

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
Civil Division

**CHARLES A. HORTON,**  
825 10<sup>th</sup> Street, NW  
Apt. 585  
Washington, DC 20001

v.

Case Number No. \_\_\_\_\_

**FABIAN ESPINDOLA**  
9316 Rustic Breeze Ct.  
Bristow, VA 20136

**Jury Trial Demanded**

and

**BENJAMIN OLSEN**  
914 T Street, NW  
Washington, DC 20001

and

**D.C. SOCCER LLC D/B/A/  
D.C. UNITED**  
**Serve: Registered Agent**  
CT Corporation System  
1015 15<sup>th</sup> Street, NW  
Suite 1000  
Washington, DC 20005

and

**MAJOR LEAGUE SOCCER, LLC**  
420 Fifth Avenue  
7<sup>th</sup> Floor  
New York, New York 10018

**COMPLAINT**

COMES NOW the Plaintiff Charles A. Horton, by and through his attorneys

ASHCRAFT & GEREL, LLP, and respectfully files this Complaint and avers the following:

**JURISDICTION AND PARTIES**

1. Jurisdiction of this Court is founded on D.C. Code §11-921, §13-422, §13-423(a)(1), and §13-423(a)(3).

2. At all times relevant hereto, Plaintiff Charles (“Charlie”) Horton was a professional soccer player employed by Major League Soccer, LLC (hereinafter referred to as “MLS”) and was a member of the professional soccer club Defendant D.C. Soccer LLC d/b/a D.C. United (hereinafter “D.C. United”), which is a member team of MLS and wholly-owned by MLS. At all times relevant hereto, Mr. Horton was a resident of the District of Columbia.

3. At all times relevant hereto, Defendant Fabian Espindola was a professional soccer player employed by MLS and was a member of the professional soccer club D.C. United. Defendant Espindola was a teammate of Plaintiff. At all times relevant hereto, Defendant Espindola was a resident of the Commonwealth of Virginia.

4. At all times relevant hereto, Defendant Benjamin Olsen was the head coach of D.C. United and, upon information and belief, was an employee of MLS. At all times relevant hereto, Defendant Olsen was a resident of the District of Columbia.

5. At all times relevant hereto, Defendant D.C. United was a professional soccer club licensed to do business in the District of Columbia and with its principal place of business in the District of Columbia. At all times relevant hereto, D.C. United was a member team of MLS and wholly-owned by MLS.

6. At all times relevant hereto, Defendant MLS was a professional sports league with its headquarters and principal place of business in New York, New York. MLS is a single-entity limited liability company, in which club operators own a stake in the league as a whole, as opposed to individual teams.<sup>1</sup>

### **FACTUAL ALLEGATIONS**

7. Plaintiff Charlie Horton became a professional soccer player in or about July 2013 when he signed a contract to play goalkeeper at Peterborough United F.C., a professional soccer club at the time situated in England's 'League One,' the third tier of the English professional soccer system.

8. After a successful tenure at Peterborough United, Mr. Horton was transferred to Cardiff City F.C. and subsequently Leeds United, F.C., two clubs situated in the English Football League Championship, the league directly below the English Premier League, one of the most competitive soccer leagues in the world.

9. Mr. Horton played for Leeds United F.C. for approximately five (5) months before leaving the club and returning to the United States due to family reasons.

10. While Mr. Horton was playing professionally in the English professional leagues, he was also a member of the United States Under-23 Men's National Team, which was attempting to qualify for the 2016 Olympic Games. In this capacity, Mr. Horton was a starting goalkeeper for the national team, playing in multiple international games and competitions—including Olympic qualifying games—around the world.

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<sup>1</sup> See MLS Press Box, About Major League Soccer, <http://pressbox.mlssoccer.com/content/about-major-league-soccer>.

11. Upon returning to the United States, Mr. Horton signed an employment contract with MLS on or about February 16, 2016 and his rights were subsequently acquired by Defendant D.C. United. D.C. United General Manager Dave Kasper touted Mr. Horton as a “talented young goalkeeper who has a bright future.”<sup>2</sup>

12. At the time Plaintiff joined D.C. United, Defendant Benjamin Olsen was the head coach of D.C. United and Defendant Fabian Espindola was a player on the D.C. United team.

