CAS 2020/A/7610 Besiktas Futbol Yatirimlari Sanayi Ve Ticaret A.S. v. FIFA, Victor Ruiz Torre and Real Betis Balompié

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark
Arbitrators: Mr Nicolas Cottier, Attorney-at-Law, Saint-Prex, Switzerland
Mr Jan Räker, Attorney-at-Law, Stuttgart, Germany

in the arbitration between

Besiktas Futbol Yatirimlari Sanayi Ve Ticaret A.S., Istanbul, Turkey

Represented by Messrs Sébastien Besson and Antonio Rigozzi, Attorneys-at-Law, Lévy Kaufmann-Kohler, Geneva, Switzerland

Appellant

and

1/ Fédération Internationale de Football Association (FIFA), Zurich, Switzerland.

Represented by Ms Marta Ruiz-Ayucar and Ms Cristina Pérez González, Litigation Department, FIFA, Zurich, Switzerland

First Respondent

2/ Victor Ruiz Torre, Spain

Represented by Mr Oriol Castañer and Ms Teodora Taneva, Attorneys-at-Law, Barcelona, Spain

Second Respondent

3/ Real Betis Balompié, Spain

Third Respondent

I. INTRODUCTION

1. This appeal is brought by Besiktas A.S. ("Besiktas", the "Club" or the "Appellant") against the Decision of the FIFA Dispute Resolution Chamber (the "FIFA DRC") passed on 22 October 2020 (the "Appealed Decision") regarding a contractual dispute between Besiktas, Mr Victor Ruiz Torre (the "Player" or the "Second Respondent") and Real Betis Balompié ("Real Betis", the "New Club" or the "Third Respondent").

II. PARTIES

2. Besiktas is a professional football club based in Istanbul, Turkey. Besiktas is affiliated with the Turkish Football Federation (the "TFF"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

3. FIFA is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

4. Mr Victor Ruiz Torre is a professional football player of Spanish nationality born on 25 January 1989. The Player is currently registered with Real Betis.

5. Real Betis is a professional Spanish football club based in Sevilla, Spain. Real Betis is affiliated with the Real Federación Española de Fútbol (the "RFEF"), which in turn is affiliated with FIFA.

6. FIFA, the Player and Real Betis are hereinafter collectively referred to as the "Respondents" and together with Besiktas as the "Parties", where applicable.

III. FACTUAL BACKGROUND

A. *Background facts*

7. Below is a summary of the main relevant facts as established on the basis of the Parties' written and oral submissions and the evidence examined in the course of these proceedings. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the award only refers to the submissions and evidence it considers necessary to explain its reasoning.

8. On 7 August 2019, Besiktas, the Player and the Spanish football club Villareal FC entered into a transfer agreement (the "Transfer Agreement") for the transfer of the federative and economic rights of the Player from Villareal FC to Besiktas. According to the Transfer Agreement, in consideration of these rights Besiktas agreed to pay to Villareal FC the amount of EUR 2,500,000.

9. On the same date, the Player and Besiktas entered into an employment agreement (the "Employment Agreement") valid until 31 May 2022.

10. The Employment Agreement stated, *inter alia*, as follows:

"ARTICLE 6 – OBLIGATIONS OF THE CLUB
The Club is obliged to pay the amount as written below to the player in return of his services subject to this Agreement, all payments indicated in the Agreement are to be considered as "net" payments. All payments and remunerations are net of any kind of taxes and deductions of any nature. The Club shall bear the obligation of Turkish taxes and stamp duty.

A) The Guaranteed Salary of The Player
For 2019/2020 Football Season: 1.800.000 EUR
The aforementioned amount is NET and to be paid to the Player by the club on mentioned below dates:
The club will pay the Player 200.000 EUR net on the date of his Agreement. The remaining 1.600.000 EUR will be paid by the Club to the Player as following:

31/08/2019 : 160.000 EUR
30/09/2019 : 160.000 EUR
31/10/2019 : 160.000 EUR
30/11/2019 : 160.000 EUR
31/12/2019 : 160.000 EUR
31/01/2020 : 160.000 EUR
28/02/2020 : 160.000 EUR
31/03/2020 : 160.000 EUR
30/04/2020 : 160.000 EUR
31/05/2020 : 160.000 EUR

For 2020/2021 Football season: 1.750.000 EUR
The aforementioned amount is NET and to be paid to the Player by the Club on the below mentioned dates:

31/08/2020 : 175.000 EUR
30/09/2020 : 175.000 EUR
31/10/2020 : 175.000 EUR
30/11/2020 : 175.000 EUR
31/12/2020 : 175.000 EUR
31/01/2021 : 175.000 EUR
28/02/2021 : 175.000 EUR
31/03/2021 : 175.000 EUR
30/04/2021 : 175.000 EUR
31/05/2021 : 175.000 EUR

For 2021/2022 Football Season: 1.750.000 EUR
The aforementioned amount is NET and to be paid to the Player by the Club on the below mentioned dates:

31/08/2021 : 175.000 EUR
30/09/2021 : 175.000 EUR
31/10/2021 : 175.000 EUR
30/11/2021 : 175.000 EUR
31/12/2021 : 175.000 EUR
31/01/2022 : 175.000 EUR
28/02/2022 : 175.000 EUR
31/03/2022 : 175.000 EUR
30/04/2022 : 175.000 EUR

31/05/2022 : 175.000 EUR

Other benefits:
Flight tickets*: Per season, the Club shall grant and pay in total 3 business-class return trips from Istanbul to Spain and back for the Player and his family, meaning that each of the 3 trips involves business-class return tickets for the Player, his wife and child. The flight tickets must be requested by the Player at least 30 days before the date of each flight.*

Housing: *The Club shall grant and pay the Player a maximum net amount of 3.000 EUR for rent per month during the term of the Agreement. The Player will be responsible with paying the bills and other maintenance costs of the house. If the rent of the house is less than the maximum amount stipulated under this article, the Club will not be required to pay the maximum amount but only the amount equivalent to the rent of the house.*

Car: *During the term of the Agreement, the Club shall provide the Player with the exclusive use of a sponsor car for the duration of this Agreement. The Player shall be responsible of gas and maintenance costs of the car.*

ARTICLE 7 – TERMINATION
Notwithstanding any other provision of this Agreement and to the extent permitted by applicable laws, the provisions of this article shall exclusively govern the Player´s and the Club´s rights upon termination of the Agreement. Both Parties have explicitly excluded any rights to terminate this Agreement without cause as far as legally possible; this applies in particular, but not limited to, for the period between the date of signing of this Agreement by both parties and the commencement date.
[…]
7.2 By the Player
The Agreement hereunder can be terminated by the Player with cause if cause of event is not curred within 30 (thirty) days following the written notice by the Player to the Club.
For purposes of Article 7.2 of this Agreement, "Cause" shall mean;
A. Violation of the provisions and conditions of the Agreement by the Club herunder
B. Non-payment o a salary as defined in Art. 14bis of the Transfer Rules,
C. Sporting just cause as defined in Art. 15 of the Transfer Rules or
D. Any other just cause as defined in Art. 14 of the Transfer Rules.
[…]
If the Player terminates without respecting the termination procedures above his termination shall be deemed invalid."

11. From the beginning of the employment relationship, the Club failed to comply with its payment obligations towards the Player in a timely manner, and the Player forwarded several reminders to the Club regarding outstanding payments pursuant to the Employment Agreement.

12. By e-mail of 7 January 2020, the Player put the Club in default, stating, *inter alia*, as follows:

"*I am contacting you again with respect to the unpaid amounts that are due to [the Player] by virtue of [the Employment Contract.]*

In this regard please be informed that the Club has failed to pay the Player the monthly salaries for November, December and approximately a quarter of October salary is also pending.

Therefore, we are requesting you to fully comply with your financial obligations in the next fifteen (15) days from the date of the receipt of the present according to Article 14bis of the FIFA Regulations on the Status and Transfers of Players. […]"

13. In the following days, the Club and the Player had discussions about how to solve the matter of the outstanding salaries, including a proposal from the Club to pay the entire outstanding amount, however on new due dates, due to the Club's "*big financial problems*".

14. On 21 January 2020, and as a result of these discussions, the Club and the Player entered into a Settlement Agreement (the "January Settlement Agreement") regarding the outstanding payments, which stated, *inter alia*, as follows:

"WHEREAS

1. *The Parties have entered into an Employment Agreement on 1 August 2019 ("Employment Agreement"), regarding the employment of the Player by the Club as a professional football player until 31 May 2022.*

2. *On 7 January 2020, the Player's representative Mr. Oriol Castaner has sent an e-mail requesting the payment of;*
- Quarter of the October 22019 salary,
- November 2019 salary
- December 2019 salary
Within 15 days in accordance with article 14bis of the FIFA Regulations on the Status and Transfer of Players ("RSTP").

3. *The Parties have agreed to enter into this Settlement Agreement to arrange the payment of the overdue remuneration due to the Player arising from the Employment Agreement.*

CLAUSES

4. *The Club agrees and accepts that as of the communication of the e-mail dated 7 January 2019 (as mentioned in Whereas.2), the overdue remuneration of the Player from the Club is equal to 369.000 EUR - three hundred sixty nine thousand euros-net ("Overdue Amount") which constitutes of;*
- 40.000 EUR, the remaining salary with the due date of 31 October 2019
- 160.000 EUR salary with the due date of 30 November 2019
- 160.000 EUR salary with the due date of 31 December 2019
- 9.000 EUR house rent for the months of October, November and December 2019

5. *The Club agrees and accepts to pay the Player the Overdue amount of 369.000 EUR net (as mentioned in clause 4) as following:*
- 69.000 EUR on 24 January 2020
- 150.000 EUR on 10 March 2020
- 150.000 EUR on 10 April 2020

6. *The Parties agree and accept that in case the Club fails to pay the first instalment of 69.000 EUR on or before 24 January 2020 to the Player (as stipulated in clause 5 above), then this Settlement Agreement will automatically be considered as null and void.*

7. *In case of failure of the Club to pay the Player the second and third instalments stipulated under clause 5 above, the Club agrees and accepts to pay the Player an interest of 10% per month over the outstanding amount until the date of effective payment.*

8. *By signing this Settlement Agreement and receipt of the first instalment of 69.000 EUR on or before 24 January 20202 to the Player (as stipulated in clause 5 above), the Player*

agrees and accepts that e-mail dated 7 January 2020 addressed to the Club will automatically be considered null and void.

9. *The Parties agree and accepts that this Settlement Agreement is an integral part and annex of the Employment Agreement. […]*"

15. On 22 January 2020, the Club paid the first instalment pursuant to the January Settlement Agreement in the amount of EUR 69,000 to the Player, and the other two instalments were eventually paid by the Club to the Player on 10 March 2020 and on 10 April 2020, respectively.

16. By the beginning of 2020, however, the Club failed to pay the Player his remuneration for January and February, which fell due on 31 January 2020 and 28 February 2020, respectively.

17. On 11 March 2020, the WHO declared the Covid-19 situation a pandemic, and on 19 March 2020, the TFF suspended all official matches of the Turkish Süper Lig. As of the same date, training and official matches of the Club were also suspended.

18. On 7 April 2020, FIFA published its "Covid-19 Football Regulatory Issues Version 1.0" (the "FIFA Guidelines").

19. On 27 April 2020, and following discussions between the Club and the Player's agent regarding possible amendments to the Employment Agreement as a result of the Covid-19 pandemic, the Club forwarded a draft Settlement Agreement dated 15 March 2020 (the "First Draft Settlement Agreement") to the Player, which stated, *inter alia*, as follows: […]

"***CLAUSES***

4. *The Parties agree and accept that as of the date of this Settlement Agreement, the following amounts arising from the Employment Agreement remain due and unpaid to the Player by the Club;*

- 160.000 EUR salary with the due date of 31 January 2020
- 160.000 EUR salary with the due date of 28 February 2020
- 80.000 EUR half of the salary with the due date of 31 March 2020
- 3.000 EUR rent for the month of January 2020
- 3.000 EUR rent for the month of February 2020
- 1.500 EUR half of the rent for the month of March 2020

TOTAL: 407.500 EUR

5. *The Club agrees and accepts to pay the Player the total amount of 407.500 EUR (as stipulated in clause 4 above) as following;*

- 200.000 EUR on 15 July 2020
- 207.500 EUR on 15 August 2020

6. *The Parties agree and accept that the monetary obligations of the Club towards the Player arising from the Employment Agreement dated 01 August 2020 for the term between 15 March 2020 and 31 May 2020 is suspended and the Player agrees and accepts that he will not be entitled for his remuneration for the term between 15 March 2020 and 31 May 2020 (i.e. for the rest of the 2019/2020 football season in Turkey), save for clause 7 below.*

7. *In case, the Turkish Football Federation and/or the relevant authorities decide to resume the 2019/2020 football season and the league in Turkey, the Player agrees and accepts to immediately be available and report to the Club to provide his services as a professional football*

player. In such case, the Club agrees and accepts that its monetary obligations towards the Player arising from the Employment Contract will resume starting from the first official match of the Club which will be played after the resume of the league until the last official match of the 2019/2020 football season. The salary and rent of the Player will be calculated on a daily basis, taking into consideration the monthly salary and rent of the Player for the 2019/2020 season agreed in the Employment Agreement.
8. *The Parties agree and accept that this Settlement Agreement is an integral part and annex of the Employment Agreement.* […]

20. The Player never signed the First Draft Settlement Agreement, and by e-mail of 8 May 2020, the Player replied as follows:

"*Following indications of our player/client, VICTOR RUIZ, I hereby refer to your below correspondence and its attachment whereby it is acknowledged by the club default of payment for Mr. Ruiz salary and house allowance on January, February, and half March 2020.*

As things stand today the club is also in default payment for (i) the remaining salary on 31 March 2020, (ii) half the house allowance for March 2020 plus (iii) the whole salary payment provided for 30/04/2020 and also (iv) house allowance for April 2020.

Considering this unstable situation, we have been instructed to request you proof of payment for all the above amounts within the next five (5) days from the date of receipt of this correspondence.

Waiting for your further news, we remain at your disposal. "

21. Starting from 18 May 2020, the Club slowly resumed its training in small groups, and by 28 May 2020, the Club resumed full training.

22. Furthermore, on 28 May 2020, the Club forwarded a letter to the players of the Club, which stated, *inter alia*, as follows:

"As you are aware, the severe economic and financial impact of the ongoing Covid-19 worldwide pandemic has affected all sectors including the football market and caused all matches to be suspended.

Due to these developments, which are declared as a world-wide pandemic by the World Health Organization ("WHO"), the Turkish Football Federation has declared to suspend ail official matches following the last official match played on 15 March 2020.

