1,250,000*", the Sole Arbitrator indicated at the end of the hearing that it would be helpful if the Parties would submit post hearing briefs on how this provision, in their respective views, should be interpreted. With reference to this, the CAS Court Office on 15 October 2024 invited the Parties to submit post hearing briefs addressing how the mentioned provision in the Agreement should be interpreted, in particular with respect to the word "received".

56. On 30 October 2024, the Parties submitted their post hearing briefs addressing the above question of interpretation.

57. On 4 November 2024, the CAS Court Office acknowledged receipt of the post hearing briefs and informed the Parties, on behalf of the Sole Arbitrator, that the evidentiary phase of the proceedings was closed and that the Sole Arbitrator would now proceed to draft and render his Award in this matter.

IV. THE PARTIES' SUBMISSIONS

58. The following summary of the Parties' positions and submissions is illustrative only and does not necessarily include each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all of the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

59. As a preliminary remark, it should be noted that there is disagreement between the Parties with respect to through whose intervention the transfer of the Respondent from Jeonbuk to Al-Ahli came about, on what basis the Claimants became involved, what role the Claimants played and what role an individual named Mr. Erkan Saglik, had in connection with the transfer.

60. The Respondent explained during the hearing that Mr. Saglik is just a friend of his, whereas the Claimants have submitted that Mr. Saglik acted as the Respondent's worldwide, exclusive agent who provided the Claimants with two exclusive mandates dated 12 and 18 December 2022 through which Mr. Saglik authorised the Claimants to negotiate the conditions of the Al-Ahli Contract.

A. The Claimants

61. The Claimants' submissions may be summarized as follows:

- In relation to the question of the jurisdiction of the CAS, the Claimants, in their Request for Arbitration dated 26 December 2023, point to the arbitration clause in the Agreement and submit that the dispute falls well within the scope of this clause,

which embraces "*any disputes between the parties relative to this Agreement*". Accordingly, in their view, the CAS is competent to hear and resolve the present matter.

- As to the merits, the Claimants first of all allege that the Al-Ahli Contract materialised as a result of their intermediation, and that the Respondent's worldwide, exclusive agent, Mr. Saglik, had authorised them to intermediate on behalf of the Respondent on the basis of the two written mandates dated 12 and 18 December 2022, respectively, which allowed the Claimants to approach Al-Ahli and negotiate the terms of an offer of employment, which led to the Respondent's transfer from Joenbuk on 10 January 2023, and ultimately to his employment with Al-Ahli on 14 January 2023.

62. According to the Claimants, the Agreement was entered into to secure the Claimants' right to receive a commission for their services as intermediaries in the event that the Respondent eventually signed an employment agreement with Al-Ahli.

63. The Claimants further allege that the Respondent has breached the Agreement by having failed to pay all of the agreed fees, which according to the Claimants became due when the Respondent entered into the Al-Ahli Contract, which secured the Respondent a total renumeration of at least 2,500,000 USD and an employment during 2½ seasons (that is the remainder of the season 2022/2023 until the end of the season 2024/25).

64. The Claimants emphasise that payment of the agreed fees was expressly not conditional upon the Respondent staying in Al-Ahli and that his temporary transfer to Sivasspor from 28 August 2023 until 30 June 2024 is therefore of no relevance with respect to the Respondent's obligation to pay the agreed fees.

65. More specifically, the Claimants submit that Art. 5 of the Al-Ahli Contract secured the Respondent a fixed total remuneration of 3,750,000 USD and that according to clause 1 of the Agreement (concerning "subject and price") the total commission amount owed by the Respondent is 1,250,000 USD of which 575,000 USD is payable to Mr. Saglik, 475,000 USD is payable to Claimant 1 and 200,000 USD is payable to Claimant 2.

66. According to the Claimants the amounts owed to the Claimants should have been paid on a lump sum basis on the date of the execution of the Al-Ahli Contract, *i.e.*, on 14 January 2023, since all of the relevant conditions were met on that date and since the Parties never agreed to a payment schedule.

67. As to the legal basis for the claims raised, the Claimants first of all invoke the principle of *pacta sunt servanda*, asserting in this connection that: "*the Agreement leaves no doubt neither about the Claimants' right to receive the agreed fees, nor about the Respondent's obligation to comply with the payment of such fees upon execution of the [Al-Ahli Contract]*". They further invoke the principle of *venire contra factum proprium* with reference to the Respondent's payment on 8 February 2023 of 25,000 USD to Claimant 2. In addition, referring to the evasive conduct of the Respondent, the Claimants invoke the overarching principle of good faith, embedded in Art. 2 of the Swiss Code of Obligations (also referred to as the "SCO" in the following) in support of their claims.

68. More specifically, the Claimants allege that the nature of the Agreement is that of an express acknowledgement of debt, falling under Art. 17 of the Swiss Code of Obligations and that they have both acted as agents for the Respondent within the meaning of Art. 390 of the Swiss Code of Obligations.

69. The Claimants conclude, on this basis, that since the Respondent has only paid USD 25,000 to Claimant 2, the Respondent owes USD 475,000 to Claimant 1 and USD 175,000 to Claimant 2.

70. In their Statement of Claim dated 12 April 2024, the Claimants elaborate on their legal arguments set out in the Request for Arbitration, stating among other things:

- With respect to the question of jurisdiction and the application of Swiss law, that by not filing an Answer to the Request for Arbitration, the Respondent has agreed to the jurisdiction of CAS in this matter and to Swiss law being applicable.

- The transfer of the Respondent from Jeonbuk to Al-Ahli was a result of the Claimants' intermediation as agents. In this context, the Claimants submit a copy of a letter from Al-Ahli in which the club authorises Claimant 1 to negotiate the transfer with Jeonbuk until 23 December 2022.

- In relation to their intermediary efforts, the Claimants furthermore submit copies of WhatsApp conversations between them and Mr. Saglik regarding the transfer, an offer from Jeonbuk and a counteroffer from Al-Ahli both dated 22 December 2022 regarding the terms of the transfer as well as a copies of correspondence between the clubs, including the acceptance letter dated 31 December 2022 from Al-Ahli, which resulted in the Transfer Agreement.

- With respect to the Agreement and its proper interpretation under Swiss law, the Claimants submit that Art. 19 of the Swiss Code of Obligations allows for a high degree of contractual freedom and with reference to Art. 18.1 of the Swiss Code of Obligations that the interpretation "*begins and abides with the express and clear wording of the clause*".

- With respect to the Respondent's payment obligation, the Claimants point to Art. 75 of the Swiss Code of Obligations and submit that absent an agreed payment term, a debt falls due immediately when the creditor demands payment. According to the Claimant the commission fees became due on 14 January 2023, seeing that "*the Claimants had indeed approached the Respondent on several occasions, requesting the payment of the intermediation fees accrued upon the signature of the [Al-Ahli Contract].*"

- In relation to the nature of the Agreement, the Claimants maintain that it is an express acknowledgement of debt, falling under Art. 17 of the SCO, which concerns an "*unconditional promise made by the debtor to pay a certain sum of money to the creditor"*.