13. The employment contract Mr. Horton signed with MLS expired on December 31, 2016. Under this employment contract, MLS had the unilateral discretion at the end of the contract period to extend Mr. Horton’s playing services for an additional twelve months or conversely refuse Mr. Horton’s future services. MLS had this discretion for the 2017, 2018, and 2019 seasons pursuant to their employment of Mr. Horton. MLS was at all relevant times solely responsible for paying Mr. Horton’s compensation and benefits and negotiating any and all details of his employment.

14. On or about March 29, 2016, the D.C. United players and coaches gathered in the club’s training facilities for a video analysis of a match played days prior against fellow MLS club F.C. Dallas. After the video analysis session ended, Mr. Horton walked to a separate training room, where he was accompanied by Defendant Espindola.

15. At that time and place, Defendant Espindola engaged Mr. Horton in an argument purportedly stemming from an on-field issue the two had weeks prior on the

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<sup>2</sup> “D.C United acquire Charlie Horton,” March 3, 2016, D.C. United, <https://www.dcunited.com/post/2016/03/03/dc-united-acquire-charlie-horton>.

practice field. Mr. Horton informed Defendant Espindola that he was not interested in continuing to argue, and turned away from Defendant Espindola.

16. Suddenly, and without warning, Defendant Espindola viciously struck Mr. Horton in the left temple with his elbow. Espindola was pulled away from Mr. Horton by teammates and staff who witnessed the incident.

17. Mr. Horton immediately began experiencing dizziness, shakiness, visual disturbances, nausea, sensitivity to light and sound, and other symptoms associated with a concussion. Despite Mr. Horton's exhibiting severe concussion symptoms, he was allowed to practice with the team that day and was not entered into the MLS Concussion Protocol at that time.

18. Due to his violent conduct, Defendant Espindola was dismissed from practice by the coaching staff and Mr. Horton was summoned to meet with Defendant Benjamin Olsen to discuss the incident that day.

19. Unbeknownst to Mr. Horton, Defendant Espindola indeed had a history of engaging in violent conduct on and off the field. For example, in 2014 Espindola was suspended for six games for physically attacking a referee during a match.<sup>3</sup> He was also

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<sup>3</sup> See Steven Goff, "D.C. United's Fabian Espindola set to return from MLS suspension," WASHINGTON POST, April 22, 2015, available at [https://www.washingtonpost.com/news/soccer-insider/wp/2015/04/22/d-c-uniteds-fabian-espindola-set-to-return-from-mls-suspension/?utm\\_term=.db8c16904b4a](https://www.washingtonpost.com/news/soccer-insider/wp/2015/04/22/d-c-uniteds-fabian-espindola-set-to-return-from-mls-suspension/?utm_term=.db8c16904b4a) (describing Fabian Espindola as having a "passion that on occasion rages out of control"); see also Steven Goff, "D.C. United trades Fabian Espindola to Vancouver, acquires Patrick Mullins from NYCFC," WASHINGTON POST, July 20, 2016, available at [https://www.washingtonpost.com/news/soccer-insider/wp/2016/07/20/d-c-united-trades-fabian-espindola-to-vancouver-acquires-patrick-mullins-from-nycfc/?utm\\_term=.17c5307f696f](https://www.washingtonpost.com/news/soccer-insider/wp/2016/07/20/d-c-united-trades-fabian-espindola-to-vancouver-acquires-patrick-mullins-from-nycfc/?utm_term=.17c5307f696f) (describing Espindola as a "fiery and competitive figure [who] at times, struggled to temper his emotions" and noting that "[i]n the 2014 playoffs, he accosted an assistant referee").

suspended in 2014 for two matches for “violent conduct” toward another player.<sup>4</sup> In July 2015, Defendant Espindola was ejected from a league match for attempting to elbow an opposing player in the head/face area.<sup>5</sup> Upon information and belief, Defendants Olsen, D.C. United, and MLS were aware of Espindola’s history of violent conduct prior to the subject incident on or about March 29, 2016.

20. During the aforesaid meeting with Defendant Olsen, said Defendant expressed to Mr. Horton that he was aware of Defendant Espindola’s history of violent and aggressive conduct on and off the field, and that he knew it was only a matter of time before he committed a violent act against a D.C. United teammate. Defendant Olsen also conveyed to Mr. Horton that the incident would give him an opportunity to take disciplinary measures against Mr. Espindola for his actions.