This pandemic as well as the decision of the TFF to suspend all official matches, have deeply affected our Club's financial planning and caused ail income of our Club, including but not limited to; income from broadcaster and sponsors as well as match-day and store revenues to be stopped. ln addition, it is evident that the negative financial impacts of the Covid-19 pandemic will continue to remain in effect once the pandemic comes to an end.

ln light of these financial difficulties, which our Club had no fault or negligence, it has become impossible for our Club to fully comply with its obligations stipulated under the agreement signed with you, as well as other players, technical staff and other employees.

Consequently, our Club invites you to discuss the revision of your employment contract, taking into consideration the financial impact of the Covid-19 pandemic to our Club's finances.

We hereby respectfully invite you to be present at the meeting in our Club's Nevzat Demir football training grounds on 28 May 2020 (meeting time to be communicated by the administration in due course) in order to discuss the abovementioned topics."

23. Finally, on the same date, the Players attended the meeting with the Club to discuss the financial impact of the pandemic. According to the Club, during the said meeting, the Club proposed to amend its players' employment contracts taking into consideration the principles of good faith, proportionality and the dire financial position of the Club. No agreements were made during the meeting.

24. On 8 June 2020, the Club paid to the Player his remuneration for January 2020 in the amount of EUR 160,000, and on 8 June 2020, the Player forwarded an e-mail to the Club, stating, *inter alia*, as follows:

"*Reference is made to my correspondence below in which connection please be reminded the club is in default of payment for (i) the remaining salary on 31 March 2020 plus the house allowance for said period; (ii)whole salary payment on 30/04/2020and house allowances for April 2020 and (iii) now the payment scheduled on 31/05/2020 plus house allowances for May 2020.*

Further and as informed with regard the meeting held on the 28th May, it was already proposed on our client` side a reasonable and in good faith solution to ease the financial difficulties due to the Covid-19 outbreak.

Unfortunately, we are not aware of any reply to that so we must insist on receiving proof of payment for all above within the next five (5) days from the date of receipt of this correspondence."

and furthermore, by e-mail of 11 June 2020, the Player wrote as follows to the Club:

"*Following my email below please find attached hereto FIFA further clarification as published today with regard, among other issues, the unilateral reduction of our client salary.*

As you may appreciate from FIFA`s conclusions, our position about the unlawfulness of the salary reduction to our client fully stands.

I truly thank you in advance for taking note of the above and remain at your disposal.

Al our client´s rights and remedies in this matter are strictly reserved."

25. On 11 June 2020, FIFA published FAQs for COVID-19 Football Regulatory Issues ("FIFA FAQs"), and on 12 June 2029, the Süper Lig in Turkey was resumed.

26. By e-mail of 25 June 2020 (the "Default Letter"), the Player put the Club in default as follows:

"*Following indications of our client VICTOR RUIZ, we refer to our previous correspondence dated on 8 May 2020, 8 June 2020 and 11 June 2020, regarding the pending salaries and default of payment by the club.*

First of all, we would like to remind you of the repeated late payment of the Player`s salaries since the very commencement of his employment contract (i.e. August 2019) although the efforts and collaboration by the player to the Club to ease said situation.

As evidence of the above, we remind that on 7 January 2020 the player already claimed late payment for the October, November and December 2019 remuneration (including house allowance) under his Employment contract and the Club asked for the acceptance of a delayed payment proposal to cover said amounts.

At the Club request the Player showed his good faith and agreed to arrange a payment plan for the overdue remuneration.

However, since such settlement, the Player has been again forced to withstand the same delay situation regarding now his remuneration (including house allowance) for January, February, March and April 2020 as provided under the Employment contract.

As an example of the above on 8 May 2020 and in another effort to attempt a friendly solution to thus breach of contract, the Club was requested again to provide a solution for the non-payment of the above remuneration.

As to the effects of the COVID-19 outbreak for the pending remuneration please bear in mind that on 28 May 2020 all players attended a meeting proposed by the Club and made in good faith a proposal to ease the financial situation as was alleged by the Club.

The Club informed the players that it would transmit their offer to the President of the Club and give them feedback, which to our knowledge essentially consists of not honoring the pending amount and remuneration thereafter up until November 2020, already next season.

It must then be concluded that the Club has decided to bypass any possibility of reaching a reasonable and proportionate solution with his players but rather has unilaterally and unlawfully amended the terms of our clients Employment contract and simply decided not to pay, at all, any salary.

For the above unsuitable situation on 8 June 2020 and 11 June 2020, we have once again requested to the Club to remedy the situation, for which we have not yet hear any reply or solution.

We therefore must conclude from the passivity of the Club in front of this unjustifiable situation to our client that the Club has no intention to fulfill its contractual obligations towards him.

Having said the above, we have been instructed by the Player to request you to comply with all the pending financial obligations to him under the Employment contract and pay his remuneration for February, March, April and May 2020 plus house allowances for January, February, March, April and May 2020 within the next fifteen (15) days from the date of receipt of this correspondence.

In failure to do so we will have no other option than to consider that the club is not any more interested in continuing with the current employment relationship, and that you decided to terminate the employment contracts without just cause for which we will contact FIFA and initiate legal proceedings in accordance with Article 14bis of FIFA Regulations on the Status and Transfer of Players."

27. On 30 June 2020, the Club forwarded to the Player a new draft Settlement Agreement (the "Second Draft Settlement Agreement") regarding the remuneration for the months affected by the pandemic, which stated, *inter alia*, as follows:

"*WHEREAS*

1. *The Parties have entered into an Employment Agreement on 07 August 2019 for the employment of the Player by the Club until 31 May 2022.*

2. *According to the Employment Agreement, for the 2019/2020 season the Club agreed to pay the Player a total guaranteed salary of 1.600.000 EUR and a signing fee of 200.000 EUR.*

3. *Due to the Covid-19 pandemic worldwide, which has affected the organized football in the world including Turkey and resulted the leagues and official matches to be suspended, the Club has suffered financial damages and was deprived of its income. The Parties have agreed to sign this Agreement to amend the remuneration of the Player by the Club for the season 2019/2020 arising from the Agreements stipulated in Whereas.1*

CLAUSES

4. *The Player explicitly and irrevocably agrees and accepts that, considering his total entitlement of 540.000 EUR as guaranteed salary and signing fee for the months March, April and May 2020, he waives his entitlement to 270.000 EUR which corresponds to half of his remuneration arising from the employment agreement stipulated in Whereas.1 for the months March, April and May 2020. Furthermore, the Player explicitly agrees and accepts that the remaining part of 210.000 EUR as guaranteed salary for the months March, April and May 2020 will be paid by the Club to the Player on 31 October 2020.*

5. *The Player agrees and accepts that he will continue to provide his services to the Club until the new ending date of the 2019/2020 season announced by the TFF and he will not request any additional payment or remuneration for this additional term.*

6. *This Agreement is signed on 29 June 2020 in 2 (two) copies between the Parties.*"

28. However, on the same date, the Club received an e-mail from the Player, stating, *inter alia:* "*Please note our client is not in a position of accepting a salary reduction for the reasons already stated to Mr Ali Naibi, Besiktas' Director of Football by means of our correspondence dated 25/06/2022 and which content is self-exploratory."*

29. On 7 July 2020, the Club forwarded to the Player yet a new draft Settlement Agreement (the "Third Draft Settlement Agreement") regarding the remuneration for February 2020, which stated, *inter alia*, as follows:

*"**WHEREAS***

1. *The Parties have entered into an Employment Agreement on 07 August 2019 ("Employment Agreement"), regarding the employment of the Player by the Club as a professional football player until 31 May 2022.*

2. *On 25 June 2020, the Player, through his representative Mr. Oriol Castaner, has sent a Final Request for Payment to the club ("Demand Letter) requesting the payment of; February, March, April and May 2020 remuneration of the Player within 15 days following the receipt of the Demand Letter.*

3. *The Parties have agreed to enter into this Settlement Agreement to arrange the payment of the overdue remuneration due to the Player arising from the Employment Agreement.*

CLAUSES:

***4**. The Club agrees and accepts that as of the communication of the Demand Letter dates 25 June 2020, the overdue remuneration of the Player from the Club until 29 February 2020 is equal to 166.000 EUR net which constitutes of:*

- 160.000 EUR net overdue guaranteed salary for February 2020 arising from the Employment Agreement (instalment dates 28 February 2020)

- 6.000 EUR net house rent for the months of January and February 2020

5. The Club agrees and accepts to pay the Player 166.000 EUR net (as mentioned in clause 4 above) on or before 9 July 2020

6. By signing this Settlement Agreement and the receipt of the sum mentioned in clause 4 above within the stipulated deadline, the Player agrees and accepts that the Demand Letter dated 25 June 2020 addressed to the Club will automatically be considered as null and void.

7. The salaries and house rent allowance for the months of March, April and May 2020 are not affected by the present Settlement Agreement."

30. By e-mail of 8 July 2020, the Player replied to the Club, *inter alia*, as follows: "[…] *After review and consultation please note it will not be accepted as only addresses a fraction of the whole debt towards the player and therefore our correspondence dated 25/06/2020 fully stands and remain unaltered.* […]".

31. On 9 July 2020, the Club paid to the Player his remuneration for February 2020 together with his housing allowance for January and February 2020 in the amount of EUR 166,000, of which payment the Player was informed by letter of 10 July 2020, which also stated as follows:

"*Our Club is still not able to receive majority of its incomes which were anticipated to be received if the Covid-19 pandemic had not taken place. Our Club is working strongly and in good faith to complete the payments to its players as well as your Client. The payment which was completed to Mr. Ruiz's account today was made atter several attempts of our Club to generate this income.*

That being said, in light of these financial difficulties, which our Club had no fault or negligence, it has become impossible for our Club to fully comply with its obligations for the months March, April and May 2020 as stipulated under the employment agreement signed with Mr. Ruiz, as well as other players, technical staff and other employees.

According to the guidelines published by FIFA and Turkish Football Federation during the Covid-19 pandemic, several proposals were made to minimize the sportive and financial damages caused by the Covid-19 pandemic. Among these proposals, importance was given to the Agreements which could not be performed as originally anticipated. In this context, FIFA also established that the Covid-19 was a force majeure situation.

Collective and individual meetings were conducted between Mr. Ruiz, other players, technical staff, employees and our Club's President and board members to mitigate the damages caused by the Covid-19 pandemic and to enable our Club to continue its activities. During these meetings, a proposal was made to Mr. Ruiz to amend the monetary obligations of the employment contract in accordance with the financial damages suffered by our Club due to

Covid-19 pandemic and an amicable solution was sought. However, a positive outcome was not reached.

Furthermore, on 30 June 2020 a draft settlement agreement was provided by our Club to Mr. Ruiz as well as other players to revise the monetary obligations of our Club for the months of March, April and May 2020 in light of the damages and loss of income of our Club due to Covid-19 pandemic. This request was also not accepted.

Due to the fact that no positive outcome was reached, in order to guarantee its activities and financial survivability, our Club has no other option but to mitigate the monetary obligations under employment agreements signed between Mr. Ruiz and other players, technical staff and employees, whilst taking into consideration the principles of equal treatment, proportionality and reasonableness.

At the current stage, the negotiations with the remaining members of the team squad are still ongoing. However, to guarantee its activities and financial survivability, our Club has decided to apply a deduction on all players' (including Mr. Ruiz's) remuneration which will be equal to %15 of the total remuneration due by our Club to each player for the 2019/2020 season and this deduction will be applied to each players' salaries for March, April and May 2020, (the term when the Covid-19 was declared as a worldwide pandemic and the leagues and organized football were suspended in Turkey is cancelled as a result of the above-mentioned force majeure situation.)

This mitigation and postponement of the monetary obligations, which is mandatory for our Club to continue its activities, will be exercised equally to all members of our Club and importance was given to make sure that each player faces minimum damages.

Finally, as mentioned above, our Club is still facing serious financial problems due to the fact that it has suffered damages and loss of income due to the Covid-19 pandemic.

Considering that our Club is also not able to generate any income or receive payments at the current stage as a result off the Covid-19 pandemic, our Club will be able to pay Mr. Ruiz's remaining remuneration for the months of March, April and May 2020 as soon as this legal and financial uncertainty is resolved.

On this point we respectfully request Mr. Ruiz's good faith and understanding to provide our Club more time since our Club has still not received its anticipated incomes from the federation and third parties yet."

32. On 15 July 2020, the Player forwarded a notice of the unilateral termination of the Employment Agreement (the "Termination Letter"), which stated, *inter alia*, as follows:

"*Following indications of our client, VICTOR RUIZ TORRE, we refer to your last correspondence dated 10 July 2020 with respect to our final request for settling the debt towards him.*

In this regards, we would like to provide further clarifications to said correspondence.

The Turkish Football Federation has suspended all official matches following the last match played on 15 March 2020. By that time, and before the appearance of the Covid-19 the Club was in default of the Player's salary of January 2020 and February 2020.

On 8 May 2020 the Player's salary of January, February and March 2020 remained unpaid, as well as the absence of the Club to provide any information as to his salary of April 2020.

We would like to clarify that the only meeting held with the Player was the one on 28 May 2020 with the other players of the team; two and a half months after the "WHO" declared Covid-19 a pandemic. Such behaviour does not in any way show the Club's intention to reach an agreement with the players. In said meeting the Club informed the players that it will transmit their offer to the President and will give them a feedback as to the non-payment of their salaries.

On 8 June 2020 and 11 June 2020, due to the Clubs' lack of interest in remedy the situation, we contacted the Club requesting information concerning the situation of our client.

Meanwhile, on 13 May 2020 the Team started the training sessions and the Turkish football league resume on 12 June 2020 and the Player duly complied with his obligations.

On 25 June 2020, the Club was put in default for the last time and received a fifteen (15) days deadline to fulfil its obligations towards the Player.

The reaction of the Club was to unilaterally and unlawfully amend the terms of our client's Employment contract by sending a draft proposal reducing its outstanding debt up to 50% and the salary for March, April and May 2020 to be paid on 31 October 2020, without providing any proper insurance coverage, and adequate alternative income support arrangements for his unsustainable situation.

At this point, and regardless the Covid-19 the Club was in a constant default of payment with the Player since the beginning of the Employment relationship. It is the Player's belief that the Club has had four months to resolve the unsustainable situation and at this point the only thing that he receives is a unilateral proposals for reducing his salary without specifying any date of payment.

As a consequence considering that the Club has failed to honour its obligations within the granted deadline the Player shall not be expected to bear the persistent failure of The Club anymore and hereby terminates his Contract with immediate effect and with just cause in accordance with the article 14bis of the FIFA Regulations on the Status and Transfer of the Players.

The Player hereby reserves all his rights to claim the total unpaid salaries as well as the compensation due to his termination with just cause before the decision-making bodies of FIFA."