- The Claimants further elaborate on the application of the legal principle of *venire contra factum proprium*, stating that the Respondent's payment of USD 25,000 to

Claimant 2, amounted to a partial fulfilment of the Agreement, which consequently estops the Respondent from escaping his obligations under the Agreement.

- Finally, the Claimants elaborate on the issue of good faith, referring *inter alia* to Art. 2 of the SCO and stating that the Respondent's conduct amounts to bad faith which should not be condoned by the Sole Arbitrator.

71. On this basis, the Claimants seek the following relief from the CAS:

"*(i) To condemn the Respondent to pay to the First Claimant the outstanding amount of FOUR HUNDRED SEVENTY-FIVE THOUSAND US DOLLARS (475,000.00 USD) corresponding to the remuneration agreed between the Parties in Clause 1st of the Agreement, which should have been paid by the Respondent on 14th January 2023;*

(ii) To condemn the Respondent to pay to the Second Claimant the outstanding amount of ONE HUNDRED SEVENTY-FIVE HOUSAND US DOLLARS (175,000.00 USD), corresponding to the remainder remuneration agreed between the Parties in Clause 1st of the Agreement, which should have been paid by the Respondent on 14th January 2023;

(iii) To condemn the Respondent to pay to the Claimants the interests accrued corresponding to the aforementioned outstanding amounts, at the rate of five per cent (5%) per annum, in accordance with Swiss Law and CAS Jurisprudence, as from the date they became due and payable (14th January 2023), until the effective date of payment.

(iv) To condemn the Respondent to pay the whole procedural costs and expenses of the present Ordinary Arbitration Procedure, including any administrative expenses of the CAS, as well as the Arbitrators' professional fees.

(v) To condemn the Respondent to pay a compensation of THIRTY THOUSAND EUROS (€30,000.00) as a contribution to the Claimants' legal expenses, including all the Claimants' counsel fees and any other expenses the Claimants incurred for the defense of their interests in the present Ordinary Arbitration Procedure."

B. The Respondent

72. The Respondent's submissions in this matter may be summarised as follows:

73. With respect to the Respondent's failure to submit an Answer to the Request for Arbitration, the Respondent explains that he changed his e-mail address when he joined Sivasspor and that the initial correspondence in this matter was sent to his old and inactive e-mail account.

74. With respect to the question of the jurisdiction of the CAS, the Respondent submits, in it its Response to the Statement of Claim dated 3 June 2024, that the Agreement was never signed by himself. Accordingly, the clauses in the Agreement, including the arbitration clause, cannot be invoked against the Respondent. Should the Agreement, however, be seen as binding, the Respondent agrees that Swiss law applies.

75. In support of this allegation, the Respondent points to the fact that the pages of the Agreement do not bear his initials and that he habitually adds his initials to each page of a contract signed by him. Furthermore, the Respondent alleges that the electronic signature on the last page of the Agreement looks different from his original signature. In this regard, the Respondent points to a number of documents bearing his original signature, including his two passports, the Al-Ahli Contract, and the Sivasspor Contract.

76. Further, with respect to the validity of an electronic signature under Swiss law, the Respondent submits that while electronic signatures have been accepted under Swiss law since 2003, their use is regulated by the rules set out in the Federal Law on Electronic Signatures and by Art. 14 of the SCO, which provides that an authenticated electronic signature combined with an authenticated time stamp is deemed equivalent to a handwritten signature.

77. The Respondent outlines (in some length) the regulation of electronic signatures under the mentioned rules and concludes that since he did not sign the Agreement by hand or with an electronic signature that is accepted and confirmed in accordance with the Swiss rules, he is not bound by the Agreement.

78. The Respondent also argues that the Agreement contains a number of anomalies, including: A lack of a specific payment date or an instalment plan, a lack of a date and place stipulated under his alleged signature, an excessively high commission fee calculated in an unusual manner and a requirement for him to pay even if he left Al-Ahli permanently without receiving his remuneration. In particular with respect to this last-mentioned condition, the Respondent submits with reference to Art. 20 of the SCO that "*this kind of agreement is unlawful and illegal and also, contrary to the ordinary course of things in football*".

79. The Respondent further submits, with reference to Art. 8 of the SCO, that the burden of proof rests with the Claimants to show (i) that they were authorised by the Respondent to act on his behalf in relation to negotiating the Al-Ahli Contract, rather than acting as an intermediary for the club; and (ii) that the signature on the last page of the Agreement indeed belongs to the Respondent. In this vein, the Respondent urges the CAS to verify whether the Claimants are licensed intermediaries.

80. The Respondent argues that he never gave the Claimants a mandate, authorising them to act on his behalf. In the same vein, the Respondent submits that the alleged written mandates dated 12 and 18 December 2022, respectively, were only valid for 72 hours each, and that they were never renewed.

81. Moreover, the Respondent argues that Claimant 1's managing director, Mr. Yazeed Alnemer, is nominated as the club's intermediary in the Al-Ahli Contract, which is co-signed by him in this capacity. By contrast, the section concerning details of the player's intermediary is left blank on the last page of the Al-Ahli Contract. Against this background, the Respondent submits that if the Agreement were legally binding, (which is contested), the Claimants would have been involved in dual representation in violation of applicable FIFA regulations. In the absence of awareness by both the club and the

player of such double representation, the agreement in question is invalid according to the Respondent.

82. Against this background and with reference to Art. 415 of the SCO, the Respondent further submits, that the Claimants - in their capacity of brokers - having acted in the interest of a third party (Al-Ahli), are deemed to have forfeited his right to receive compensation for their services.

83. In relation to the size of the claims raised, the Respondent, with reference to Art. 417 of the SCO, argues that the commission fees stipulated in the Agreement, exceeding 33% of the total remuneration from Al-Ahli to the Respondent, are immensely disproportionate and should therefore be reduced pursuant to this provision. The Respondent points to CAS case law[2] related to Art. 417 of the SCO and asserts that three factors are to be considered when determining whether a fee is excessive: (i) The excessive nature of the remuneration, (ii) what makes it abnormal in light of the circumstances, and (iii) in what manner there is an imbalance between the Parties' obligations, which must be considered as usurious.

84. The Respondent finally also emphasises that he did not make enough money under the Al-Ahli Contract before he was transferred on loan to Sivasspor that would allow him to pay the commission fees to the Claimants. According to the Respondent "*It was Sivasspor's responsibility to pay the amount corresponding to the loan duration, and the Respondent could not fully receive his money*". The Respondent further submits that he had waived some of his remuneration from Al-Ahli during his time with Sivasspor, however, he also experienced challenges with respect to Sivasspor's payments of his salary and ultimately had to terminate his contract with Sivasspor in which connection he also waived some of his remuneration. The Respondent, however, offers no evidence in support of these allegations. Instead, he invites the CAS to request the relevant information from Al-Ahli and from Sivasspor and include such information in these proceedings.