21. Defendant Ben Olsen himself publicly described Espindola as playing “with fire in his belly . . . We’ve seen it at times spill over, but I love it.”<sup>6</sup>

22. During the evening of March 29, 2016 and into the morning of March 30, 2016, Mr. Horton’s concussion symptoms increased in severity. He nevertheless reported to practice on or about March 30, 2016. His concussion symptoms at this point were so severe that he was unable to take the field. He reported his symptoms to the D.C. United

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<sup>4</sup> Major League Soccer, “Fabian Espindola Incident vs Montreal Impact – Disciplinary Committee Action, June 25, 2014,” *available at* [https://www.washingtonpost.com/news/soccer-insider/wp/2015/04/22/d-c-uniteds-fabian-espindola-set-to-return-from-mls-suspension/?utm\\_term=.db8c16904b4a](https://www.washingtonpost.com/news/soccer-insider/wp/2015/04/22/d-c-uniteds-fabian-espindola-set-to-return-from-mls-suspension/?utm_term=.db8c16904b4a).

<sup>5</sup> Steven Streff, “Fabian Espindola sees red as D.C. United falls late to Seattle Sounders 1-0,” SB NATION – BLACK & RED UNITED, July 4, 2015, *available at* <http://www.blackandredunited.com/dc-united-2015-season/2015/7/4/8892465/dc-united-seattle-sounders-mls-recap-highlights-espindola-silva-mears>.

<sup>6</sup> Steven Goff, “Fabian Espindola off to strong start with D.C. United after long journey from native Argentina,” WASHINGTON POST, April 25, 2014, *available at* [https://www.washingtonpost.com/sports/dcunited/fabian-espindola-off-to-strong-start-with-dc-united-after-long-journey-from-native-argentina/2014/04/25/6e77db08-cc7a-11e3-b81a-6fff56bc591e\\_story.html?utm\\_term=.95d3f57a9248](https://www.washingtonpost.com/sports/dcunited/fabian-espindola-off-to-strong-start-with-dc-united-after-long-journey-from-native-argentina/2014/04/25/6e77db08-cc7a-11e3-b81a-6fff56bc591e_story.html?utm_term=.95d3f57a9248).

trainer, Brian Goodstein, who prohibited him from training that day and referred him to a team physician. The team physician diagnosed Mr. Horton with a concussion and he was entered into the MLS Concussion Protocol.

23. Mr. Horton was not cleared to play after the incident due to his ongoing and continuous symptoms, including but not limited to dizziness, lack of concentration, memory loss, visual disturbances, and chronic headaches. During this time, he underwent multiple neurological, neuropsychological, and ophthalmological treatments and examinations.

24. Upon information and belief, neither D.C. United nor MLS publicly announced that Mr. Horton had suffered injury due to Defendant Espindola's physical attack, but rather misinformed the public and news media that his concussion was due to a training ground incident.

25. Mr. Horton's concussion symptoms did not cease over the next several months; nevertheless, he was cleared to play in or about May 2016. He was relegated temporarily to a lower-league team so he could attempt to come back from his concussion injury caused by Defendant Espindola's violent attack. Within a matter of weeks, Mr. Horton broke his finger during training, which, in addition to his injuries from his concussion, precluded his ability to continue his season with D.C. United.

26. After sitting out the remainder of the 2016 MLS season, Mr. Horton attempted to reclaim his position on the D.C. United club for the 2017 season. However, he was unable to regain his level of play prior to the attack by Defendant Espindola due to his ongoing post-concussive symptoms. As a result of his substandard level of play, he

was informed by Defendant Olsen and other coaching staff during a closed-door meeting that he would no longer be a member of the D.C. United club.

27. Due to the severity of his ongoing post-concussive neurological symptoms, which directly inhibited his ability to perform at a level necessary to continue his professional career, Mr. Horton was forced to officially retire from professional soccer.

**COUNT I - ASSAULT**  
**(Defendant Espindola)**

28. Plaintiff incorporates and realleges each of the foregoing paragraphs of this Complaint.

29. On or about March 29, 2016, Defendant Espindola committed assault against Plaintiff Charlie Horton by maliciously and intentionally striking Plaintiff in the left temple with his elbow, suddenly and without warning, causing severe injury that caused Plaintiff's forced retirement from professional soccer.

30. In so doing, Defendant Fabian Espindola acted intending to cause harmful and offensive contact to Plaintiff and did in fact cause harmful and offensive contact to Plaintiff.