33. By letter of 21 July 2020, the Club objected to the termination, stating, *inter alia*, as follows:

"*We refer to your e-mail and its attached Letter dated 15 July 2020 which states that Mr. Victor Ruiz Torre has unilaterally terminated his employment contract with our Club with immediate effect.*

First and foremost, we wish to express our disappointment at Mr. Ruiz's decision to unilaterally terminate his Employment Agreement during these difficult times of our Club as a result of the Covid-19 pandemic.

As you state in your letter dated 15 July 2020, the Turkish Football Federation has suspended all official matches following the last official match played on 15 March 2020. Starting from this date onwards, our Club, like most other clubs, have faced a serious financial turmoil as all its income was suspended. During this time, our Club's main priority was the health of its players and at the same time generating financial income to continue paying its players and staff.

Moreover, during this time of uncertainty, since the future of the league was not certain, the damage caused by Covid-19 pandemic on our Club's financials could not be calculated. Therefore, instead of offering an unrealistic proposal, our Club chose to wait during the Covid-19 pandemic to see the decision of TFF for the continuation of the league which would make it easier for our Club to calculate the possible damages of Covid-19 pandemic.

Once the decision of the TFF to continue the leagues was announced, our Club started negotiations with its players, including Mr. Ruiz, to reach an amicable solution in order to ease the suffered damages by our Club. Unfortunately, Mr. Ruiz was not interested in reaching an amicable solution as he declined any kind of salary deduction during the term of Covid-19 pandemic.

Our Club has made all possible attempts to reach an amicable solution with its players and Mr. Ruiz. However, since these attempts remained unsuccessful, we had no other option but to apply a salary reduction to all its players taking into consideration the principles of proportionality and equality among all of its players. Therefore, by taking into consideration the damages suffered by our Club during Covid-19 pandemic, our Club decided to apply a deduction of 15% over the yearly remuneration of its players, Including Mr. Ruiz, which would partially reflect the damages suffered during the Covid- 19 pandemic.

Furthermore, since the cash flow (broadcasting, sponsors, match day revenue etc.) of our Club was suspended as a result of Covid-19 pandemic, the remaining part of the remuneration to all of our players for the months of March, April and May 2020 were to be paid on 31 October 2020.

It must also be highlighted that Mr. Ruiz was paid all of his remuneration up to and including February 2020, (i.e. before the Covid-19 pandemic) However, due to the fact that our Club was unable to obtain any further income after the start of Covid-19 pandemic, the funds to cover the amended payments reflecting the Covid-19 pandemic term were planned to be paid once our Club was able to obtain an income as a result of the leagues being resumed, but no later than 31 October 2020.

These facts were also clarified to you in our letter dated 10 July 2020 which was sent as a reply to your notice dated 25 June 2020 and in our proposal to you for an amicable settlement

Unfortunately, our Club has received no acknowledgment, understanding and good faith from Mr. Ruiz for his remuneration during the Covid-19 pandemic (a term which is considered as a force majeure for FIFA and according to Turkish Law) which are made subject to your letter dated 15 July 2020.

Since these claimed amounts reflect the term of the Covid-19 pandemic and are subject to a deduction as a result of this force majeure situation and since the cash flow (broadcasting, sponsors, match day revenue etc.) of our Club was suspended as a result of Covid-19 pandemic, due to this financial and legal uncertainty, we reject your argument that the unilateral termination of the employment agreement on 15 July 2020 was made with just cause.

Consequently, we reject the unilateral termination of the Employment Agreement alleged in your letter dated 15 July 2020 and we wish to inform you that you are expected to provide your services to our Club as stipulated in the Employment Agreement, In case of failure, our Club reserves its rights to claim damages and compensation from you for your failure to honor the Employment Agreement."

34. On 22 July 2020, the Player lodged a claim against Besiktas with FIFA.

35. Subsequently, on 30 July 2020, the Club made two further payments to the Player in accordance with the alleged unilateral variation of the Employment Contract made by the Club on 10 July 2020:

- EUR 210,000 in alleged settlement of the Player's remuneration for March, April and May 2020 with a pandemic discount of EUR 270,000 applied (out of a total amount of EUR 480,000)

- EUR 9,000 as payment for the Player's housing allowances for the months of March, April and May 2020.

36. On 1 September 2020, the Player signed a new employment contract with Real Betis valid until 30 June 2021, and in June 2021, the Player and Real Betis signed a contract extension for a further two years.

B. ***Proceedings before the FIFA Dispute Resolution Chamber***

37. In his claim against Besiktas lodged with FIFA, the Player requested FIFA:

> "*a) To accept the claim against [BESIKTAS]*
>
> *b) Hold the Club liable for breaching both Art. 14bis and Art. 17 paragraph 1 of the RSTP in light of its unjustified breach of the employment contract, at the same time, to order the Claimant to pay the amount of* ***Three million nine hundred eight nine thousand Euros net (EUR 3.989.000)*** *as follows:*
>
> - *Outstanding remuneration for the monthly salary of March, April and May 2020 in amount of* ***EUR 498.000*** *net;*
> - *Remaining contractual period amounting to* ***EUR 3.500.000 net.***
>
> *a)* [sic] *Order the payment of legal interest at a rate of five (5) per cent (%) p.a. to the values due by the Club to the Player, starting to count on the date when the each of them became due until effective payment;*
>
> *a)* [sic] *Impose sporting sanctions on the Club, vanning it from registering any new player, either nationally or internationally, for two registration periods under article 17, paragraph 4 of the FIFA RSTP;*
>
> *b)* [sic] *Order that the Club bear all administrative and procedural costs eventually incurred by the Player.*"

38. By letter of 28 July 2020 (the "Opening Letter"), the FIFA Player Status Department (the "FIFA PSD") informed the Club of the claim lodged by the Player with the FIFA DRC and initiated the proceedings under Ref. No. 20-01044, inviting the Club to present its position on the claim on or before 17 August 2020 via email.

39. The Opening Letter further stated, *inter alia*, as follows:

> "*In this context, we specifically refer you to art. 9 par. 3 second sentence of the Procedural Rules, in accordance with which, if no statement or reply is received before the time limit expires, a decision shall be taken upon the basis of the documents already*

on file, and to the third sentence of the aforementioned provision, which stipulates that submissions received outside the time limit shall not be taken into account.

We would like to inform all the parties involved that the present matter is scheduled to be submitted to the Dispute Resolution Chamber, if need be, in the week of 3 October 2020. Please be informed that any changes affecting the date of this meeting will be communicated accordingly."

40. The Opening Letter was sent to info@bjk.com.tr, demet.gurbak@bjk.com.tr and basak.pekin@bjk.com.tr, which addresses were all to be found in FIFA's Transfer Matching System (the "FIFA TMS"). It is undisputed between the Parties that the FIFA TMS also contained the email addresses of the Club's TMS Managers, i.e. the Club's (then) football director, Mr Ali Naibi (ali.naibi@bjk.com.tr), and the reporting manager, Ms Nazife Çakir (nazife.cakir@bjk.com.tr).

41. By letter of 29 September 2020, the FIFA PSD referred to the Opening Letter and informed the Club and the Player that no correspondence had been received from Besiktas, that the investigation phase was now closed and that no further submissions would be admitted to the file. Moreover, it was stated, *inter alia*, that "*[…] in line with our aforementioned correspondence as well as art. 9 par. 3 of the said Procedural Rules, we wish to inform you that we will proceed to submit this matter to the Dispute Resolution Chamber for consideration and a formal decision upon the basis of the documents already on file. […]*"

42. On 30 September 2020, Besiktas replied to the FIFA PSD, stating, *inter alia*, as follows:

"[…] *Your correspondence dated 29 September 2020 was a complete surprise for [Besiktas] since the club did not receive any e-mail and/or any communication from FIFA on 28 July 2020 or afterwards regarding the above-referenced dispute and did not receive or were not made aware of any claim lodged by Player Victor Ruiz Torre before the FIFA Dispute Resolution Chamber ("DRC").*

[Besiktas] has conducted an internal search within its e-mail servers and did not locate your referred communication dated 28 July 2020 in the above-referenced dispute and the only communication [Besiktas] received so far is your communication dated 29 September 2020.

Notwithstanding the fact that [Besiktas] did not receive your communication and the claim dated 28 July 2020 and not meaning as an acceptance that [Besiktas]was made aware of the claim of Player Victor Ruiz Torre, we also would like to point out that the recipients of your communication dated 29 September 2020 (assuming that they were also appointed as recipients in your referred communication dated 28 July 2020) do not reflect the full list of recipients which are declared by the Respondent in the FIFA TMS.

In detail, [Besiktas´] football director Ali Naibi (ali.naibi@bjk.com.tr), assistant football director Mr. Can Kaymakoglu (can.kaymakoglu@bjk.com.tr) and reporting manager Ms. Nazife Qakir (nazife.cakir@bik.com.tr) are the TMS managers and main contact points declared by [Besiktas] in the FIFA TMS. However, it is understood through your communication dated 29 September 2020 that none of these main contacts were included in your communication.

Therefore, for any future correspondence due to Besiktas Futbol regarding legal matters, we respectfully request you to send such communication to [Besiktas´] football director Ali Naibi (ali.naibi@bjk.com,tr), assistant football director Mr. Can Kaymakoglu (can.kavmakoglu@bik.com.tr) and reporting manager Ms. Nazife Cakir (nazife.cakir(@bik.com.tr).

Notwithstanding the above, we wish to inform you that the undersigned will be representing [Besiktas] in the above captioned matter. A copy of the Power of Attorney is enclosed. We kindly request the future communication in the referred case to be sent to the email address: koravakalp@akalpSunna.com.

Due to the fact that your referred correspondence dated 28 July 2020 had never been received by [Besiktas] and the fact that not all contacts of [Besiktas] (and most importantly main contacts listed in TMS) were not included in your communication, the Respondent was never made aware of the claim lodged by Player Victor Ruiz Torre and logically, could not provide its answers and counter claims against the claim.

Consequently, we respectfully request FIFA;

- *To provide us with your referred communication dated 28 July 2020 and the claim of Player Victor RuizTorre in the above-captioned matter.*
- *To restore the deadline of [Besiktas]to provide its answers and counter-claim to the claim of Player Victor Ruiz Torre. […]*."

43. On 1 October 2020, the FIFA PSD issued a letter (the "Appealed Letter") on behalf of the FIFA DRC informing Besiktas that it was not in a position to restore the deadline for Besiktas to provide its answer and counterclaim to the claim of the Player.

44. In the Appealed Letter, FIFA determined, *inter alia*, the following:

"[W]*e kindly refer* [Besiktas] *to art. 9bis par 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: the "Procedural Rules"), according to which "Communications from FIFA shall be sent to the parties in the proceedings by using the email address provided by the parties or as provided in* [FIFA TMS]. *The email address provided in TMS by associations is considered a valid and binding means of communication".*

Equally, we also refer [Besiktas] *to the last sentence of the aforementioned rule, pursuant to which "The parties and associations must ensure that their contract details (e.g. address, telephone number and email address) are valid and kept up to date at all times".*

Bearing in mind the foregoing, we note that our letter of 28 July 2020 was sent and delivered to the e-mail addresses of Besiktas indicated in FIFA TMS, namely info@bjk.com.tr *and* Demet.gurbak@bjk.com.tr*, and therefore is a valid and binding mean of communication (cf. art. 9bis par. 3 of the Procedural Rules).*

Consequently, we regret to inform you that we are not in a position to grant the request made on your correspondence dated 30 September 2020., i.e. to restore the deadline of [Besiktas] *to provide its answer and counter-claim to the claim of* [the Player].

Lastly, [Besiktas] *will find enclosed, for information purposes only, a copy of the entire documentation on file. In this regard, we kindly remind Besiktas Futbol of the contents of art. 9 par. 3 of the Procedural Rules, in accordance with which submissions received outside the time limit shall not be taken into account. Equally, we kindly refer to ar. 9 par. 4 of the Procedural Rules, in accordance with which the parties shall not be authorised to supplement or amend their requests or their arguments, to produce new exhibits or to specify further evidence on which they intend to rely after notification of the closure of the investigation. […]*"

45. On 4 October 2020, Besiktas filed a claim against the Player and his new club, the Spanish professional football club Real Betis ("Real Betis"), with FIFA regarding the Player's alleged breach of contract and requested compensation pursuant to Article 17 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP").

46. On 7 October 2020, the FIFA PSD, on behalf of the FIFA DRC, informed Besiktas that its claim could not be taken into account as it was a "*counterclaim*" in the proceedings under Ref. No. 20-01044 initiated by the Player and that the investigation phase of the said proceedings was closed.

47. By letter of 12 October 2020, Besiktas objected to the content of the letter of 7 October 2020 and stated that its claim filed on 4 October 2020 was not to be considered as a counterclaim made in the context of the original claim of the Player and, by extension, requested the FIFA PSD "*to proceed with registering the claim of [Besiktas] dated 4 October against [the Player] and [Real Betis] under a new registration number.*"

48. On 13 October 2020, the FIFA PSD informed the Club and the Player, *inter alia*, that "*we kindly inform you the parties, that it will be up to the Dispute Resolution Chamber to decide whether Besiktas Futbol's correspondence can be taken into account in the present matter.*"

49. With regard to the merits of the Player's claim, and in support of the same, the Player submitted, *inter alia*, that throughout the entire employment relationship, the Club had failed to pay him his contractual remuneration in a timely manner, based on which he had put the Club in default already back in 2019.

50. In January 2020, he had accepted a payment plan for overdue remuneration originating from 2019 and signed a settlement agreement with the Club; however, subsequently he "*faced the same situation regarding his salary for January 2020, February 2020 and March 2020*." At the end of April 2020, the Club sent him another settlement agreement acknowledging not having paid the salaries for January, February and half of March 2020, and unilaterally deciding to reschedule the dates of payment. The Player never signed such proposed agreement.

51. At the beginning of May 2020, the Player requested from the Club the payment of the outstanding salaries and housing allowances, and on 28 May 2020, the Club held a meeting with its players to discuss a possible reduction of salaries, however "[…] *no*

agreement was reached between the Players and Club in relation to the reduction of the salary due to the immobile position of the Club."

52. After having resumed training in mid-May 2020 and after several times having requested payment of the outstanding amounts from the Club, on 25 June 2020, the Player put the Club in default regarding his remuneration for "*February, March, April and May 2020 plus housing allowances for February, March, April and May 2020*", granting the Club a deadline of 15 days to remedy the situation.

53. The Club replied by sending a further settlement agreement, by means of which it "*unilaterally and unlawfully*" reduced "*its outstanding debt for his salary for March, April and May 2020 up to 50%*", but without mentioning the outstanding salary for February 2020.

54. On 15 July 2020, and after having received EUR 166,000 from the Club on 10 July 2020 equivalent to his February salary and housing allowances for January and February 2020, the Player terminated the Employment Agreement.

55. Finally, and with regard to his claim for compensation, the Player highlighted that all amounts according to his new employment contract with Real Betis are gross amounts.