C. The Parties' further submissions on the issue of jurisdiction

85. As noted above under section III, both Parties were invited to make further submissions in this matter in light of the Respondent's objection to the jurisdiction of the CAS. These submissions can be summarised as follows:

The Claimants:

86. In their Reply to the Jurisdictional Objection dated 21 June 2024, the Claimants first of all argue, with reference to Article R39 of the Code, that the Respondent's jurisdictional objection is time-barred since the objection should have been raised in an Answer to the Request for Arbitration, which the Respondent did not submit. Article R39 of the Code

[2] CAS 2016/A/4485

provides among other things that the "*answer shall contain: - a brief statement of defence; - any defence of lack of jurisdiction; - any counterclaim.*"

87. The Claimants also point to Art. 186(2) of the Swiss Private International Law Act (the "PILA") and to Art. 359(2) of the Swiss Code of Civil Procedure (the "CPC"), which both provide that any jurisdictional objections must be raised prior to any defence on the merits.

88. Secondly, the Claimants allege that the Respondent's engagement in preliminary procedural matters (concerning the constitution of the Panel, acceptance of English as the procedural language and the request for time extensions addressed in Mr. Dincer's letters of 13 February 2024 and 16 April 2024, respectively, to the CAS Court Office) should prevent the Respondent from objecting to the jurisdiction of the CAS, because this conduct – according to the Claimants – constitutes an unconditional appearance in the arbitration proceedings.

89. Thirdly, with respect to the question of the alleged invalidity of the Respondent's digital signature on the Agreement, the Claimants assert, with reference to Art. 11(1) and Art. 14(2) of the SCO that Swiss law does not generally require that contracts take a specific form in order to deploy legal effects, except in specific cases expressly mandated by law. An acknowledgement of debt does not have to meet any formal requirements. Furthermore, the Claimants point to the fact that the Respondent habitually signed other documents, including contracts and power of attorneys, digitally. Accordingly, in the Claimants' opinion, the Respondent's "simple electronic signature" on the Agreement is sufficient in terms of rendering it legally binding under Swiss law.

90. Further, the Claimants argue, with reference to the award of 16 April 2018 rendered in CAS case 2017/A/5092 *Club Hajer FC Al-Hasa v. Arsid Kruja*, that the burden of proof (as per the legal principle, *actori incumbit probatio*, enshrined in Art. 8 of the Swiss Civil Code) rests with the Respondent to demonstrate that his signature on the Agreement has been forged, fabricated or artificially altered. According to the Claimants the Respondent has not discharged his burden of evidence in this regard, which could have been done, *e.g.*, by means of expert witness testimony from a handwriting expert.

91. In relation to this issue, the Claimants have also submitted documents purportedly showing that the Respondent signed the Agreement digitally via an adobe application in the evening of 26 December 2022, that this was the first time the Claimants saw and had access to his digital signature, and that the digital properties of the PDF version of the Agreement show that it was generated in the evening of 26 December 2022 and remained unchanged.

92. Further, in relation to the issue of the authenticity of the Respondent's signature, the Claimants point to several documents bearing the Respondent's signature, which appear to be very similar to the one on the Agreement, purportedly signed by the Respondent on 26 December 2022. These documents include: The offer of employment from Al-Ahli signed by the Respondent on 28 December 2022, the Al-Ahli transfer agreement signed by the Respondent on 5 January 2023, the Foreign fund request form signed by

the Respondent on 8 February 2023 (with which the Respondent transferred 25,000 USD to Claimant 2), the invoice issued by Claimant 2, signed by the Respondent on 8 February 2023 and finally the power of attorney in favour of Mr. Dinçer which the Respondent signed on 13 February 2024.

93. As a fourth point, the Claimants allege that the Respondent actually benefited from the services rendered by them, as demonstrated by the fact that he was employed by Al-Ahli from 14 January 2023, which according to the Claimants "*boosted his regular earnings as a football player.*"

94. As a fifth and final point, the Claimants reiterate that the Respondent's partial payment of Claimant 2's commission fee bars the Respondent from contesting the validity of the Agreement and hence the jurisdiction of the CAS due to the principle of *venire contra factum proprium*.

95. In the Claimants' Reply to the Respondent's Statement of Claim dated 15 August 2024, the Claimants reiterated the points raised in their above-summarised Reply to the Jurisdictional Objection dated 21 June 2024 and further submitted as follows:

96. In relation to the issue of whether the Claimants had been duly authorised by the Respondent, the Claimants submit that it is common practice in the football industry for the agent of a player to authorise, on a time limited basis, another agent in a particular market where the latter agent operates. This is what happened in the present case when Mr. Saglik authorized the Claimants. That being said, the Claimants underline that the important point in this case is that the Respondent, himself, signed the Agreement, which the claims arise from.

97. With respect to the question of Claimant 1's alleged double representation, the Claimant submit that they were not and have never been the Respondent´s agents, rather they acted as intermediaries trying to secure the Respondent's transfer and subsequent hiring by Al-Ahli and none of the activities carried out by the Claimants can be deemed a conflict of interest because the Respondent got what he explicitly demanded from the Claimants, namely a formal employment offer by the Al-Ahli on the terms specified in the Agreement. Further, the Claimants allege that the Respondent was fully aware that the Claimants were engaged for intermediating between the Respondent and Al-Ahli in order to obtain the employment offer on the terms demanded, and that it was the Respondent's own agent, Mr. Saglik, who was taking care of the Respondent's interests.

98. Against this background, the Claimants submit that there is no conflict of interest within the meaning of Art. 415 of the SCO in this matter and that this provision could only be applied where either the Claimants had acted to the detriment of the Respondent in the execution of the Al-Ahli Contract; and/or (ii) the Claimants had obtained a promise of remuneration of from Al-Ahli in bad faith and/or in breach of contract. Neither of these conditions are met in this matter and Art. 415 of the SCO therefore does not apply according to the Claimants.

99. On this basis, the Claimants submit that they have not acted against the interests of the Respondent in this matter, and that their right to receive the agreed commission arose when the terms of the Agreement had been fulfilled. In this regard the Claimants point to *inter alia* the award rendered on 20 September 2016 in CAS case 2016/A/4485 *Al Ittihad FC v. Daniel Gonzales Landler*, which concerned a similar contractual arrangement.

100. With respect to the question of whether the commission fees are allegedly excessive the Claimants submit that the agreed fees are not excessive and that Swiss law allows parties ample of room to reach whatsoever agreements they freely determine by mutual consent. According to the Claimants the Respondent freely entered into the Agreement whereby he expressly and willingly undertook to pay the Claimants the agreed fees in consideration for their intermediation services upon him signing the Al-Ahli Contract.