31. As a direct and proximate result of Defendant Espindola's aforementioned assault of Plaintiff, Plaintiff has suffered severe physical injuries including but not limited to a concussion, memory loss, visual disturbances, light and sound sensitivity, lack of concentration, a diminution in cognitive function, and chronic headaches, all or some of which are permanent in nature.



32. As a further direct and proximate result of Defendant Espindola's aforementioned assault of Plaintiff, Plaintiff has incurred and will continue to incur expenses relating to medical treatment and rehabilitation.

33. As a further direct and proximate result of Defendant Espindola's aforementioned assault of Plaintiff, Plaintiff has suffered significant wage loss and a forfeiture of his professional soccer career, and loss of earnings and earning capacity.

34. As a further direct and proximate result of Defendant Espindola's aforementioned assault of Plaintiff, Plaintiff has suffered emotional and psychological distress, mental anguish and impairment, pain and suffering, and loss of quality of life, all of which will extend into the future.

**COUNT II – BATTERY**  
**(Defendant Espindola)**

35. Plaintiff incorporates and realleges each of the foregoing paragraphs of this Complaint.

36. On or about March 29, 2016, Defendant Fabian Espindola committed battery against Plaintiff Charlie Horton by maliciously and intentionally striking Plaintiff in the left temple with his elbow, suddenly and without warning, causing severe injury that caused Plaintiff's forced retirement from professional soccer.

37. In so doing, Defendant Fabian Espindola acted intentionally to cause harmful and offensive bodily contact with Plaintiff.

38. As a direct and proximate result of Defendant Espindola's aforementioned battery of Plaintiff, Plaintiff suffered severe physical injuries including but not limited to

a concussion, memory loss, visual disturbances, light and sound sensitivity, lack of concentration, a diminution in cognitive function, and chronic headaches, all or some of which are permanent in nature.

39. As a further direct and proximate result of Defendant Espindola's aforementioned battery of Plaintiff, Plaintiff has incurred and will continue to incur expenses relating to medical treatment and rehabilitation.

40. As a further direct and proximate result of Defendant Espindola's aforementioned battery of Plaintiff, Plaintiff has suffered significant wage loss and a forfeiture of his professional soccer career, and loss of earnings and earning capacity.

41. As a further direct and proximate result of Defendant Espindola's aforementioned battery of Plaintiff, Plaintiff has suffered emotional and psychological distress, mental anguish and impairment, pain and suffering, and loss of quality of life, all of which will extend into the future.

**COUNT III – Intentional Infliction of Emotional Distress**  
**(Defendant Espindola)**

42. Plaintiff incorporates and realleges each of the foregoing paragraphs of this Complaint.

43. On or about March 29, 2016, Defendant Fabian Espindola intentionally caused emotional harm to Plaintiff Charlie Horton by maliciously striking Plaintiff in the left temple with his elbow, suddenly and without warning.

44. Defendant Espindola's conduct was extreme, outrageous, and reckless and was done with the intent of causing both bodily harm and emotional harm to Plaintiff.

45. As a direct and proximate result of Defendant Espindola's aforementioned conduct, Plaintiff suffered severe emotional and psychological distress, mental anguish and impairment, pain and suffering, and loss of quality of life, all of which will extend into the future.

**COUNT IV – Negligent Supervision**  
**(Defendants Olsen and D.C. United)**

46. Plaintiff incorporates and realleges each of the foregoing paragraphs of this Complaint.

47. At all times relevant hereto, Defendant Ben Olsen was the head coach of the D.C. United soccer club and was responsible for overseeing and supervising the conduct and activities of D.C. United soccer players, including Defendant Espindola and Plaintiff.

48. At all times relevant hereto, Defendant D.C. United was responsible, through its agents, servants, and/or employees, of overseeing and supervising the conduct and activities of D.C. United soccer players, including Defendant Espindola and Plaintiff.

49. At all times relevant hereto, Defendants Olsen and D.C. United separately and collectively knew about and were on notice of Defendant Espindola's history of violent conduct on and off the field, and his propensity toward violent physical conduct. Defendants Olsen and D.C. United separately and collectively had this knowledge well in advance of March 29, 2016.

50. This knowledge on the part of Defendants Olsen and D.C. United is exemplified by Defendant Olsen's statement to Mr. Horton that he knew it was only a

matter of time before Espindola caused physical harm to a teammate, in addition to Espindola's well-documented history of violent conduct on the field resulting in multiple suspensions and disciplinary action.