56. The Club was invited to file its position on the Player's claim by 17 August 2020 at the latest, which, according to FIFA, the Club failed to do, as set out above.

57. Having established its competence to deal with the matter, the FIFA DRC referred to the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") and concluded that, since the claim was filed on 22 July 2020, the June 2020 edition of the Procedural Rules is applicable to the matter at hand, and so is the June 2020 edition of the FIFA RSTP.

58. Moreover, and with reference to the Procedural Rules, the FIFA DRC recalled the basic principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact carries the respective burden of proof.

59. The FIFA DRC then recalled the facts of the case and took into account that, on 15 July 2020, the Player notified the Club of the termination of the Employment Agreement on the basis of outstanding remuneration after having granted the Club 15 days to cure its default.

60. With regard to the Club's position, the FIFA DRC decided that the Club, for its part, failed to present its response to the Player's claim despite having been invited to do so and was consequently considered to have renounced its right to defence and thus accepted the allegations of the Player.

61. Based on that, the FIFA DRC noted that it stood undisputed that the Club had failed to pay the Player his remuneration for the period March-May 2020.

62. Notwithstanding the above and for the sake of completeness, the DRC highlighted that it was well aware of the specific circumstances concerning the effects of the COVID-

19 pandemic, and hence deemed it important to recall some of the events that led to the early termination of the Employment Agreement.

63. In that regard, the FIFA DRC initially highlighted that "*FIFA issued a set of guidelines, the COVID-19 Guidelines, which aim at providing appropriate guidance and recommendations to member associations and their stakeholders, to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest. Moreover, on 11 June 2020, FIFA has issued an additional document, referred to as FIFA COVID-19 FAQ, which provides clarifications on the most relevant questions in connection with the regulatory consequences of the COVID-1 9 outbreak and identifies solutions for new regulatory matters*".

64. However, the FIFA DRC also referred to the fact "*that said guidelines - as per the explicit wording of FAQ no. 16, as well as pages 6 and 7 of the FIFA COVID-19 Guidelines - are only applicable to "unilateral variations to existing employment agreements". Therefore, except where a termination of a contract occurred following a unilateral variation made as a result of COVID-19 (in which case the validity of the variation must first be assessed under the guidelines), said guidelines do not apply to assess unilateral terminations of existing employment agreements. The members of the Chamber further noted that for the assessment of disputes that are presented before the FIFA judicial bodies concerning the unilateral termination of a contract, the F1FA Regulations as well as the established jurisprudence of the Chamber shall apply*".

65. In this regard, it was specifically noted, that the Club offered the Player a salary reduction by means of the draft settlement agreement dated 29 June 2020 and that the Player refused such salary reduction.

66. In light of the particular circumstances of the case and taking into special consideration the fact that the Club presented the Player with an amendment to the contract, the FIFA DRC considered that the Club's behaviour in this respect cannot be considered as a unilateral variation of the contract as the Club invited the Player to provide his consent. The Chamber found it clear that this specific attempt was not successful, since the Player adamantly refused the proposed modification of the contractual terms.

67. Nevertheless, on 10 July 2020, the Club unilaterally reduced the Player's salaries of March, April and May 2020 by 15% of the Player's annual salary, and five days later the Player terminated the employment relationship.

68. Accordingly, the FIFA DRC referred to the Player's termination notice of 15 July 2020, and noted that said termination was irrespective of the unilateral variation of the contract by the Club, since it pertained to the outstanding salaries requested by the Player in his letter of 25 June 2020. In other words, the FIFA DRC confirmed that the termination of the Employment Agreement took place at the initiative of the Player not because the Club had unilaterally reduced his remuneration, but because the Club failed to pay him his remuneration in the period March-May 2020. The FIFA DRC underlined that, irrespective of the variation of the Employment Agreement, it stood undisputed that the Club did not pay the Player any remuneration during said period.

69. In light of the particular circumstances of the case and taking into special consideration the constellation described above, the FIFA DRC decided that, in the case at hand, "*there was no termination of a contract following a unilateral variation made as a result of COVID-19. Consequently, the FIFA COVID-19 Guidelines and the FIFA COVID-19 FAQ are therefore inapplicable and only the FIFA Regulations and the jurisprudence of the Chamber will apply. In any event, the Chamber once more stressed that by failing to timely reply to the claim, [the Club] renounced its right to defence and thus accepted the allegations of [the Player], hence there was no evidence of the legality of the variation were it to be considered*".

70. The FIFA DRC further stated that "*On account of all the above-mentioned considerations, specifically considering that, when [the Player] terminated the contract, more than two salaries were due despite the fact that [the Player] provided [the Club] with 15 days to remedy the default, the Chamber decided that [the Player] had just cause to unilaterally terminate the employment relationship on 15 July 2020 based on art. 14bis par. 1 of the Regulations. Consequently, [the Club] is to be held liable for the respective consequences*".

71. With regard to the consequences of such termination, the FIFA DRC took into consideration the issue of unpaid remuneration at the time when the Employment Agreement was terminated and decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Club was liable to pay to the Player the amount of EUR 489,000, corresponding to the salaries and housing allowances for March, April and May 2020 (i.e three times EUR 160,000 and three-times EUR 3,000).

72. Furthermore, and in line with its constant practice and taking into consideration the Player's request, the FIFA DRC decided to award the Player interest at the rate of 5% p.a. on the outstanding amounts as from the relevant due dates until the date of effective payment.

73. Secondly, the FIFA DRC took into consideration Article 17 (1) of the FIFA RSTP since the Club was liable to pay compensation to the Player for breach of contract, and with regard to the calculation of the amount of compensation for breach of contract, the FIFA DRC first summed up that, in accordance with the said article, the amount of compensation must be calculated, in particular and unless otherwise provided for in the contract at issue, with due consideration for the law of the country concerned, the specificity of sport and any other objective criteria, including, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within a protected period.

74. Since the Employment Agreement did not contain a provision under which the Club and the Player had agreed beforehand on an amount of compensation payable by the parties to the contract in the event of breach of contract, the FIFA DRC proceeded with the calculation of the monies payable to the Player under the terms of the Employment Agreement until the natural expiry of thereof and concluded that the amount of EUR 3,572,000 (i.e. two seasons of EUR 1,750,000 each plus 24 months of housing allowances of EUR 3,000 each) should serve as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.

75. Furthermore, the FIFA DRC verified whether the Player had signed an employment contract with another club within the relevant period of time, which would have enabled him to reduce his loss of income.

76. The FIFA DRC noted that the Player had in fact signed a new employment contract with Real Betis, according to which the Player was entitled to a total amount of EUR 1,410,000, and outlined at the same time that the Player had submitted no evidence regarding the tax impact on this new contract, on which grounds the FIFA DRC decided that it would consider the amounts as stated in the said contract between the Player and his new club, thus concluding that the Player had in fact mitigated his damages by a total amount of EUR 1,410,000.

77. The FIFA DRC then turned its attention to Article 17 (1) (ii) of the FIFA RSTP, according to which a player is entitled to an additional compensation of three monthly salaries, subject to the early termination of the contract being due to overdue payables, and decided to award the Player additional compensation corresponding to EUR 534,000 (i.e. three times EUR 178,000 as the monthly remuneration plus housing allowances).

78. Consequently, the FIFA DRC decided that the Club must pay the amount of EUR 2,696,000 to the Player, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter.

79. Furthermore, taking into consideration the Player's request as well as its constant practice, the FIFA DRC decided to award the Player interest at the rate of 5% p.a. on the said compensation as from the date of the claim until the date of effective payment.

80. Finally, the FIFA DRC decided that, in the event that the Club failed to pay the amount due to the Player within 45 days from the time when the Player communicated the relevant bank details to the Club, at the request of the Player, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods would be applicable to the Club in accordance with Article 24bis (2) and (4) of the FIFA RSTP.

81. On 22 October 2020, and after Besiktas had filed its Statement of Appeal against the Appealed Letter with the CAS, the FIFA DRC rendered the Appealed Decision and decided, *inter alia*, that:

1. The claim of [the Player] is partially accepted.

2. The correspondence of [the Club], dated 4 October 2020, is inadmissible.

3. [The Club], has to pay to [the Player], the following amounts:

- EUR 163,000 as outstanding remuneration plus 5% interest p.a. as from 1 May 2020 until the date of effective payment;

- EUR 163,000 as outstanding remuneration plus 5% interest p.a. as from 1 June 2020 until the date of effective payment;

- EUR 163,000 as outstanding remuneration plus 5% interest p.a. as from 1 July 2020 until the date of effective payment;

- EUR 2,696,000 as compensation for breach of contract plus 5% interest p.a. as from 22 July 2020 until the date of effective payment.

4. Any further claims of [the Player] are rejected.

[…]

7. In the event that the amount due, plus interest as established above is not paid by [the Club] within 45 days, as from the notification by [the Player] of the relevant bank details to [the Club], the following consequences shall arise:

1. [The Club] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mention will be lifted immediately and prior to its complete serving, once the due amount is paid.

2. In the event that the payable amount as per this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.

8. This decision is rendered free of costs.

82. On 4 December 2020, the FIFA DRC notified the grounds of the Appealed Decision to the Parties.

83. The grounds stated, *inter alia*, as follows regarding the formalities of the dispute, including the Club's claim against the Player:

"*(39) Notwithstanding the above, the Chamber was observant of the fact that the Respondent, after having been granted a deadline until 17 August 2020 to file his position, and after the FIFA Administration closed the investigation phase of the matter on 29 September 2020:*
a. On 30 September 2020, submitted a request that a new deadline was set for it to file its position; and
b. On 4 October 2020, filed a parallel claim against the player and Betis pertaining to the same matter as the one at hand, i.e. the termination of the contract by the player.

(40) Bearing in mind the foregoing, the DRC deemed it necessary to assess the admissibility of the correspondences filed by the Respondent both on 30 September 2020 and on 4 October 2020.

(41) By doing so, the DRC confirmed that the correspondence sent by the FIFA Administration on 28 July 2020 was sent to the email addresses indicated by the Respondent in the Transfer Matching System (TMS). Additionally, it recalled the contents of art. 9bis par. 3 of the Procedural Rules, according to which "Communications from FIFA shall be sent to the parties in the proceedings by using the email address provided by the parties or as provided in the Transfer Matching

System (TMS; cf. art 4 par. 1 of Annexe 3 and art. 5 par. 2 of Annexe 3 of the Regulations on the Status and Transfer of Players)". The email address provided in TMS by associations and clubs is considered a valid and binding means of communication.

(42) Moreover, the DRC referred to the last sentence of the cited article and confirmed that it is a duty of the Respondent to "ensure that their contact details (e.g. address, telephone number and email address) are valid and kept up to date at all times".

(43) Consequently, the DRC firmly established that the Respondent had been properly summoned to the proceeding at hand for the letter dated 28 July 2020 was sent by FIFA was addressed to a valid and binding means of communication, i.e. the email addresses indicated by the Respondent itself on TMS.

(44) In continuation, the Chamber noted that it stood undisputed that the Respondent had not sent any submissions to FIFA by 17 August 2020.

(45) Accordingly, the DRC found that the FIFA Administration acted correctly on the basis of art. 9 par. 3 and 4 of the Procedural Rules by closing the investigation phase of the matter on 29 September 2020 and subsequently not granting the Respondent a new deadline on 1 October 2020. The DRC arrived at such decision considering that the Respondent had failed either to adequately request a deadline extension in accordance with article 16 par. 1 of the Procedural Rules or to timely file its position. The Chamber highlighted that the Respondent filed its letters (i.e. dated 30 September 2020 and 4 October 2020) after the closure of the investigation, that is, at a moment in time where the parties were no longer authorised to supplement or amend their requests or their arguments, to produce new exhibits or to specify further evidence on which they intended to rely, pursuant to the unequivocal contents of both art. 9 par. 4 of the Procedural Rules and FIFA's letter dated 29 September 2020.

(46) In continuation, the Chamber noted that the parallel claim filed by the Respondent against the Claimant and Betis on 4 October 2020 is nothing more than a counterclaim, which should have been filed within the same time limit applicable to the reply in line with art. 9 par. 3 of the Procedural Rules.

(47) As such, the members of the Chamber concluded that the Respondent's parallel claim is to be considered an attempt to circumvent the Procedural Rules, and since it was not timely filed, it cannot be taken into account.

(48) Although confident of the foregoing line of reasoning, the Chamber emphasized, for the sake of completeness, the contents of FIFA Circular no. 1694 dated 30 October 2019, which introduced the wording currently found in articles 9 and 9bis of the Procedural Rules, and which reads inter alia, as follows:

Simplifying proceedings: (. . .)
2. (.. .) ***If party would like to lodge counterclaim, it should do so jointly with its position to the claim*** *and submit all necessary documents.*
The contact details of parties contained in the Transfer Matching System (TMS) are binding for procedures managed by the Players' Status Department. In other words, they will be taken as default information. Therefore, it is important to ensure that the

contact details of clubs and associations are up to date at all times in TMS." (emphasis added by the DRC)

(49) The Chamber furthermore referred to the jurisprudence of the Dispute Resolution Chamber, such as the decision passed on 8 May 2020 pertaining the player Hassamo, as well the jurisprudence of the CAS, in particular cases CAS 2019/A/6144 Anthony Modestev. Tiajin Tianhai FC and CAS 2019/A/6145 Tiajin Tianhai FC v. Anthony Modeste, 1. FC Köln & FIFA, and firmly confirmed its position.

(50) On account of the foregoing, the DRC concluded that the correspondence of the Respondent dated 4 October 2020 was filed late and thus is inadmissible."

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT - CAS 2020/A/7455

84. On 19 October 2020, the Appellant filed a Statement of Appeal with the CAS requesting the restoration of its deadline to answer the Player's claim before the FIFA DRC. The Statement of Appeal also contained a request for provisional measures, namely to suspend the FIFA proceedings until a decision was taken on the possible restoration of the deadline.

85. On 21 October 2020, the Deputy President of the CAS Appeals Arbitration Division rendered her Order dismissing this request holding that the appeal was premature at the Club would have the possibility to appeal the decision in the Player´s DRC proceedings.

86. On 12 April 2022, the Panel issued its award in the 2020/A/7455 case, dismissing the Club's request for restoration of the deadline and stating, *inter alia*, that "*the provision of Article 9 par. 3 of the Procedural Rules is clear and leaves no room for interpretation. It also sets out clearly the consequences for not complying with the given deadlines, which is why the decision to reject the Club´s belated request for restoration of the deadline cannot be considered as an excessive formalism on the part of FIFA.*"

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

87. On 23 December 2020, Besiktas filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision. The Statement of Appeal contained, *inter alia*, a request to suspend the present proceedings "*until such time as a decision has been rendered on the merits in CAS 2020/A/7455*".