101. The Claimants also state that their services were crucial in term of the Respondent obtaining the offer of employment from Al-Ahli and that neither Art. 20 nor Art. 417 of the SCO can be applied in this matter because the agreed commission is fair and proportionate and in line with the customary practices in the Saudi football market. In this connection the Claimants also state that the Respondent's remuneration under the Al-Ahli Contract is comparable to a gross salary of approximately USD 5,000,000 in normal circumstances, seeing that in many jurisdictions the remuneration received by a football player will be taxed at a rate above 50% which is not the case in the Kingdom of Saudi Arabia. Finally, in this connection, the Claimants point to the fact that almost 50% of the commission agreed was earmarked for Mr. Saglik, while Claimant 1's share of the commission amounted to 12.6% of the Respondent's remuneration and Claimant 2's share amounted to 5.33%.

102. With respect to the question of the time for payment, the Claimants allege, with reference to Articles 75, 102 and 413 of the SCO that the commission fees became payable when the Al-Ahli Contract was concluded on 14 January 2023, and that the Respondent has been in default at least since 26 September 2023 when the Respondent was requested by Claimant 2 to proceed with the payment of the commission fees.

103. Finally, the Claimants elaborate in some length on the legal effects of the Respondent's partial payment of the commission to Claimant 2 and the legal principle, *venire contra factum proprium*.

The Respondent:

104. In the Respondent's Rejoinder dated 24 September 2024, the Respondent submits as follows with respect to the question of Claimant 1's alleged double representation: Al-Ahli paid Claimant 1 USD 375,000 in two equal instalments for its role as a broker in the negotiations concerning the Respondent. The Respondent never knew about, let alone authorised, Claimant 1 to act both on his behalf and on behalf of Al-Ahli. According to the Respondent this double representation constitutes a breach of loyalty and fiduciary duties towards the Respondent. Moreover, this apparent conflict of interest

also implicates Claimant 2 in light of the fact that the two Claimants acted jointly and in coordination vis-à-vis the Respondent.

105. The Respondent also states that he only learned about Claimant 1's engagement with Al-Ahli in connection with the preparation of his Rejoinder and alleges that this explains his partial payment to Claimant 2.

106. The additional content of the Rejoinder may be summarized as follows:

- The Respondent reiterates that he never personally granted any mandate to or gave any authorisations to the Claimants to represent him.

- The purported signature of the Respondent on the Agreement differs significantly from the Respondent's signatures on the other documents submitted by the Claimants.

- The alleged signature on the Agreement does not meet the requirements related to digital signatures under Swiss law. The Agreement therefore does not bind the Respondent.

- The Claimants were on Al-Ahli's side in the negotiations related to the transfer of the Respondent as evidenced by the fact they were paid by the club.

- There were no direct communications between the Claimants and the Respondent in relation to his transfer.

- The Claimants have not demonstrated that they were the effective cause in relation to the transfer of the Respondent to Al-Ahli. According to the Respondent this is crucial in assessing whether the Claimants have the right to receive payment of the commission fees.

- The services rendered by the Claimants were exclusively rendered on behalf of Al-Ahli without considering the Respondent and the Claimants did not secure the best possible deal for the Respondent.

- The Respondent did not know about the alleged double representation, let alone accepted it when he allegedly signed the Agreement. Such acceptance would be necessary under Art. 8 of the FIFA Regulations on Working with Intermediaries, as also reflected in the new FIFA Football Agent Regulation (2023). The Respondents acted in bad faith by not disclosing their relationship with Al-Ahli when allegedly also representing the Respondent.

- By acting as brokers for Al-Ahli in the deal, the Claimants ensured that the minimum requirements for their remuneration were met, rather than securing the Respondent the best possible engagement with a club in the Kingdom of Saudi Arabia with the highest possible remuneration.

- On this basis, pursuant to Art. 415 of the SCO, the Claimants are deemed to have forfeited their right to receive remuneration under the Agreement in light of the clear and significant conflict of interest.

- According to the doctrine related to Art. 415 of the SCO, which the Respondent describes in some detail, the consequence for a broker infringing the provision is the nullity of the contract and the forfeiture of the right to be remunerated.

- With respect to the question of the magnitude of the commission fees, the Respondent reiterated that the fees are excessive and disproportionate. With reference to the award dated 10 April 2018 in CAS case 2017/A/5374 *Jaroslaw Kolakowski v. Daniel Quintana Sosa* the Respondent further submits that the commission payable to a football agent is usually proportionate to the player's actual period of employment with the club in question. He also emphasized that that he had to waive a part of his remuneration during his loan period at Sivasspor and stated that "*If inquiries are made to Al-Ahli or Sivasspor, they can provide confirmation of these details*".

- Finally, with respect to the question of interest, the Respondent submits that the interest should only accrue from the date of the first notification sent by the Claimants to, cf. Art. 102(1) of the SCO.

107. Against this background, the Respondent requests the following relief:

"*1. To decide that CAS does not have jurisdiction to resolve this dispute.*

In case where CAS' jurisdiction is confirmed:

2. To dismiss all claims of the Claimants.

- The First Claimant who was explicitly acting as the Club's intermediary and for the Club's benefit and also being remunerated by the Club

- The Second Claimant who closely cooperated and worked with the First Claimant and was aware of the whole situation.

In case this request is denied:

3. To avoid double payment, to deduct the total amount (375,000.-USD) received by the First Claimant from the Club.

4. To reduce the total requested excessive and disproportionate amount (475,000.-USD so the first Claimant and 175,000.-USD for the second Claimant) to a fair amount in accordance with the Swiss code, FIFA intermediary regulations.

5. The total commission amount should be adjusted in a pro- rata basis according to the actual amount received by the Respondent from the Club.

In any case,

6. To decide that the calculation of interest should commence from the date of the first notification by the Claimants to the Respondent personally, per article 102, paragraph 1 of the Swiss Code of Obligations.

7. To condemn the Claimant to the payment in favor of the Respondent of the legal expenses incurred.

8. To establish the costs of the present arbitration procedure shall be borne by the Claimant."

D. The Parties' post hearing briefs concerning the interpretation of the Agreement

108. As also noted above under section III, both Parties were invited to file post hearing briefs following the hearing held on 14 October 2024 addressing the question of how the following provision in the Agreement should be interpreted, in particular with respect of the word "*received*":

"- *THE Player has received a total of $3,750,000, the commission amount is $1,250,000.*

From which the player will pay:

(The Agent) will receive 46% = $575,000.

(The first intermediary) Sportlink will receive 38% = $475,000.

(The second intermediary) Bauza Adrover consultancy will receive 16% = $200,000."

109. The pertinent parts of the post hearing briefs can be summarised as follows:

The Claimants:

In their post hearing brief dated 30 October 2024 the Claimants argue as follows:

- The burden of proof rests with the Respondent in terms of evidencing that he has not received the full remuneration of 3,750,000 USD under the Al-Ahli Contract. This burden of proof has not been met as the Respondent has submitted no form of

evidence whatsoever in support of his allegations that he encountered difficulties and irregularities in Sivasspor with respect to his salary payments and that he consequently waived some of his remuneration in connection with the termination of the Sivasspor Contract.