51. Despite knowledge that Espindola was violent and likely to behave in a violent manner toward teammates, Defendants Olsen and D.C. United at all relevant times failed to adequately supervise Espindola and through their lack of adequate supervision created an opportunity for Espindola to engage in violent conduct against Plaintiff.

52. As a direct and proximate result of Defendants Olsen's and D.C. United's negligent supervision of Defendant Espindola, Espindola was allowed an opportunity to viciously attack and did viciously attack Plaintiff, resulting in severe personal injury to Plaintiff.

53. As a further direct and proximate result of Defendant Olsen's and D.C. United's negligent supervision of Defendant Espindola, Plaintiff suffered severe physical injuries including but not limited to a concussion, memory loss, visual disturbances, light and sound sensitivity, lack of concentration, a diminution in cognitive function, and chronic headaches, all or some of which are permanent in nature.

54. As a further direct and proximate result of Defendant Olsen's and D.C. United's negligent supervision of Defendant Espindola, Plaintiff has incurred and will continue to incur expenses relating to medical treatment and rehabilitation.

55. As a further direct and proximate result of Defendant Olsen's and D.C. United's negligent supervision of Defendant Espindola, Plaintiff has suffered significant

wage loss and a forfeiture of his professional soccer career, and loss of earnings and earning capacity.

56. As a further direct and proximate result of Defendant Olsen's and D.C. United's negligent supervision of Defendant Espindola, Plaintiff has suffered emotional and psychological distress, mental anguish and impairment, pain and suffering, and loss of quality of life, all of which will extend into the future.

**COUNT V – Negligent Hiring and Retention**  
**(Defendant MLS)**

57. Plaintiff incorporates and realleges each of the foregoing paragraphs of this Complaint.

58. At all times relevant hereto, Defendant MLS was the sole employer of Defendant Espindola pursuant to contract.

59. As Defendant Espindola's employer, MLS was at all relevant times solely responsible for hiring Espindola and retaining his services as a player in the league.

60. As Defendant Espindola's employer, MLS had a duty at all relevant times to use reasonable care to ensure that Espindola was competent and fit for the work assigned to him, and furthermore, to ensure that if he demonstrated unfitness for such work, his employment would cease.

61. At all times relevant hereto, Defendant MLS knew or should have known that Defendant Espindola had a history of violent conduct toward others and presented a danger to teammates including Plaintiff Charlie Horton. Defendant MLS therefore knew

that Defendant Espindola was unfit for the work assigned to him as a professional soccer player and employee of MLS.

62. Despite such knowledge of Defendant Espindola's unfitness, Defendant MLS hired and retained him as a professional soccer player and employee, thereby breaching their duty of reasonable care in the hiring and retention of Defendant Espindola.

63. As a direct and proximate result of Defendant MLS's negligent hiring and retention of Defendant Espindola, Espindola was provided an opportunity to viciously attack Plaintiff and did viciously attack Plaintiff, resulting in severe personal injury to Plaintiff.

64. As a further direct and proximate result of Defendant MLS's negligent hiring and retention of Defendant Espindola, Plaintiff suffered severe physical injuries including but not limited to a concussion, memory loss, visual disturbances, light and sound sensitivity, lack of concentration, a diminution in cognitive function, and chronic headaches, all or some of which are permanent in nature.

65. As a further direct and proximate result of Defendant MLS's negligent hiring and retention of Defendant Espindola, Plaintiff has incurred and will continue to incur expenses relating to medical treatment and rehabilitation.

66. As a further direct and proximate result of Defendant MLS's negligent hiring and retention of Defendant Espindola, Plaintiff has suffered significant wage loss and a forfeiture of his professional soccer career, and loss of earnings and earning capacity.

67. As a further direct and proximate result of Defendant MLS's negligent hiring and retention of Defendant Espindola, Plaintiff has suffered emotional and psychological distress, mental anguish and impairment, pain and suffering, and loss of quality of life, all of which will extend into the future.

**COUNT VI – Respondeat Superior/Vicarious Liability**  
**(Defendants MLS & D.C. United)**

68. Plaintiff incorporates and realleges each of the foregoing paragraphs of this Complaint.

69. At all times relevant hereto, Defendant Espindola was an employee, agent, and/or servant of MLS and an agent of D.C. United.