88. By letter of 22 February 2021 from the CAS Court Office, the Parties were informed, *inter alia*, as follows: "*Given that the Parties agreed to bifurcate the proceedings in CAS 2020/A/7455, I hereby confirm that all deadlines – including the deadline to pay the advance of costs – are suspended until a final award is rendered in the aforesaid procedure.*"

89. By letter of 28 September 2021, the Parties were informed that Mr Frans de Weger had decided to step down as President of the Panel in the procedure CAS 2020/A/7455.

90. By letter of 4 November 2021 from the CAS Court Office, the Parties were informed that Mr Lars Hilliger had been appointed as new President of the Panel.

91. On 12 April 2022, the Arbitral Award in CAS 2020/A/7455 was notified to the relevant parties involved in said procedure, and by letter of 13 April 2022 from the CAS Court Office, the Parties were informed that the suspension of the present proceedings was lifted with immediate effect.

92. On 15 June 2022, and within the granted extension of time, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code, which included a request for the Player's production of certain documents.

93. On 8 September 2022, and within the granted extension of time, the First and Second Respondents submitted their Answers in accordance with Article R55 of the CAS Code, while the Third Respondent failed to submit such Answer within the granted time limit.

94. On 9 September 2023, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to hear the appeal was constituted as follows:

President:	Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark
Arbitrators:	Mr Nicolas Cottier, Attorney-at-Law, Saint-Prex, Switzerland Mr Jan Räker, Attorney-at-Law, Stuttgart, Germany.

95. By letter of 25 October 2022, the Parties were informed that the Panel had decided to hold a hearing. The Parties were further informed as follows: "[…] *the Panel has noted that, together with its Answer, the Second Respondent provided the documents as requested by the Appellant in its request for production under lit. a) and d). In this context, and given the Second Respondent's comments and details about his request provided in his Answer, the Appellant is invited, by 1 November 2022, to state whether it maintains its request for production of document listed under lit. b), c) and e).*"

96. On 8 November 2022, the Appellant informed the CAS Court Office, *inter alia*, of the following:

"***Request for Production: categories a) and d)***

Having reviewed the Player's production of documents under categories a) and d), it is clear that the documents produced do not provide an accurate or complete presentation of the remuneration that the Player was entitled to receive from Real Betis Balompié during the remaining term of the original contract with Beşiktaş.
Indeed:

- *the Player has not provided any documentation with respect to the variable remuneration he was entitled to in the 2021-22 season (see Annex 1, Section 4 to the Player's Exhibit 26 to the Answer – hereinafter "Exhibit R-26").*

More specifically, whereas the employment contract produced as Exhibit R26 confirms the variable remuneration owed to the Player in relation to the 2020-21 season (see Annex 1, Section 4, Article 1.4 of Exhibit R-26), the Player has not produced any documentation confirming the variable remuneration payable to him in relation to the 2021-22 season, which

must have been recorded – in one way or another – following the conclusion of the contract at Exhibit R-26.

- *additionally, with respect to image rights, the Player has submitted that he assigned his image rights to Real Betis Balompiè and that "all and any income for the use and exploitation by Betis of the Player's image rights is included in the gross salary for each of season 2020/2021 and 2021/2022" (Answer at paragraphs 214-215).*

However, Beşiktaş notes that under the relevant agreements (see for example Annex 2, Clause 3(1) of Exhibit R-26) the Player was in fact entitled to certain remuneration for "economic exploitation of the image rights of the Player, other than those arising from [his] status as a member (individual and/or collective) of the Real Betis Balompiè squad...".

In view of the above, Beşiktaş requests that the Player be ordered to supplement his document production linked to categories a) and d) of Beşiktaş' document production request with the following additional documents:

1) *any document(s) (including contracts, agreements, payslips or other documents in written form) confirming the total remuneration paid or payable to the Player in case of economic exploitation of his image rights pursuant to his agreements with Real Betis Balompiè.*
2) *any document(s) (including contracts, agreements, payslips or other documents in written form) confirming the total variable compensation paid or payable by Real Betis Balompiè to the Player in relation to the 2021-22 season.*
3) *in the alternative to 2) above, official records from the Player or Real Betis Balompiè confirming the number of official matches played by the Player in the 2021-22 season (Annex 1, Section 4, Articles 1.2 and 1.3 of Exhibit R-26) as well as any collective bonus(es) paid to the Player and his teammates for the 2021-22 season (Annex 1, Section 4, Article 1.4 of Exhibit R-26).*

Such documents are clearly relevant to the present proceedings because, as noted by Beşiktaş in its Appeal Brief, its request for production was justified on the (indisputable) basis that under the FIFA RSTP and general legal principles the Player is obliged to mitigate his damages. Thus, remuneration received by the Player (in relation to his employment with Real Betis Balompiè) until the end of the Employment Agreement with Beşiktaş must be deducted from any amounts (potentially) awarded to him in these proceedings.

Given that the Player's agreements with Real Betis Balompiè provide for potential remuneration in relation to image rights, as well as variable compensation, it is clear that the relevant amounts must be disclosed by the Player or otherwise ascertained by the Panel in order to rule upon Beşiktaş' request that "any remuneration awarded to the Player by the Panel (if any) be subject to mitigation with respect to all amounts earned by the Player with his New Club in the 2020-21 and 2021-22 season (including salaries, other remuneration and housing allowances)"

Request for Production: categories b), c) and e)

As the Panel has rightly noted, the Player has not produced any documents that are responsive to Beşiktaş' requests for production in categories b), c) and e)[7]

The consequences of the Player's refusal to produce such documents will be addressed at the hearing, including any adverse inferences that should be taken by the Panel as a result of the Player's deliberate non-production.

Please do not hesitate to contact us with any questions on the above."

97. By letter of 25 November 2022, the Second Respondent replied as follows:

"***Request for Production: categories a) and d)***
1. Image rights
Both the Contract for the 2020/2021 season and the subsequently signed Contract on 25 June 2021 state in Annex 2 clause ONE, TWO and THREE that the Player assigns to Real Betis, for the term of the Contracts, his image rights both as a professional player who is a member (individually and/or collective) of Real Betis team.

Moreover, the Contracts clearly and precisely determine that Real Betis is the exclusive beneficiary of the image rights assigned by the Player.

More precisely, section 3 of Clause THREE stipulates that, the economic consideration in favour of the Player for the transfer of his image rights governed in the employment contracts, that is, as a member of Real Betis squad is included in the economic consideration agreed upon the Professional Football Contracts.

Indeed, both Contracts duly registered and approved by the Royal Spanish Football Federation (RFEF) could not be more conclusive in determining that all and any income for the use and exploitation by Betis of the Player's image rights as a member of the team are included in the gross salary for each of season 2020/2021 and 2021/2022.

It is highly offensive for the Appellant to insinuate that both the Player and Real Betis are attempting to omit contracts that cannot possibly exist given that the only Contracts that regulate the employment relationship as well as the remuneration between Real Betis and the Player are those that have been properly registered with the RFEF.

By way of clarification, clause THREE of Annex 2 stipulates the economic exploitation of the Player's personal image rights outside his professional sphere as a football player and individual or collective member of the Real Betis squad.

Any possible income in relation to his personal image, which has nothing to do with his employment relationship with Real Betis, is completely independent and should not be involved in the present proceedings, firstly because any possible income is not remunerated by Real Betis but by a third party and secondly because any exploitation and income on his personal image is outside the sphere of a professional player of Real Betis and has nothing to do with his employment relationship and remuneration agreed for his services as a player of the Club.

In any case, during the 2020/2021 and 2021/2022 seasons, the Player himself has not entered into any sponsorship agreement with third parties in relation to his personal image which has no connection with his status as a professional football player.

Finally, if the Appellant wishes to establish some fact and persuade the Panel, it must actively substantiate its allegations with convincing evidence. Thus, the Appellant failed to prove his offensive allegation that the Player has omitted contracts other than those registered with the RFEF in relation to his employment relationship with Real Betis and did not provide any convincing evidence that the information and documents presented by the Second Respondent were not accurate.

2. Variable compensation under the employment contracts with Real Betis

The Second Respondent considers that the variable compensation determined in the two employment contracts with Real Betis should not be deducted as part of the mitigation as the Player lost the opportunity to earn similar bonuses with the Appellant due to its unjustified breach of contract.

More precisely, under Article 6 b) of the Appellants employment contract with the Player, he was entitled to a bonus compensation for 2020/2021 and 2021/2022 season based on the participation in 25 games.

Most likely, if the Contract with the Appellant had not been terminated, the Player would have played the matches, as in the 2019/2020 season, he participated in 27 matches of more than 45 minutes and would have earned the respective bonus.

Moreover, the Player has not been awarded any compensation for the loss of the opportunity to earn the bonuses under the Appellants contract, therefore in order to be on equal conditions, the bonuses with Real Betis should not be considered either.

Besides, the bonuses for the official matches played with Real Betis were not a guaranteed bonus or salary payment as they were conditional to the Player's own merits and good performance during the season.

In the event that the Panel considers the bonuses earned during the 2020/2021 season to mitigate the damages of the Player, the bonus for classifying for the UEFA Europa League should not be taken into account as it is performance related and depended on the results of the team and should by no means be considered guaranteed remuneration as it does not even depend exclusively on the performance of the Player but of the whole team during the sporting season.

Having said the above, the employment contract signed on 25 June 2021 determines in Section 4 point 1.4 that for the season 2010/2021 that Real Betis owns the Player the total gross amount of EUR 325.000 corresponding to the variable compensation for the season 2020/2021 accounted and not paid. The aforementioned amount should be paid in two equal installments on 15 July 2022 and 30 November 2022.

In this respect the amount corresponding to the bonuses for the official matches played with Real Betis amounts to EUR 225.000 gross.

During the season 2021/2022 the Player has participated in 19 official matches of 45 minutes with Real Betis, accordingly, in the event the Panel considers said bonus for mitigating the damages, such amount is EUR 50.000 gross. The variable remuneration for season 2021/2022 is payable 50% on 30 August 2022 and 50% on 30 December 2022.

The participation of the Player in season 2020/2021 and 2021/2022 with Real Betis is enclosed for the Panel's consideration.

The Player has not yet received the bonuses in full, as 50% of the bonus for the season 2020/2021 is due on 30 November 2022. In this sense, as of December 2022, the Second Respondent will be able to submit the respective payroll for November 2022 in order for the Panel to take into account the percentage of tax to be applied to the Player's bonus in order to determine the exact net amount.

On the other hand, the bonus for season 2021/2022 will be paid in full on 30 December 2022. In this regard, the Panel will be able to obtain the exact tax rate applicable to the Player on said bonus with the December 2022 payroll.

Having said the above, for maximum certainty in determining the net amount of the bonuses resulting from the deduction of the respective taxes, the Second Respondent will be able to submit the pay slips for August, November, and December 2022 as soon as he receives them from Real Betis.

3. Request for Production: categories b), c) and e)

Regarding the request for production of documents establishing the Player's housing situation, the Second Respondent would like to emphasize, once again, that the Contracts with Real Betis does not stipulate any amount for housing allowance, and if there were any, it would be duly reflected in the employment contracts. The rent is covered directly by the Player himself and is outside the context of the employment relationship with the Club. Indeed, Real Betis remunerates the Player exclusively for his professional services as a Player of the team and the exploitation of his image rights.

On the other hand, and in relation to the request for production of documents under category b), the Second Respondent has already provided each and every one of the pay slips for the 2020/2021 and 2021/2022 season in which it clearly and precisely states the exact percentage of taxes and social security that is applied monthly to the Player's gross salary.

There is no greater proof than the Player's monthly salary statement to verify the exact net salary after deduction of all taxes and social security.

The Second Respondent again reiterates that it is highly offensive to be requesting documentation that has already been provided and demonstrates the Player's net salary for the two seasons at Real Betis."

98. On 16 December 2022, the CAS Court Office informed the Parties, *inter alia*, that:

"*Considering the confirmation provided by the Second Respondent in that letter, that he had assigned all his Image Rights to Real Betis Balompie and that he did not perceive any additional remuneration from Real Betis Balompie in relation to his image rights, the Panel concludes that the Appellant's request for production of the documents mentioned under letters a) and d) of the Appellant's letter dated 8 November 2022 regarding the said image rights has been addressed by the Second Respondent so that no further action needs to be taken in this respect.*

Furthermore, the Panel has noted that the Second Respondent will be in a position to provide the payment slips related to his variable remuneration for August, November and December 2022 as soon as he receives them from Real Betis Balompie.

In light of the foregoing, the Second Respondent is instructed to provide copies of the payment slips related to his variable remuneration for August, November and December 2022 immediately after their receipt.

99. By letter of 27 December 2022, the Player forwarded his August pay slip regarding the payment of the 50% of the variable remuneration for the 2020/2021 season in the amount of EUR 162,500 gross, stating, *inter alia*, as follows: "*As is evident, 48,5% as State tax reduction (the Personal Income Tax) is being applicable to the Player's gross remuneration. Therefore, the net amount in respect to the 50% of the variable compensation after the respective tax deduction amounts to EUR 78,812.5 net.*"

100. By letter of 5 January 2023, the Parties were informed that the hearing was to be held in Lausanne on 20 February 2023.

101. By letter of 3 February 2023, the Player wrote to the CAS Court Office, *inter alia*, as follows:

"*[…] In this regard, we hereby enclose the Player's January 2023 payslip regarding the payment of the other 50% of the variable remuneration for the 2020/2021 season in amount of EUR 162.500 gross.*
As in the August payslip, 48,5% as State tax deduction (the Personal Income Tax) is being applicable to the Player's gross remuneration. Therefore, the net amount in respect to the other 50% of the variable compensation after the respective tax deduction amounts to EUR 78.812,5 net.
Moreover, we would like to inform the Panel that the variable compensation of EUR 50.000 gross for season 2021/2022 payable 50% on 30 August 2022 and 50% on 30 December 2022 has not yet been paid by Real Betis.
As a proof of the above, it can be observed that said amount does not appear as having been paid in either the August or December pay slips."

102. The Appellant and the First and Second Respondents duly signed and returned the Order of Procedure, confirming, *inter alia*, the jurisdiction of the CAS to hear this dispute.

103. On 20 February 2023, a hearing was held at the CAS Court Office in Lausanne, Switzerland.

104. In addition to the Panel and Mr Fabien Cagneux, Managing Counsel, the following persons attended the hearing:

For the Appellant:

Prof. Sébastien Besson – Counsel

Ms Marie Gachet – Counsel

Mr Anil Dincer – Legal advisor

Mr Secil Aygul – CEO of the Club – Party representative/Witness

For the First Respondent:

Ms Marta Ruiz-Ayúcar Torres – Head of Judicial Bodies Investigatory

Ms Cristina Pérez González – Senior Legal Counsel

For the Second Respondent

Ms Teodora Latchezar Taneva – Counsel

Mr Oriol Castaner – Counsel

Mr Victor Ruiz Torre – Second Respondent – via video

Mr Erik Leonardo Piccioto Gálvez – Interpreter – via video.