- It is too late, after the hearing, for the Respondent to submit evidence in support of his allegations, cf. Article R44.2 of the CAS Code which provides that '*Once the hearing is closed, the parties shall not be authorised to produce further written pleadings, unless the Panel so orders*'. Consequently, the Sole Arbitrator should "*make a decision on the basis of the evidence produced by the parties until the closing of the Hearing*".

- Several elements in the Agreement, whose clauses should be interpreted as a whole in accordance with Art. 18 of the SCO, lead to the conclusion that the Claimants (and the Respondent's exclusive agent) would be "*entitled to a commission if they were successful in obtaining an employment offer from Al-Ahli that met the following two (2) conditions: (i) an initial term of two and a half seasons; and (ii) a total remuneration of non-less than $2,500,000*."

- The Parties agreed that if the employment contract between the Respondent and Al-Ahli exceeded 2,500,000 USD then the Respondent's Agent and the Claimants would be entitled to receive the excess over that 2,500,000 USD.

- The parties agreed that the Respondent undertook to pay the agreed fees *´FOR THE TOTAL CONTRACT*", which shows that it was irrelevant whether or not the Respondent actually received the remuneration from Al-Ahli, since the commission was accrued upon receipt of the offer and subsequent inclusion of the required terms in the Al-Ahli Contract as evidenced by the wording stating that the obligation for the Respondent to pay the agreed fees was "*not subject to his stay at Al-Ahli Saudi FC*".

- Accordingly, the Agreement "*can only be interpreted as meaning that the Respondent's full receipt of the remuneration agreed in the Employment Contract with Al-Ahli was irrelevant, as long as the total economic value of such employment contract set out a remuneration in excess of $2,500,000*".

- The wording in question - "*THE Player has received a total of $3,750,000, the commission amount is $1,250,000. From which the player will pay […]*" - merely states a fact that was known to the Parties already at the time of the execution of the Agreement, namely that Al-Ahli had indeed made an official employment offer that met the conditions required by the Respondent.

- It is impossible to infer that actual receipt of 3,750,000 USD by the Respondent was a condition precedent to his obligation to pay the agreed commission fees.

- In any event, on the basis of the evidence produced by the Parties so far, the conclusion can only be that the Respondent has received the full remuneration of $3,750,000, since there is no evidence to the contrary.

The Respondent:

110. In his post hearing brief dated 30 October 2024 the Respondent argues as follows:

- As acknowledged by CAS jurisprudence, there is no reason to depart from the plain text of a contract unless there are objective reasons to think that it does not reflect the core meaning of the provision under review.

- The meaning of the verb chosen by the Parties – "*to receive*" – is intrinsically linked to the act of actually getting something into one's possession.

- The intent behind the clause in question is clearly that the Respondent's obligation to pay the commission of USD 1,250,000 to the agents arises only if he receives the total amount of USD 3,750,000. His liability to pay is thus conditional upon him receiving this total amount.

- The Respondent has not, however, received the total amount of USD 3,750,000 from Al Ahli. He was loaned to Sivasspor in Turkey for the 2023/24 season and later signed an employment agreement with club, Abha, in the Saudi First Division League for the 2024/25 season, following a termination by mutual agreement of his contract with Al Ahli.

- The total amount paid to the Respondent by Al Ahli was USD 2,000,015. Accordingly, no commission is due.

- Alternatively, Should the Sole Arbitrator deem the commission enforceable, the remuneration to the Claimants should be proportionate to the Respondent's actual period of employment with the Al Ahli, which was limited to half a season.

V. JURISDICTION OF THE CAS

111. The Agreement provides as follows with respect to dispute resolution:

112. "EXPRESS SUBMISSION: *The parties agree that the court of Arbitration for sports situated in Lausanne shall have jurisdiction over any disputes between the parties relative to this Agreement and that the legislation of Switzerland shall be applied during the dispute resolution. In witness thereof, in accordance with all the foregoing, the Parties hereby sign this document in duplicate in the location and on the date expressed at the beginning.*"

The question of time bar:

113. The Respondent has argued that the CAS lacks jurisdiction in this matter because he never signed the Agreement containing the arbitration clause. This argument was raised in the Response to the Statement of Claim and not in an Answer to the Request for Arbitration (since the Respondent did not file an Answer to the Request for Arbitration).

114. The Claimant argues with reference to Article R39 of the Code, Art. 186(2) of the PILA and Art. 359(2) of the Swiss Code of Civil Procedure ("SCCP") that the Respondent is barred from objecting to the jurisdiction of the CAS because the objection was not raised in an Answer to the Request for Arbitration.

115. In CAS proceedings, objections regarding jurisdiction have to be raised prior to any defence on the merits, *i.e.*, with the Answer to the Request for Arbitration, but in any event at the latest with the Response to the Statement of Claim. The reason for the rules set out in the PILA and in the SCCP, which the Claimants have invoked, is that once a respondent has submitted its response and expressed itself on the merits of the case, the respondent is deemed to have accepted the jurisdiction and is therefore no longer admitted to raise the defense of lack of jurisdiction[3].

116. Against this background, the Sole Arbitrator does not find that the Respondent is barred from objecting to the jurisdiction of the CAS, seeing that the objection was raised as the very first legal argument in the Respondent's first written submission in this matter. Nor does the Sole Arbitrator find that the Respondent is deemed to have made an unconditional appearance in the arbitration proceedings, which can prevent the jurisdictional objection, simply because of his counsel's (Mr. Dinçer's) correspondence with the CAS Court Office concerning the appointment of the Sole Arbitrator, the procedural language and requests for time extensions.

The question of the Respondent's signature on the Agreement:

117. The Respondent has submitted a number of signature samples from among other documents his two passports, the Sivasspor Contract and the Al-Ahli Contract which appear to be different from the signature on the Agreement.

118. The Claimants have also provided a number of signature samples from documents, including the power of attorney granted by the Respondent to his attorney, Mr. Dinçer, that are seemingly identical to the signature on the Agreement.

119. With respect to the particular rules under Swiss law concerning digital signatures, which the Respondent has invoked, the Sole Arbitrator agrees with the Claimants that Swiss

[3] See Dr. Manuel Arroyo (ed.), "*Arbitration in Switzerland – The Practitioner's Guide*", 2nd ed., Vol II, p. 1516. See also the award of 8 April 2015 in CAS case 2014/A/3639 *Amar Muralidharan v. Indian National Anti-Doping Agency (NADA), Indian National Dope Testing Laboratory, Ministry of Youth Affairs & Sports*: "*According to the Swiss Federal Tribunal, a jurisdictional challenge should be filed in a timely manner (i.e. before entering a defence on the merits (**included in** – or prior to filing – an answer), failing which the parties are deemed to have accepted jurisdiction*." (Emphasis added).

law does not generally require contracts to take a specific form or be signed in a specific manner in order to be legally binding. This principle is established in Art. 11 of the SCO.

120. The Respondent habitually signed other documents digitally, including contracts and power of attorneys. On this basis, the Sole Arbitrator does not find that the electronic signature on the Agreement can be disregarded merely on formal grounds.