70. At all times relevant hereto, Defendant Olsen was an employee, agent, and/or servant of MLS and an agent of D.C. United.

71. At all times relevant hereto, Defendant D.C. United was owned by MLS, was a member team in MLS, and was an agent of MLS.

72. Defendant MLS is liable under a theory of *respondeat superior* for each and every act and omission of Defendants Espindola, Olsen, and D.C. United as set forth in the above paragraphs of this Complaint, including but not limited to the following:

- a. assault committed by Defendant Espindola against Plaintiff committed in the course and scope of Espindola's employment with MLS on or about March 29, 2016;

- b. battery committed by Defendant Espindola against Plaintiff committed in the course and scope of Espindola's employment with MLS on or about March 29, 2016;
- c. intentional infliction of emotional distress by Defendant Espindola against Plaintiff committed in the course and scope of Espindola's employment with MLS on or about March 29, 2016;
- d. Defendant Olsen's negligent supervision of Defendant Espindola despite his knowledge of Espindola's history of violent conduct and propensity of violence toward other persons;
- e. Defendant D.C. United's negligent supervision of Defendant Espindola despite its knowledge of Espindola's history of violent conduct and propensity of violence toward other persons; and
- f. other acts and omissions not specifically known at this time.

73. Defendant D.C. United is liable under a theory of *respondeat superior* for each and every act and omission of Defendants Espindola and Olsen, as set forth in the above paragraphs of this Complaint, including but not limited to the following:

- a. assault committed by Defendant Espindola against Plaintiff committed in the course and scope of Espindola's agency with D.C. United on or about March 29, 2016;
- b. battery committed by Defendant Espindola against Plaintiff committed in the course and scope of Espindola's agency with D.C. United on or about March 29, 2016;



- c. intentional infliction of emotional distress by Defendant Espindola against Plaintiff committed in the course and scope of Espindola's agency with D.C. United on or about March 29, 2016;
- d. Defendant Olsen's negligent supervision of Defendant Espindola despite his knowledge of Espindola's history of violent conduct and propensity of violence toward other persons;
- e. other acts and omissions not specifically known at this time.

74. As a further direct and proximate result of Defendants MLS and D.C. United's intentional, negligent and tortious conduct through the acts and omissions of its agents, employees, and/or servants as described above, Plaintiff suffered severe physical injuries including but not limited to a concussion, memory loss, visual disturbances, light and sound sensitivity, lack of concentration, a diminution in cognitive function, and chronic headaches, all or some of which are permanent in nature.

75. As a further direct and proximate result of Defendants MLS and D.C. United's intentional negligent and tortious conduct through the acts and omissions of its agents, employees, and/or servants as described above, Plaintiff has incurred and will continue to incur expenses relating to medical treatment and rehabilitation.

76. As a further direct and proximate result of Defendants MLS and D.C. United's intentional negligent and tortious conduct through the acts and omissions of its agents, employees, and/or servants as described above, Plaintiff has suffered significant wage loss and a forfeiture of his professional soccer career, and loss of earnings and earning capacity.

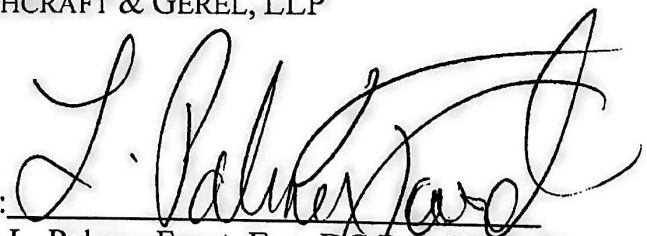
77. As a further direct and proximate result of Defendants MLS and D.C. United's intentional negligent and tortious conduct through the acts and omissions of its agents, employees, and/or servants as described above, Plaintiff has suffered emotional and psychological distress, mental anguish and impairment, pain and suffering, and loss of quality of life, all of which will extend into the future.

WHEREFORE, Plaintiff demands that judgment be entered in his favor and against Defendants Fabian Espindola, Benjamin Olsen, D.C. Soccer, LLC d/b/a/ D.C. United and Major League Soccer, LLC. for compensatory and punitive damages in an amount to be determined by the trier of fact, plus the costs of this action, as well as such further and additional relief as the nature of this case may require and which this Honorable Court deems just and proper.

Respectfully submitted,

ASHCRAFT & GEREL, LLP

By:



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