105. The Third Respondent was not represented at the hearing. However, the Panel decided, with reference to Article 57 (4) of the CAS Code, to proceed with the hearing in order to be able to render the present award.

106. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel.

107. The Panel heard the evidence of Secil Aygul, witness/party representative called by the Appellant, and of Mr Victor Ruiz Torre, who were invited by the Panel to tell the truth, subject to the sanctions of perjury under Swiss law. The Parties and the Panel had the opportunity to examine and cross-examine the witness and the Player.

108. The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

109. After the Parties' final submissions, the Panel closed the hearing. The Panel took into account in its subsequent deliberations all the evidence and arguments presented by the Parties although they may not have been expressly summarised in the present Award.

110. Upon the closure of the hearing, the Parties stated that they had no objections in respect of their right to be heard and to have been treated equally and fairly in these arbitration proceedings.

111. By letter of 3 March 2023, the Second Respondent wrote, *inter alia,* as follows to the CAS Court Office, "*We would kindly request, as it has been discussed at the hearing, to be able to submit our calculations with regard to the amount of compensation due by the Appellant, in the event that the Panel determines that the Player has terminated his contract with just cause.*" On the same date, the Parties were informed that the Second Respondent was allowed to submit such calculations within a given time limit, which the Second Respondent did by letter of 9 March 2023.

112. By letter of 9 March 2023, the Appellant was invited by the CAS Court Office "*to file its observations, strictly limited to the content of the Second Respondent´s letter*", which the Appellant did by letter of 16 March 2023.

113. The Panel took into consideration the content of these letters from the Second Respondent and the Appellant in its deliberations.

VI. SUBMISSIONS OF THE PARTIES

114. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions on the bifurcated issues made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant

115. In its Appeal Brief, Besiktas requested the CAS to issue an award:

(i) Upholding the appeal of [Besiktas]
(ii) Setting aside the [Appealed Decision] and issuing a new decision:
a. Declaring that the claim of [Besiktas] against [the Player] and [Real Betis] is admissible;

b. Ordering [the Player] and [Real Betis], jointly and severally, to pay [Besiktas] EUR 5,666,666 together with interest at 5% per annum from 4 October until full payment;

c. Dismissing entirely the claim of [the Player] against [the Club], alternatively reducing the amount of such claim.

(iii) Alternatively to (ii), setting aside the [Appealed Decision] and referring the case back to the FIFA Dispute Resolution Chamber.

(iv) Ordering [the Player], [Real Betis] and FIFA to bear all costs incurred with the present proceedings and cover all legal expenses of [Besiktas] related to the present proceedings.

116. The Appellant's submissions, in essence, may be summarised as follows:

- The Player's termination of the Employment Agreement was unlawful, and Article 14bis of the FIFA RSTP does not apply.
- First of all, the Club's proposed settlement agreement of 30 June 2020 did not unilaterally vary the Player's remuneration.
- Even though the Club did unilaterally reduce the Player's remuneration on 10 July 2020, the FIFA DRC wrongfully considered that the termination was with just cause, since it wrongfully found, *inter alia*, that the FIFA Covid-19 Guidelines were not applicable, and thus decided the dispute solely based on the FIFA RSTP and its own jurisprudence.
- However, the Employment Agreement was suspended and then varied in accordance with the FIFA Covid-19 Guidelines, and the Club paid the amount of EUR 220,000 in adjusted salary accordingly on 30 July 2020.
- As such, the Club did in fact pay the Player his March, April and May 2020 salary instalments (as varied) and housing allowance (in full), even if such payment was not made on 15 July 2020, which the Club does not dispute is the case.
- In any case, this amount of EUR 220,000 already paid to the Player should not have been included in the amount awarded to the Player in the Appealed Decision, and the fact that the Club did pay such amount should also be taken into consideration in the determination of whether the Player had in fact just cause to terminate the Employment Agreement.
- Moreover, it must be stressed that the termination took place in the midst of the most volatile and disruptive period during the COVID-19 pandemic, which created a force majeure situation in Turkey.
- Furthermore, as from 15 March 2020, the Player did not provide any services to the Club until the leagues were resumed in Turkey, and following the issuing of the FIFA Covid-19 Guidelines, the Club decided to suspend all employment agreements with its players, which decision was notified to the Player on 27 April 2020.

- Regardless of the suspension, the Player continually insisted on full payment, showing no sympathy with the financial situation of the Club and the risk that the Club might in fact go bankrupt.

- As such, Article 14bis of the FIFA RSTP does not apply to these proceedings, and contrary to the finding of the FIFA DRC in the Appealed Decision, the FIFA Guidelines and the FIFA FAQs are applicable.

- Pursuant to the FIFA Guidelines and the FIFA FAQs the first priority should be amicable settlement, and FIFA strongly recommended that clubs and players make their best effort to find collective agreements before following any other guiding principle.

- However, the Player never wished to engage in any negotiation with the Club in good faith, forcing the Club to impose a unilateral reduction, which it did on 10 July 2020 when it decided to apply a unilateral reduction of all players' remuneration equal to 15% of the total remuneration due to each player for the 2019/2020 season which would be applied to the Player's remuneration for March, April and May 2020.

- Despite that, five days later, the Player terminated the Employment Agreement and already on 21 July 2020, the Player filed his claim with FIFA.

- As such, the Club disagrees with the FIFA DRC's conclusion that "*in the case at hand there was no termination of a contract following a unilateral variation made as a result of COVID-19.*", based on which the FIFA Guidelines are applicable to the case at hand.

- The unilateral amendment of the Employment Agreement was made in accordance with the FIFA Guidelines taking into consideration, *inter alia*, (i) that the Club had attempted to reach a mutual agreement with its players, (ii) that the amendment was proportionate considering the Player's net income after the amendment and (iii) the undeniably difficult economic situation of the Club, as already recognised by FIFA in a different decision.

- Based on the above, Article 14bis of the FIFA RSTP, which only deals with unlawful failure to make payments on the respective due dates, is not applicable since the Club's failure to pay the Player his March, April and May salaries as at the date of termination was not unlawful.

- In this regard, the "two months" referred to in the said article should in any case be interpreted – in these particular circumstances – as starting upon the resumption of the Süper Lig in June 2020.

- To the extent that the Player's termination was only related to the above-mentioned salaries, and considering the content of the FIFA Guidelines, it was abusive for the Player to rely on Article 14bis of the FIFA RSTP, and

it must also be noted that the Player never made any counter-proposal to the Club.

- Furthermore, the Player never explicitly warned the Club about the consequences, and Clause 7.2 of the Employment Agreement sets out a deadline of at least 30 days to comply, which deadline was never granted to the Club.

- As such, the Player's termination was made without just cause.

- The Club's claim against the Player and Real Betis is admissible and must be decided by the CAS.

- The applicable Procedural Rules did not provide for a time limit for "new claims" and must in any case be interpreted *contra proferentem*.

- The Club's claim is not only a counterclaim to the Player's claim, but is in fact a new claim involving not only the Player but Real Betis as the Player's new club as well.

- As such, the Club's claim against the Player and the New Club was admissible before FIFA, and in the interest of procedural efficiency, the Panel should exercise its discretion under Article R57 of the CAS Code to "*issue a new decision which replaces the decision challenged*" rather than to refer the case back to the previous instance.

- With regard to the Club's claim against the Player and the New Club, it is evident that the Player's breach of contract has been established, thus depriving the Club of the opportunity to benefit from his services until 31 May 2022 as originally anticipated between the two parties.

- Article 17 (1) of the FIFA RSTP regulates the consequences of such breach, however, the Club's damages may be assessed in a number of ways, which renders the determination of the compensation "case-dependent".

- In addition to taking into account the residual value of the Employment Agreement and the remuneration due to the Player under his new contract, the Panel may also consider the fees and expenses paid or incurred by the Club and amortised over the term of the contract in question.

- In this regard it must be stressed that the Club paid the amount of EUR 2,500,000 to the Player's former club for the federative and economic rights of the Player, and following the fact that the Club could not use the services of the Player for the seasons 2020/2021 and 2021/2022, the unamortised part of the total transfer fee is EUR 1,666,666.

- As the Player's breach took place within the protected period, the Club also requests that it be awarded an additional compensation of EUR 5,666,666

based on the specificity of sport and taking into consideration the particular circumstances of the case.

- As such, the amount of EUR 5,666,666 as compensation for breach of contract should be awarded to the Club.

- In accordance with Article 17 (2) of the FIFA RSTP, Real Betis, as the Player's new club, is jointly responsible for the payment of the said compensation.

- Finally, and for the sake of procedural caution only, if the Panel should find that the Player terminated the Employment Agreement with just cause, the amount awarded to the Player in the Appealed Decision must be significantly reduced in any event.

- First of all, the FIFA DRC found the Club liable to pay the amount of EUR 489,000 for the salaries of March, April and May 2022 plus three monthly housing allowances. However, the FIFA DRC failed to take into consideration the fact that the Club did in fact already pay the amount of EUR 210,000 to the Player as adjusted salaries for the said three months together with EUR 9,000 in housing allowances on 30 July 2020. The payment of these amounts is not disputed by the Player.

- With regard to the Player's contractual entitlement to monthly allowances, the Club was not contractually liable to pay more than the rent actually incurred.

- To the extent that the Appealed Decision took into account housing allowances as part of the future remuneration payable to the Player (which it did with the amount of EUR 72,000), such amount should only be confirmed by the Panel if the Player established that he did in fact spend such sums on rent during the 2020/2021 and 2021/2022 seasons and was not provided with housing allowances under his new contract.

- As such, any housing allowances payable to the Player should be limited to any amount actually incurred by him in rent and which is not covered by his New Club.

- Finally, the Player mitigated his damages when signing the new contract with the New Club, and all amounts earned, even if not yet paid, by the Player until the expiry of the term of the Employment Agreement must be taken into account as mitigating the Player's damages and thus the compensation potentially payable by the Club.

B. FIFA

117. In its Answer, FIFA requested the CAS to:
(a) Reject [Besiktas's] appeal in its entirety;

(b) Confirm paragraph 2 of the decision rendered by the FIFA DRC on 22 October 2020;
(c) Order [Besiktas] to bear all costs incurred with the present procedure;
(d) Order [Besiktas] to make a contribution to FIFA´s legal costs.

118. FIFA's submissions, in essence, may be summarised as follows:

- Initially, it must be stressed that FIFA does not have standing to be sued with respect to the contractual dispute between the Club and the Player.

- It must further be noted, that the Club is attempting to enter into the core of issues that were already dealt with and resolved by this Panel in CAS 2020/A/7455.

- The principle of *res judicata* guarantees that a dispute will be subject to only one set of court or arbitration proceedings and serves to establish legal peace between the parties.

- In this respect, and considering that this Panel already declared that it *"[did] not find that Besiktas was deprived of its right to be heard when FIFA in the [FIFA Letter dated 1 October 2020] informed [Besiktas] that its request to have the deadline restored was not granted*", every endeavour of the Club to question FIFA's refusal to grant the restored deadline should not be considered by the Panel.

- Moreover, and with regard to the Club's claim, all aspects pertaining to FIFA's decision of 1 October 2020 not to admit the Club's counterclaim to the file because it was belatedly filed have been already resolved in CAS 2020/A/7455, and any attempt to rediscuss this issue should be disregarded by the Panel.

- With regard to the Club's alleged new claim of 4 October 2020, the FIFA DRC correctly ruled that this claim was an inadmissible counterclaim.

- As such, and keeping in mind the provisions of Article 9 (3) of the Procedural Rules then applicable, the Club should have lodged its counterclaim within the same time limit which it had been granted to comment on the Player's claim.

- However, as the Club failed to do so, it missed its opportunity to reply and/or file a counterclaim by missing the deadline it was granted by FIFA's letter of 28 July 2020.

- In a desperate attempt to submit its answer and counterclaim to the Player's claim "through the back door", the Club now tries to deceive the Panel by alleging that its correspondence of 4 October 2020 was not a "*counterclaim but rather a new claim*".

- However, only five days before filing this alleged "new claim", the Club requested FIFA to restore the deadline for the Club "*to provide its answers and counter-claim to the claim of [the Player]*".

- Moreover, the alleged "new claim" requests that the Player be ordered to pay compensation for the unlawful termination of the Employment Agreement, which is the exact opposite of the Player's claim, based on which there is no doubt that the dispute between the parties only revolves around the same topic: Who was responsible for the early termination of their contractual relationship.

- The Club not only failed to demonstrate that the alleged "new claim" could refer to a new dispute between the Club and the Player, but filing the claim of 4 October 2020 is also a violation of the principle of *venire contra factum proprium*.

- In this respect, the Club is estopped from filing a "new claim" with the FIFA DRC against the Player and the New Club only five days after it had expressed its intention to the Player and to FIFA to file a (late) counterclaim to the Player's claim.

- The mere fact that the New Club is included in the Club's claim of 4 October 2020 does not alter the fact that the claim is based on the (same) dispute between the Club and the Player regarding the early termination of the Employment Agreement.

- Moreover, the Club's contention that the alleged "new claim" included the New Club as a new party is moot, as Article 17 (2) of the FIFA RSTP establishes that the Player's new club will automatically be jointly and severally liable to pay that compensation.

- Additionally, it must be stressed that the New Club would only have a secondary or accessory role in the proceedings before the FIFA DRC, since the proceedings, if admissible, would in any case have centred on an analysis of the Player's behaviour.

- In any case, had FIFA accepted to proceed with the Club's alleged "new claim" and decided to consolidate this proceeding with the one initiated by the Player's claim, it would have created a situation in which the Club would have been unfairly granted a second opportunity to have its comments on the Player's claim admitted to the file.

- This would have constituted a violation of the principle of equality of treatment, a fundamental principle that requires that the proceedings are conducted in such a way that each party has the same opportunity to present its case.

- And as confirmed by the CAS jurisprudence, "*the matter of deadlines has to be considered under the principles of equal treatment, it is a must to treat all the clubs and the national associations the same way.*"

- In view of the above, the FIFA DRC correctly ruled that the Club's correspondence of 4 October 2020 was in fact a counterclaim.

- Pursuant to Article 9 (3) of the applicable Procedural Rules, a counterclaim must be submitted within the same time limit as applicable to the reply, and pursuant to Article 9 (4) of the same rules, "*Parties shall not be authorised to supplement or amend their requests or their arguments, to produce new exhibits or to specify further evidence on which they intend to rely, after notification of the closure of the investigation.*" These rules are not ambiguous and leave no room for interpretation, as wrongly submitted by the Club.