121. The Sole Arbitrator furthermore agrees with the Claimants that the burden of proof rests with the Respondent in terms of demonstrating that his signature has been added onto the Agreement without his knowledge or will.

122. In his assessment of the issue at hand, the Sole Arbitrator attaches decisive importance to the fact that the Respondent on 8 February 2023 paid 25,000 USD to Claimant 2. In this connection, the Respondent clearly stated in the payment request form that the payment concerned an "AGENT-FEE", made to a "FOOTBALL AGENT" and that the relationship between the Respondent and the recipient of the funds was that of a: "FOOTBALL AGENT/PLAYER".

123. The Respondent has not offered any convincing explanations as to why he paid 25,000 USD to Claimant 2 if this payment had nothing to do with the Agreement or if he did not believe to be legally bound by the Agreement.

124. The Sole Arbitrator notes in this context that the principle, *venire contra factum proprium*, has been applied in a number of CAS awards, among others in the award of 16 February 2010 in CAS case 2009/A/1956 *Club Tofta Itróttarfelag, B68 v. R.* where the Panel among other things held: "*If a party has clearly shown that it was willing to rely upon a signed agreement by performing its contractual obligations, it may not submit that the agreement is to be considered as invalid and repudiate it. Such repudiation would clearly be contrary to the attitude adopted by the party before the termination, which is prohibited by the general principles of good faith (venire contra factum proprium).*"

125. Having scrutinized the different signature samples presented by the Parties, the Sole Arbitrator does not find that the Respondent has demonstrated, to his comfortable satisfaction (or even on a balance of probabilities), that his digital signature was added onto the Agreement without his knowledge or against his will. If this had been the case, the Respondent would presumably not have transferred 25,000 USD to Claimant 2 as payment of an "AGENT FEE".

126. Accordingly, the Sole Arbitrator finds that the Respondent is legally bound by the Agreement and by the arbitration clause embedded therein.

127. It follows that the CAS has jurisdiction to hear the present dispute, which clearly falls within the scope of application of the arbitration clause.

128. Accordingly, the Sole Arbitrator agrees with the Claimant that the Request for Arbitration is admissible.

VI. APPLICABLE LAW

129. Article R45 of the Code provides as follows:

130. "*The Panel shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to Swiss law*."

131. Further, according to the above-cited arbitration clause in the Agreement "*the legislation of Switzerland shall be applied during the dispute resolution*".

132. Finally, there is agreement between the Parties that this case should be decided according to Swiss law.

133. In light of this wording, the Sole Arbitrator will apply Swiss law in this matter.

134. However, the Sole Arbitrator does not find that the FIFA regulations, invoked by the Respondent applies in this matter, seeing that the Claimants are not authorised FIFA agents, and seeing that the FIFA regulations do not form part of Swiss law. Furthermore, given that the dispute and the claims for payment arise out of commercial agreement, the Sole Arbitrator does not find that it is relevant to consider whether the Claimants are licensed intermediaries.

VII. MERITS

The Claimants' and Mr. Saglik's involvement in the transfer of the Respondent:

135. The Sole Arbitrator finds that the Claimants have demonstrated that the transfer of the Respondent from Jeonbuk to Al-Ahli on 10 January 2023 and the Respondent's signing of the Al-Ahli Contract on 14 January 2023 materialised, to a wide extent, as a result of their intermediary efforts.

136. The Sole Arbitrator is also of the view that the Respondent's agent, Mr. Saglik, and the Claimants worked together to secure the transfer and the employment of the Respondent by Al-Ahli, and that the Respondent was well aware of this collaboration.

The validity of the Agreement:

137. As already stated above in relation to the issue of jurisdiction, the Sole Arbitrator finds that the Agreement was concluded in a manner that legally binds the Respondent, who - by his conduct after the Agreement was concluded - has demonstrated that he believed to be bound by the Agreement.

Claimant 1's alleged double representation and Art. 415 of the SCO:

138. With respect to the issue of Claimant 1's double representation, the Sole Arbitrator does not find that Claimant 1's engagement with Al-Ahli conflicted with the commercial interests of the Respondent in light of the fact that the Respondent obtained an

employment offer for 2½ seasons with a remuneration of at least USD 2,500,000 from Al-Ahli in accordance with the Agreement. Since the Claimants' commission would be equal to any amounts received by the Respondent above his remuneration of USD 2,500,000, the Sole Arbitrator finds that the Claimants essentially negotiated the size of their own fee once the USD 2,500,000 remuneration of the Respondent had been agreed upon.

139. For these reasons, the Sole Arbitrator does not find that Art. 415 of the SCO applies in this matter[4].

The nature of the Agreement and Art. 17 of the SCO:

140. In line with a long line of CAS awards, the Sole Arbitrator finds that the principle of *pacta sunt servanda* must be respected and that the terms and conditions, which the Parties have freely agreed upon, must be fulfilled, in the absence of any mandatory law to the contrary.

141. As to the nature of the Agreement, the Sole Arbitrator does not, however, find that it constitutes an express acknowledgement of debt, falling under Art. 17 of the SC O, since the obligation to pay the commission fees set out in the Agreement are clearly not unconditional as required by Art. 17, cf. in further detail right below.

The interpretation of the Agreement:

142. The Sole Arbitrator does not agree with the Claimant that "*the Agreement leaves no doubt neither about the Claimants' right to receive the agreed fees, nor about the Respondent's obligation to comply with the payment of such fees upon execution of the [Al-Ahli Contract]*".

143. On the contrary, the Sole Arbitrator finds that the Agreement leaves us with a considerable amount doubt with respect to the conditions that must be fulfilled in order for the commission fees to fall due.

144. The recitals of the Agreement read as follows:

"*WHEREAS*

IF THE PLAYER, through the Agent and the intermediaries has received an offer from Al-Ahli Saudi FC, to register as a professional Football player for the First Division in Saudi Arabia (Second Tier).

[4] See the award of 23 June 2014 in CAS case 2013/A/3393 *Genoa Cricket and Football Club v. Juan Aisa Blanco* where the panel among other things stated with reference to Art. 415 of the SCO: "*Summarizing in this regard, the Panel finds that the Appellant did not prove that there was a conflict of interest which would render the Representation Contract void. The mere allegation of a possible conflict of interest without any evidence to support it does not suffice in this regard."* See in this regard also the award of 14 June 2013 in CAS case 2012/A/2988 *PFC CSKA Sofia v. Loïc Bensaïd*.

If the offer received by THE PLAYER consists in entering into an employment contract for two seasons and a half of a season and the total agreement amount is non-less than 2,500,000.00 USD (Two Million and five Hundred Thousand USD), THE PLAYER agrees to pay the agent and THE INTERMEDIARIES the exceeding amount as a commission."