- At the time when the Club requested FIFA to reinstate the deadline to submit its answer and counterclaim (i.e. 30 September 2020) and after the rejection of this request, the Club still filed a claim, which is not in line with the applicable rules.

- Such failure to respect the deadline can only be attributed to the Club, and filing an alleged new separate claim is a clear attempt to circumvent FIFA procedural rules.

- In light of the circumstances, the Appealed Decision correctly considered that the alleged "new claim" of 4 October 2020 was inadmissible.

- In this regard, it must also be stressed that in the event that the Panel confirms the inadmissibility of the alleged "new claim", the Club's right to be heard would still have been respected as already confirmed by this same Panel in CAS 2020/A/7455.

- Moreover, any alleged violation of the Club's right to be heard (*quod non*) is fully cured by Article R57 of the CAS Code, as the Club has been allowed to file its position with respect to the Player's claim before FIFA.

- In the unlikely event that the Panel should find the Club's claim of 4 October 2020 admissible, in accordance with Article R57 of the CAS Code, the Panel should issue a new decision on the merits of the dispute in order to protect the rights of the Parties and for reasons of procedural economy.

- However, and as FIFA does not have standing to be sued in so-called "horizontal" disputes, once the jurisdiction of the FIFA DRC has been addressed, FIFA respectfully declines to comment on the merits of the contractual dispute (save for the inadmissibility of the Club's claim already addressed) and simply refers to the findings in the Appealed Decision.

C. Second Respondent

119. In his Answer, the Player requested the CAS to issue an award:
a) The appeal filed by [Besiktas] on 23 December 2020 against the [Appealed Decision] is dismissed.
b) Hold [Besiktas]liable for breaching both Article 14bis and Article 17 paragraph 1 of the RSTP in light of its unjustified breach of the [Employment Contract], at the same time to order [Besiktas] to pay the amount of EUR 3,604,966.93 net if to consider season 2020/21 with [Real Betis] or alternatively EUR 2,990,829.14 net if to consider both season 2020/21 and 2021/22 with [real Betis]-
c) Order the payment of legal interest at a rate of five (5) percent(%) p.a. to the values due by [Besiktas] to the Player, starting to count on the date when the each of them became due until effective payments;
d) Impose sporting sanctions on the Club, banning it from registering any new players, either nationally or internationally, for two registration periods under article 17 paragraph 4 of the FIFA RSTP.
e) Order that [Besiktas] bear all administrative and procedural costs eventually incurred by the Player.
f) *Ordering the Respondent [sic] to bear the Appellant´s [sic] legal fees incurred in connection with these proceedings.*

120. The Player's submissions, in essence, may be summarised as follows:

- The FIFA DRC correctly decided that, considering the circumstances of the case, the FIFA Guidelines and FIFA FAQs were not applicable and that the dispute is governed by the FIFA RSTP as well as the established jurisprudence of the FIFA DRC.

- The FIFA Guidelines and FIFA FAQs were only applicable "*during any period when a competition is suspended*" and, moreover (FIFA FAQ no. 16), were only applicable to unilateral variations to existing employment agreements, and thus are not applicable to disputes concerning unilateral termination.

- As such, any unilateral variation of the Employment Agreement should have been made during the suspension of the competition, which was not the case. Additionally, the guiding principles do not apply to unilateral terminations of existing employment agreements which are not preceded by a unilateral variation.

- Moreover, the Employment Agreement was never suspended, and the alleged unilateral reduction of the Player's salary on 10 July 2020 was not made in accordance with the FIFA Guidelines. In any case, already on 18 May 2020, the Player was required to start training with the team again, thus fulfilling his contractual obligations towards the Club.

- Furthermore, and in accordance with consistent jurisprudence of FIFA, there can be no retroactive application of a unilateral variation of contractual terms.

- In any case, at the time when the Player terminated the Employment Agreement, no amount had been paid to the Player for the months of March, April and May 2020, whether reduced by 15% or not, and the outstanding amount payable, according to the Club, by the Club was not paid until 30 July 2020 and thus after the Employment Agreement was terminated by the Player on 15 July 2020.

- As already set out above, the FIFA guiding principles do not apply to assess unilateral terminations of existing employment contracts which are not preceded by a unilateral variation of the same contract.

- As such, the FIFA Guidelines and the FIFA FAQs are not applicable to this dispute as the Club (i) never officially suspended the Employment Agreement and duly informed the Player about said circumstance, and (ii) the unilateral variation of the Employment Agreement did not occur when the competition was suspended.

- Moreover, the termination of the Employment Agreement was not effected due to the Club's decision to retroactively reduce the Player's salary, but because (i) the Club had been in constant default of payment since the beginning of the employment relationship and (ii) had not paid anything to the Player since March 2020.

- In addition, it must be stressed that despite the alleged difficult economic situation of the Club, in the season 2021/2022 it concluded new contracts with at least 13 new players, spending money on loan and transfer agreements as well as salary payments to these new players.

- Whether the Employment Agreement was terminated with just cause must be assessed based on the FIFA RSTP and the well-established jurisprudence and in accordance with Swiss law.

- Just cause exists where the terminating party cannot in good faith be expected to continue the employment relationship based on the circumstances of the case.

- In this context, on 15 July 2020, the Player had sufficient just cause to terminate the Employment Agreement with immediate effect for two reasons; (i) the Club's non-payment of his remuneration for three consecutive months, and (ii) the Clubs constant delay in payment of his salaries since the beginning of his employment relationship with the Club.

- Having received no remuneration at all since January 2020, the Player put the Club in default on 8 May 2020 and furthermore sent reminders to the Club on 8 and 11 June 2020.

- Even before the Covid-19 pandemic, the Club was in default with respect to the Player's salaries for January, February and at least half of March, and

the Club cannot use the pandemic as an excuse for failing to pay these salaries in a timely manner.

- On 25 June 2020, the Player sent a final request for payment to the Club, warning the latter that the employment relationship would be terminated if the debt had not been settled within 15 days as the Club had missed any opportunity to reach a reasonable and proportionate solution with the Player.

- On 10 July 2020, and despite the Player's warning, the Club paid only the amount of EUR 166,666 corresponding to his salary for February 2020 as well as his housing allowances for the months of January and February 2020.

- Pursuant to Article 14bis (2) of the FIFA RSTP, non-payment of an amount that is equal to at least two monthly salaries will be deemed a just cause for a player to terminate the employment contract with a club.

- The payment of the salaries of its players is one of the basic duties of the Club, and the financial difficulties of the Club cannot be considered a valid justification for non-compliance with its financial obligations towards the Player.

- The Default Letter sent to the Club fulfilled the requirements set out in Article 14bis of the FIFA RSTP.

- Based on the circumstances of the case, the Player had legitimately lost faith in the ability and will of the Club to fulfil its contractual obligations in due course as the latter had repeatedly and for a significant period of time been in breach of its payment obligations towards the Player, who, as a result, had sufficient just cause to terminate the Employment Agreement based on the Club's breach of its contractual obligations.

- Clause 7.2 of the Employment Agreement is contradictable as it refers to Article 14bis of the FIFA RSTP and is not applicable.

- Following his termination of the employment relationship with the Club, on 1 September 2020 the Player signed a new employment contract with the New Club valid until 30 June 2021. Pursuant to the new contract the Player was entitled to 10 monthly payments of EUR 61,000 gross each.

- Moreover, the Player was entitled to receive a signing fee in the amount of EUR 800,000 gross.

- Any amount due under this new contract should be understood as "gross" as the New Club must deduct the taxes and social security payable according to the applicable regulation.

- Consequently, the total net amount of the Player's remuneration for the 2020/2021 season from the New Club after withholding of the applicable

deductions is EUR 770,033.07, which is the actual amount to be taken into account when considering the mitigation of the Player's damages.

- Initially, the Player was only offered a 1-year contract with the New Club, and it was solely based on the Player's own merits and good performance that the Player was eventually offered a new contract for an additional two seasons.

- Pursuant to this additional contract, the Player was entitled to twelve monthly payments of EUR 98,100 gross. As the signing bonus set out in the additional contract has not been paid by the New Club, the New Club should not be taken into consideration when assessing the mitigation of the Player's damages.

- Consequently, the total net amount of the Player's remuneration for the 2021/2022 season from the New Club after withholding the applicable deductions is EUR 614,137.79, which is the actual amount to be taken into account when considering the mitigation of the Player's damages.

- The Player was not entitled to receive any housing allowances pursuant to the contracts with the New Club, thus making the Player entitled to receive the housing allowances set out in the Employment Agreement for the remaining term of the said agreement since it was an integral part of the salary and not conditional upon any event or consequences.

- On 15 July 2020, when the Player terminated the Contract, the total amount of EUR 489,000 was outstanding, and on 30 July 2020, the Club paid to the Player the amount of EUR 210,000 as salaries without defining to which salaries it related.

- Based on that, the total outstanding amount of salaries and housing allowances due to the Player is EUR 279,000 net.

- With regard to the compensation payable to the Player pursuant to Article 17 of the FIFA RSTP, in particular, the remuneration and other benefits due to the Player under the existing contract and the time remaining must be taken into account, and in light of the principle of "positive interest", the harmed party should be restored to the position in which the same party would have been had the contract been properly fulfilled.

- As such, the FIFA DRC was correct in finding that the remaining value of the Employment Agreement amounts to EUR 3,572,000 net (EUR 1,750,000 + EUR 1,750,000 + EUR 72,000).

- Based on the remuneration received from the New Club under the first contract, the Player's compensation must be reduced by the amount of EUR 770,033.07 net, corresponding to a final amount of compensation of EUR 2,801,966.93 net plus interest at a rate of 5% p.a. from 15 July 2020.

- Alternatively, if the additional contract with the New Club for the 2021/2022 season is also to be taken into consideration, the additional amount of EUR 614,137.79 should also be deducted, resulting in a final amount of EUR 2,187,829.14 net plus interest at a rate of 5% p.a. from 15 July 2020.

- Moreover, the additional compensation awarded to the Player by the FIFA DRC should be confirmed.

- For the sake of good order, it must be stressed that the Club's claim against the Player dated 4 October 2020 was nothing more than a counterclaim which was filed late and therefore is inadmissible.

- Finally, the Club should be sanctioned in accordance with Article 17 (4) of the FIFA RSTP.

D. Third Respondent

121. The Third Respondent failed to submit any Answer within the granted deadline.

VII. JURISDICTION AND ADMISSIBILITY

122. The present arbitration is governed by chapter 12 of the Swiss Private International Law Act ("PILA"), which provides in Article 186 (1) that the Panel is entitled to rule on its jurisdiction ("*Kompetenz-Kompetenz*").

123. Article R47 of the CAS Code reads as follows:

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

124. Article 58 (1) of the FIFA Statutes (2020 edition) reads:

> "*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*"

125. In addition, neither the Appellant nor the Respondents objected to the jurisdiction of the CAS, and the Appellant and the First and Second Respondents confirmed the CAS jurisdiction when signing the Order of Procedure.

126. With regard to admissibility, Article R49 of the CAS Code provides, *inter alia*, as follows:

> "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. […]".*

127. Moreover, it follows from Article 58 of the FIFA Statutes (2020 edition) that:

> "*Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, members associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.*"

128. The grounds of the Appealed Decision were notified to the Appellant on 4 December 2020, and the Appellant's Statement of Appeal was lodged on 23 December 2020, i.e. within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in Article 58 of the FIFA Statutes, which is not disputed.

129. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

130. It follows that CAS has jurisdiction to decide on this appeal which, subject to what follows, is admissible.

131. However, the Panel notes that, in its prayer for relief, the Club requested, *inter alia*, the CAS to issue an award "*Ordering [the Player] and [Real Betis], jointly and severally, to pay [Besiktas] EUR 5,666,666 together with interest at 5% per annum from 4 October until full payment",* which request is based on the Player's alleged termination of the Employment Agreement without just cause.

132. While the Club considers this request to be based on a new claim filed with FIFA, the First and Second Respondents submit that this was nothing more than a counterclaim which was filed too late and therefore is inadmissible.

133. However, as the case might be, and since the Player is found to have just cause for his termination, the Club's claim against the Player and the New Club becomes moot, for which reason the Panel needs not decide on its admissibility, neither before FIFA nor before the CAS.

VIII. APPLICABLE LAW

134. Article R58 of the CAS Code provides as follows:

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

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

135. Article 57 (2) of the FIFA Statutes determines the following:

"*The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law.*"

136. Based on the above, and with reference to the filed submissions, the Panel is satisfied that the various regulations of FIFA are primarily applicable (in particular the June 2020 edition of the Procedural Rules and the June 2020 edition of the FIFA RSTP) and that Swiss law is subsidiarily applicable should the need arise to fill a possible gap in the various regulations of FIFA.

IX. MERITS

137. Initially, the Panel notes that the factual circumstances of this case are in essence undisputed by the Parties, including the fact that on 7 August 2019, the Club and the Player signed the Employment Agreement valid as from the date of signing until 31 May 2022, and that according to the said contract, the Player was entitled to receive, *inter alia*, the following amounts for the services provided to the Club:

A) The Guaranteed Salary of The Player

For 2019/2020 Football Season: 1.800.000 EUR

The aforementioned amount is NET and to be paid to the Player by the club on mentioned below dates:
The club will pay the Player 200.000 EUR net on the date of his Agreement. The remaining 1.600.000 EUR will be paid by the Club to the Player as following:

31/08/2019	*: 160.000 EUR*
30/09/2019	*: 160.000 EUR*
31/10/2019	*: 160.000 EUR*
30/11/2019	*: 160.000 EUR*
31/12/2019	*: 160.000 EUR*
31/01/2020	*: 160.000 EUR*
28/02/2020	*: 160.000 EUR*
31/03/2020	*: 160.000 EUR*
30/04/2020	*: 160.000 EUR*
31/05/2020	*: 160.000 EUR*

For 2020/2021 Football season: 1.750.000 EUR

The aforementioned amount is NET and to be paid to the Player by the Club on the below mentioned dates:

31/08/2020 : 175.000 EUR
30/09/2020 : 175.000 EUR
31/10/2020 : 175.000 EUR
30/11/2020 : 175.000 EUR
31/12/2020 : 175.000 EUR
31/01/2021 : 175.000 EUR
28/02/2021 : 175.000 EUR
31/03/2021 : 175.000 EUR
30/04/2021 : 175.000 EUR
31/05/2021 : 175.000 EUR

For 2021/2022 Football Season: 1.750.000 EUR

The aforementioned amount is NET and to be paid to the Player by the Club on the below mentioned dates:

31/08/2021 : 175.000 EUR
30/09/2021 : 175.000 EUR
31/10/2021 : 175.000 EUR
30/11/2021 : 175.000 EUR
31/12/2021 : 175.000 EUR
31/01/2022 : 175.000 EUR
28/02/2022 : 175.000 EUR
31/03/2022 : 175.000 EUR
30/04/2022 : 175.000 EUR
31/05/2022 : 175.000 EUR

Other benefits:
[…]
Housing: *The Club shall grant and pay the Player a maximum net amount of 3.000 EUR for rent per month during the term of the Agreement. The Player will be responsible with paying the bills and other maintenance costs of the house. If the rent of the house is less than the maximum amount stipulated under this article, the Club will not be required to pay the maximum amount but only the amount equivalent to the rent of the house. […]"*

138. It is further undisputed that, from the beginning of the employment relationship, the Club failed to comply with its payment obligations towards the Player in a timely manner, and the Player forwarded several reminders to the Club regarding outstanding payments.