145. The operative part of the Agreement set out the following clauses:

"*By the foregoing the parties, AGREE:*

1st. subject and price. - the player will pay the agent and the intermediaries as acknowledgement of fees for the intermediation between the player and the Football Club, the following amounts:

- *The Player will pay the agent and the intermediaries Any Amount that Exceeds 2,500,000.00 USD in Total contract and the payment schedule should be made when the club's offer is issued, the club offer issued is a total amount of $3,750,000.*

- *The Player will pay the agent and the intermediaries for the total contract and it is not subject to his stay at Al-Ahli Saudi FC, except for the case if the player and the Agent and the intermediaries signed a Mutual Agreement.*

- *THE Player has received a total of $3,750,000, the commission amount is $1,250,000.*

From which the player will pay:

(The Agent) will receive 46% = $575,000.

(The first intermediary) Sportlink will receive 38% = $475,000.

(The second intermediary) Bauza Adrover consultancy will receive 16% = $200,000."

146. It is reasonably clear from these provisions, that if the Respondent - through the Claimants and Mr. Saglik - received an employment offer from Al-Ahli to register as a professional football player in the first division in Saudi Arabia (Second Tier), and if that offer was for 2½ seasons and against a total remuneration of no less than USD 2,500,000, then the Respondent would have an obligation to pay any amount in excess of USD 2,500,000 to the Claimants and Mr. Saglik.

147. The Sole Arbitrator notes in this regard that recitals in a contract are usually designed to simply record the background to the transaction that is regulated in the operative provisions of the contract. As such, they are not generally or conventionally legally binding but are rather used to assist in the interpretation of the operative parts of the agreement.

148. Still, the legal effect of recitals may be a question of construction. If the recitals contain a clear intention that the parties will do something, then courts or arbitrators may imply it as a binding undertaking.

149. In the present case, the Sole Arbitrator finds that the second paragraph of the recitals contains a binding undertaking by the Respondent to pay the Claimants (and Mr. Saglik) any amount exceeding USD 2,500,000 as a commission provided that the stipulated conditions are all met.

150. The Sole Arbitrator furthermore agrees with the Claimants that the Respondent's continued stay with Al-Ahli was not a condition for his payment obligation. Indeed, this stipulation makes sense in light of Art. 13 of the Al-Ahli Contract, which expressly gives the club the right to transfer the Respondent on loan to other clubs. A right which the club exercised in August 2023, when the Respondent was temporarily transferred to Sivasspor. However, the Sole Arbitrator does not find that staying at the club is the same as being paid by the club as explained in further detail below.

151. The Sole Arbitrator also agrees with the Claimants that the Agreement does not contain any particular stipulations setting out a schedule for the payment of the commission fees, although this was clearly the intention of the Parties as reflected in the second bullet point: *"[…] and the payment schedule should be made when the club's offer is issued […]*". Presumably, this provision was designed to allow a certain degree of coordination between the sums payable under the Agreement and the sums receivable under the Al-Ahli Contract to ensure that the Respondent had the required cashflow to honor his payment obligations under the Agreement. However, a payment schedule was never agreed, and in its absence, the fallback position under Swiss law is that a debt becomes payable on demand, unless the time for payment is "*evident from the nature of the legal relationship*", cf. SCO Art. 75.

152. That being said, when interpreting the Agreement one cannot ignore the word "received", which is used in in the last bullet point of clause 1 of the Agreement: "*THE Player has received a total of $3,750,000, the commission amount is $1,250,000*". This clause is tied together with the last part of the clause, stipulating the exact amounts payable to the Claimants, with the words: "***From which** the player will pay: […]*. (Emphasis added).

153. With respect to the interpretation of this provision, the Claimants have in their post hearing brief submitted that the Respondent's obligation to pay the agreed commission fees is not subject to his actual receipt of the remuneration from Al-Ahli.

154. Unsurprisingly, the Respondent has submitted that this provision must be interpreted to mean that the obligation to pay the commission amount of 1,250,000 USD is conditional upon the Respondent having first received the total amount of 3,750,000 USD.

155. The Sole Arbitrator agrees with the Claimants that contracts under Swiss law are to be interpreted according to Art. 18.1 of the SCO 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*." As also pointed out by the Claimants in their Statement of Claim, the interpretation of a contract under Swiss law "*begins and abides with the express and clear wording of the clause*" in question.

156. On this basis, the Sole Arbitrator finds that the word "*received*" must be interpreted literally in the given context, meaning that the Respondent's undertaking to pay the full commission of USD 1,250,000, (divided into the portions payable to the Claimants and to Mr. Saglik as set out in the last part of the provision), depended on him having first received USD 3,750,000 from Al-Ahli.

157. This interpretation makes sense, in particular, as it would allow the Respondent an opportunity to finance the payment of the agreed commission fees with his remuneration from Al-Ahli, as presumably envisaged with the wording "*From which the player will pay:* […]".

158. Finally, the *contractual intention* of the Parties to agree on a payment schedule reflected in the second bullet point "*the payment schedule should be made when the club's offer is issued*" would also seem to indicate that the Respondent's payment of the agreed fees was to be coordinated and aligned with the cashflow stemming from the Al-Ahli Contract.

159. The Sole Arbitrator does not find that the stipulation in the first bullet point, which emphasises that the Respondent' obligation to pay the agreed fees is "*not subject to his stay at Al-Ahli Saudi FC*" conflicts with the above interpretation. As indicated, this stipulation should be read and understood in light of Art. 13 of the Al-Ahli Contract, which entitled Al-Ahli to transfer the Respondent on loan to other clubs during his employment. The Respondent's stay at Al-Ahli is therefore not the same as him being paid by Al-Ahli in the Sole Arbitrator's opinion.

160. Nor does the Sole Arbitrator find that the proposed literal interpretation of the words "*has received*" conflicts with the recitals in the Agreement, in that the recitals are designed to regulate under which conditions the Claimants were to become *entitled* to receive a commission, whilst the operative part of the Agreement regulates under which conditions and when the commission were to *become due for payment.*

161. The Sole Arbitrator does not, however, agree with the Respondent that the liability to pay *any* commission to the Claimants is conditional upon him receiving the *total* remuneration of USD 3,750,000. Rather, the recitals must be interpreted to mean that

any amount received by the Respondent above the sum of USD 2,500,000 would be payable to the Claimants as commission (regardless of the exact remuneration actually received by the Respondent above that threshold).

162. Accordingly, from the point in time when the Respondent had received USD 2,500,000 out of his total remuneration, he was obligated to start paying the Claimant's the agreed commission from the remaining part of his remuneration as he received it.

The size of the commission fees and Art. 417 of the SCO:

163. With respect to the size of the agreed commission fees the Sole Arbitrator recalls that Art. 19 of the SCO allows for a high degree of contractual freedom. The Sole Arbitrator also notes that according to Swiss law, there is no *mandatory* limitation on the amount of an intermediary's or agent's remuneration.

164. In this matter, no evidence has been adduced to the effect that the Respondent was either coerced or unduly influenced into agreeing on the commission fees set out in the Agreement. The presumption therefore is that the Parties freely and voluntarily agreed on the fees payable to the Claimants.

165. However, in a matter such as the present where a private individual is being met with a substantial claim from two corporate entities, who have acted as agents tasked with facilitating the conclusion of an employment contract, it is relevant to assess whether Art. 417 of the SCO should be applied as submitted by the Respondent. This provision stipulates as follows: "*Where an excessive fee has been agreed for identifying an opportunity to conclude or for facilitating the conclusion of an individual employment contract or a purchase of immovable property, on application by the debtor the court may reduce the fee to an appropriate amount.*"

166. Art. 417 SCO sets a high bar for the reduction of an agreed fee. In the present matter the fee of USD 475,000 to Claimant 1 is equivalent to 12.6% of the total remuneration of the Respondent under the Al-Ahli Contract, whereas the fee of USD 200,000 to Claimant 2 is equivalent to 5.3% of the Respondent's remuneration. The Sole Arbitrator does not find that the agreed fees, in proportion to the total remuneration of USD 3,750,000, which the Respondent stood to receive under the Al-Ahli Contract, are excessive or disproportionate.

167. Accordingly, the Respondent has not demonstrated that Art. 417 of the SCO should be applied in this matter.

Burden of proof and Article R44.1 of the Code:

168. The Sole Arbitrator notes the written requests made by the Respondent with respect to the CAS contacting Al-Ahli and Sivasspor to obtain evidence supporting the Respondent's allegations that he never received the agreed remuneration from Al-Ahli after he was loaned to Sivasspor.

169. The Sole Arbitrator notes that CAS proceedings are adversarial – they are not inquisitorial. Accordingly, a Sole Arbitrator cannot engage in fact finding ventures on behalf of the parties in a CAS arbitration. It is the sole responsibility of the Parties (and their legal representatives) to obtain and present the relevant evidence in support of their positions, cf. Article R44.1 (2nd para) of the Code, which provides among other things: "*Together with their written submissions, the parties shall produce all written evidence upon which they intend to rely*"[5].

170. In this case, the Respondent could have attempted to demonstrate that he was not paid in full by Al-Ahli for example by submitting written evidence in the form of account statements, salary statements or by means of an expert report prepared by his accountant, confirming his actual income from Al-Ahli and Sivasspor during the relevant periods. The Respondent could also have called witnesses from the two football clubs to substantiate his allegations that he had to waive remuneration during the time he was playing for Sivasspor. However, no such evidence was presented prior to or at the hearing in this case.

171. Accordingly, in the absence of evidence to the contrary, the Sole Arbitrator must assume that the Respondent had in fact received the amounts stated in the Agreement as of the date of the hearing. In this connection, the Sole Arbitrator agrees with the Claimants that the Sole Arbitrator is restricted to "*make a decision on the basis of the evidence produced by the parties until the closing of the Hearing"* as per Article R44.1 (2nd para) of the CAS Code.

Conclusions:

172. The Claimants have not in these proceedings that were initiated on 26 December 2023 sought any declaratory relief aimed at facilitating the pursuit of claims, not yet due as of the date of the hearing, against the Respondent under the Agreement. Instead, the Claimants have relied heavily on their argument that the commission fees became due on 14 January 2023 and have thus restricted their relief sought (on the merits) to claims for full payment of the fees. This procedural stance has been maintained by the Claimants despite the wording of the Agreement, discussed above, and despite the fact that the hearing was held on 14 October 2024, *i.e.*, 8 ½ months before the Respondent

[5] See in this regard the award rendered on 25 May 2018 in CAS case 2017/A/5336 *Al Nassr Saudi Club v. FC Twente 65*: *"In this respect, the Sole Arbitrator confirms the principle established by CAS jurisprudence that "in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (…). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence" (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff)."* See also the award of 15 October 2009 in CAS case 2008/A/1741 *Leonid Kovel v. FC Karpaty & Fédération Internationale de Football Association (FIFA): "As a result, Mr Leonid Kovel has to explain with precision the pertinent facts on which his claim relies, in particular, in order to persuade the Panel that his signature was procured by improper means. The player bears the burden of proof in this respect, i.e. the onus to substantiate his allegations and to prove that the second employment agreement is not valid.*"

was contractually entitled to receive his remaining monthly salary payments as well as his last advance payment of USD 450,000 under the Al-Ahli Contract.

173. With respect to the merits, the Sole Arbitrator is restricted to determining the Claimants' demands for payment in light of the evidence before the Sole Arbitrator as of "*the closing of the Hearing*", as rightly pointed out by the Claimants. Whether the Respondent will receive the last outstanding payments of USD 875,000 under the Al-Ahli Contract following the date of the hearing cannot, however, be assumed by the Sole Arbitrator based on the evidence in this case.

174. At the time of the hearing, on 14 October 2024, the Respondent is assumed to have received a total remuneration of USD 2,997,560 under the Al-Ahli Contract, calculated as follows:

Monthly salary payments in the period from January 2023 until 30 June 2023 (USD 53,760 x 6 months)	USD	322,560
Monthly salary payments in the period from 1 July 2023 until 14 October 2024 (USD 50,000 x 17.5 months)	USD	875,000
Sign on fee and advance payments (USD 450,000 x 4)	USD	1,800,000
Total	**USD**	**2,997,560**

175. Out of this remuneration, the sum of 497,560 USD exceeds the agreed threshold of USD 2,500,000 set out in the recitals of the Agreement, and is thus payable to the Claimants according to the percentages stipulated in the Agreement as follows:

Fee owed to Claimant 1 as of 14 October 2024 38% of USD 497,560	**USD**	**189,072.80**
Fee owed to Claimant 2 as of 14 October 2024 16% of USD 497,560	USD	79,609.60
Less the fees paid to Claimant 2 in February 2023	USD	25,000.00
	USD	**54,609.60**

VIII Interest

176. The Claimants requests payment of 5% interest per annum of the commission fees from 14 January 2023.

177. As explained above, the Sole Arbitrator finds that the commission fees only started falling due after the date when the Respondent had received USD 2,500,000 of his total remuneration under the Al-Ahli Contract. By 1 September 2024, the funds (assumed)

received by Respondent exceeded the mentioned threshold. Accordingly, interest started accruing from this date.

IX Costs

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Respondent, Mr. Modou Barrow, is ordered to pay to Claimant 1, Sportlink For Sports Marketing, an amount of USD 189,072.80 (one hundred and eighty-nine thousand and seventy-two United States Dollars and eighty cents), plus interest of 5% per annum from 1 September 2024 until the date of effective payment.

2. The Respondent is ordered to pay to the Claimant 2, Bauza Adrover Consultancy FZ-LLC, an amount of USD 54,609.60 (fifty-four thousand six hundred and nine United States Dollars and sixty cents), plus interest of 5% per annum from 1 September 2024 until the date of effective payment.

3. (…).

4. (…).

5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 4 July 2025

THE COURT OF ARBITRATION FOR SPORT

Jacob C. Jørgensen
Sole Arbitrator