139. Furthermore, it is undisputed between the Parties that, by e-mail of 25 June 2020, the Player forwarded the Default Letter to the Club, requesting the Club to pay the Player "*his remuneration for February, March, April and May 2020 plus house allowances for January, February, March, April and May 2020 within the next fifteen 15) days from the date of receipt of this correspondence*." The Default Letter further stated as follows: "*In failure to do so we will have no other option than to consider that the club is not any more interested in continuing with the current employment relationship, and that you decided to terminate the employment contracts without just cause for which we will*

contact FIFA and initiate legal proceedings in accordance with Article 14bis of FIFA Regulations on the Status and Transfer of Players."

140. On 9 July 2020, the Club paid to the Player his remuneration for February 2020 together with his housing allowances for January and February 2020 in the amount of EUR 166,000.

141. Finally, it is undisputed that, by letter of 15 July 2020, and without having received further payments from the Club, the Player terminated the Employment Agreement "*with immediate effect and with just cause in accordance with the article 14bis of the [FIFA RSTP]*."

142. However, the Parties disagree whether the Employment Agreement was terminated by the Player with or without just cause, and, accordingly, the Parties also disagree over the financial consequences of the said termination.

143. Thus, the main issues to be resolved by the Panel are:

A) Did the Player have just cause to terminate the Employment Agreement on 15 July 2020, and, in any case,

B) What are the financial consequences of the Player's termination of the Employment Agreement, if any?

A) Did the Player have just cause to terminate the Employment Agreement on 15 July 2020?

144. To reach a decision on the issue, whether the Player had just cause to terminate the Employment Agreement on 15 July 2020, the Panel has conducted an in-depth analysis of the facts of the case and the information and evidence gathered during the proceedings, including the information and evidence gathered during the proceedings before FIFA.

145. Initially, the Panel notes that the Player submits that, on 15 July 2020, the Club was in default with its payments of the following amounts to the Player:

- EUR 480,000 as monthly salaries related to the months of March, April and May 2020, and
- EUR 9,000 as housing allowances for the same months.

Based on that, the Player submits that he had just cause to terminate the employment relationship in accordance with Articles 14 and Article 14bis of the FIFA RSTP.

146. The Club, on the other hand, submits that the Player did not have just cause for the termination, *inter alia*, since the Player's remuneration had been reduced in accordance with the FIFA Guidelines and any failure to pay the Player was not unlawful and since the Player failed to fulfil the requirements for termination with just cause pursuant to Clause 7.2 of the Employment Agreement and Article 14bis of the FIFA RSTP.

147. In this regard, the Panel notes that it is now undisputed that the Employment Agreement was not formally suspended during the suspension of the Süper Lig caused by the Covid-

19 pandemic, and that the Club never submitted to the Player that it was not obliged to pay him his salaries for March, April and May 2020 even if the Player did not render his services to the Club during at least some part of this period. On the contrary, the proposals forwarded to the Player all confirmed that the Club was of the opinion that it owed the said salaries to the Player.

148. It is further undisputed that the said salaries were not paid to the Player on 25 June 2020 on which date the Club was put in default by the Player, and it is also undisputed that no agreement regarding the payment of the outstanding amounts was reached between the two parties, nor any variation/deduction made at that time.

149. Based on these facts, and on the Parties' submissions, the Panel finds that it is up to the Club to discharge the burden for of proof to establish that it had in fact fulfilled its payment obligations under the Employment Agreement at the time of the Player's termination thereof. Furthermore, and depending on whether/to what extent the Club has discharged this burden of proof, the Panel finds that it is eventually up to the Player to discharge the burden of proof to establish that he did in fact have just cause to terminate the employment relationship.

150. In doing so, the Panel adheres to 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, paras. 71ff)*."

151. However, the Panel finds that the Club has failed to adequately discharge its burden of proof to establish that it had in fact fulfilled its payment obligations under the Employment Agreement at the time of the Player's termination.

152. In this regard, the Panel initially notes that the Club does not submit that it did in fact pay the outstanding amount of EUR 489,000 to the Player before the date of the termination of the Employment Agreement.

153. On the contrary, in its letter to the Player dated 10 July 2020, the Club stated that "*it has become impossible for our Club to fully comply with its obligations for the months of March, April and May 2020 as stated under the [Employment Agreement], as well as other players, technical staff and other employees."*

154. However, by the same letter, and with reference to the FIFA Guidelines, the Player was informed that the Club had decided to apply a deduction on all players' remuneration "*which will be equal to %15 of the total remuneration due by our Club to each player for the 2019/2020 season and this deduction will be applied to each player´s salaries or March, April and May 2020. […] Considering that our Club is also not able to generate any income or receive payment at the current stage as a result of the Covid-19 pandemic, our Club will be able to pay [the Player] remaining remuneration for the*

months of March, April and May 2020 as soon as this legal and financial uncertainty is resolved."

155. Finally, on 30 July 2020, and thus after the date of the termination of the Employment Contract, the Club made two payments to the Player: i) EUR 210,000 in alleged settlement of the Player's remuneration for March, April and May 2020 reduced by EUR 270,000 applying the above-mentioned deduction, and ii) EUR 9,000 as payment for the Player's housing allowances for the same months.

156. Based on these circumstances, and without discussion, at this point, of the validity of the alleged unilateral variation of the Player's remuneration (please see para 179-186 below for the Panel's finding on this issue), the Panel finds it evident that the Club had failed to pay the Player in full his contractual remuneration for the months of March, April and May 2020 at the date of the termination of the Employment Agreement.

157. Based on the above, the Panel now turns its attention to whether, based on the circumstances of this particular case, the Player had just cause to terminate the Employment Agreement.

158. Article 13 of the FIFA RSTP defends the principle of contractual stability, stating as follows:
"*A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.*"

159. However, Article 14 and Article 14bis of the FIFA RSTP read, *inter alia*, as follows:

"*Article 14*
1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.
2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause.

Article 14bis
In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.
[…]"

160. Under Swiss law, just cause exists whenever the terminating party cannot be expected in good faith to continue the employment relationship (Article 337 (2) of the Swiss Code of Obligations), and in accordance with CAS jurisprudence, only material breaches of a contract can possibly be considered just cause for the termination of an employment contract (CAS 2013/A/3091).

161. Moreover, the Panel notes that, according to CAS jurisprudence, "*the non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated […] - constitute 'just cause' for termination of the contract […]; for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be 'insubstantial' or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract.*" (see CAS 2006/A/1180, para. 26).

162. The Panel initially notes that the Player, in the Termination Letter, referred to Article 14bis of the RSTP stating that the Club had failed to honour its obligations within the granted deadline, based on which the Player should not be expected to bear the persistent failure of the Club anymore, for which reason the termination was made with just cause.

163. The Club, for its part, disputes that the termination was made with just cause based on the fact that the FIFA Guidelines and FIFA FAQs, and not the FIFA RSTP, were applicable. Moreover, and even if this is not case, the requirements for applying Article 14bis of the RSTP were not fulfilled as the Club's failure to pay the outstanding remuneration was not "unlawful", and as the Player, in the Default Letter, had also failed to warn the Club about the potential consequences of its continuous breach of its payment obligations towards the Player. Finally, the Club submits that the termination pursuant to Article 14bis of the FIFA RSTP was made in breach of the 30 days "grace period" set out in Clause 7.2 of the Employment Agreement.

164. With regard to the FIFA RSTP not being applicable due to the alleged applicability of the FIFA Guidelines and the FIFA FAQs, and without deciding at this point on the possible application of the FIFA Guidelines and the FIFA FAQs, the Panel initially notes, that the purpose of both the FIFA Guidelines and the FIFA FAQs was to provide appropriate guidance and recommendations to the FIFA member associations and their stakeholders.

165. However, the Panel does not find any legal basis supporting the Club's submission that, *inter alia*, Article 14 and 14bis of the FIFA RSTP are to be considered not applicable at the same time, even if the qualification of just cause would possibly in some cases have to be considered in the light of the circumstances of the Covid-19 pandemic and the FIFA Guidelines/FIFA FAQs.

166. As such, the Panel does not find that the Player was excluded from invoking the application of Article 14bis of the FIFA RSTP, subject to the requirements being fulfilled.

167. With regard to the content of the Player's Default Letter of 25 June 2020, the Panel notes that the Player stated, *inter alia*, as follows: "*In failure to do so we will have no other option than to consider that the club is not any more interested in continuing with the current employment relationship, and that you decided to terminate the employment contracts without just cause for which we will contact FIFA and initiate legal proceedings in accordance with Article 14bis of FIFA Regulations on the Status and Transfer of Players.*"

168. Even if the Player did not explicitly state that he would terminate the Employment Agreement in case of the Club's continuous failure to fulfil its payment obligations, the Player did in fact point out the Club's breach and explicitly and unambiguously referred to Article 14bis of the FIFA RSTP, which sets out that the Player will be deemed to have just cause to terminate the contract if the payment obligations are not fully complied with.

169. Moreover, the Panel does not find any support for the Club's submission that its failure to fulfil its payment obligations was not "unlawful", even if it was to be considered a consequence of the circumstances of the Covid-19 pandemic.

170. The fact that the Club was suffering financially as a result of the pandemic and several times tried to reach an agreement with the Player regarding the payment of the outstanding amounts does not change this, taking into consideration the circumstances of this particular case. Whether or not the majority of players in the Club eventually accepted the unilateral variation of their salaries, as submitted by the Club, is not relevant in order to consider the "unlawfulness" of the Club's failure to fulfil its payment obligations towards the Player.

171. As such, and since it is undisputed that "*at least two monthly salaries*" were outstanding on the date the Default Letter was forwarded to the Club, the Panel finds that the prerequisites of the application of the said provision are fulfilled in order to consider that the Player had just cause to terminate the Employment Agreement on 15 July 2020 as the outstanding amount was not paid by the Club within the given deadline.

172. Finally, and with regard to the alleged "grace period" set out in Clause 7.2 of the Employment Agreement, the Panel notes that Article 18 (6) of the FIFA RSTP, states, *inter alia*, as follows: "*Contractual clauses granting the club additional time to pay to the professional amounts that has fallen due under the term of the contract (so-called "grace periods") shall not be recognized."*

173. Already as such, the Panel is comfortable in finding that the said provision in the Employment Agreement does not have as a valid legal consequence that the Player's termination of the said Employment Agreement made in accordance with Article 14bis of the FIFA RSTP is to be considered invalid or null and void.

174. Based on these facts, the Panel finds that the Club was in breach of its contractual obligations to the Player, that the Club had been duly warned about the possible consequences in accordance with Article 14bis of the FIFA RSTP and that the Player therefore had just cause to terminate the Employment Agreement on 15 July 2020.

B) What are the financial consequences of the Player's termination of the Employment Agreement?

175. Since the contractual relationship between the Club and the Player was terminated with just cause by the Player, the Panel has to address (i) the Player's claim for payment of the outstanding remuneration and (ii) the Player's claim for compensation for breach of contract.

176. With regard to the Player's claim for payment of the outstanding remuneration, and in view of the fact that it is undisputed that the Player fulfilled his obligations under the Employment Agreement until the termination date and in accordance with the general principle of *pacta sunt servanda*, the Panel finds that the Club should have fulfilled its contractual obligations to the Player until the date of termination of their contractual relationship on 15 July 2020.

177. As set out above, at the time of the Player's Default Letter, the Club was in default with its payments to the Player pursuant to the Employment Agreement for the months of February, March, April and May 2020. However, on 9 July 2020, the Club paid to the Player his remuneration for February 2020 together with his housing allowances for January and February 2020, leaving an outstanding amount of EUR 489,000, i.e. 3 x EUR 160,000 + 3 x EUR 3,000.

178. Moreover, on 30 July 2020, the Club paid to the Player the amount of EUR 9,000 for the Player's housing allowances for the months of March, April and May 2020, and the Club also paid to the Player the amount of 210,000 in alleged settlement of the Player's remuneration for the same months. The Panel notes that this payment was not taken into consideration by the FIFA DRC in the Appealed Decision and that the Player does not dispute having received this amount as a part of the then outstanding remuneration.

179. While the Player submits that the outstanding amount of contractual remuneration, based on these payments, now amount to EUR 270,000, the Club, for its part, submits, that it has fully fulfilled its payment obligations regarding remuneration towards the Player as the Club had imposed a unilateral reduction of the Player's remuneration for the 2019/2020 season of 15%, totaling EUR 270,000, which was applied to the Player's remuneration for the months of March, April and May 2020.

180. According to the Club, this unilateral variation was necessary due to the financial impact on the Club caused by the Covid-19 pandemic and was made in accordance with the applicable FIFA Guidelines, which variation the Player was informed of by letter of 10 July 2020. The Club had tried on several occasions to reach a mutual agreement with the Player in good faith, in which the Player was not interested. Moreover, the Club had conducted negotiations with its players, albeit all in vain, since the players did not use their best effort to reach an agreement. Based on that and taking into account the financial situation of the Club and the substantial amount of remuneration of the Player, the unilateral variation was justified and in accordance with the FIFA Guidelines and the FIFA FAQs.

181. The Panel initially notes that, pursuant to the FIFA Guidelines, when clubs and players cannot reach an agreement regarding a possible variation of contractual terms, a unilateral decision to vary terms and conditions of a contract will only be recognised by

FIFA where they are made in good faith and are reasonable and proportionate. When assessing whether such variation is to be considered reasonable, it will be taken into account, *inter alia*, i) whether the club attempted to reach a mutual agreement with its employees, ii) the economic situation of the club, iii) the proportionality of the contract amendment, iv) the net income of the employee after such contract amendment, and v) whether the variation applies to the entire squad or only specific employees.

182. However, the Panel further notes that it follows from the FIFA FAQs (p. 8) that the guiding principles set out by FIFA on how clubs and their players should amend their employment relationship (where appropriate) applies "*during any period when a competition is suspended*".

183. Furthermore, as set out in the FIFA FAQs (p.10), in disputes that arise before FIFA judicial bodies concerning unilateral terminations of employment relationship, the FIFA RSTP shall apply, and only if such terminations have occurred following a unilateral variation made as a result of the pandemic will the FIFA judicial bodies examine the validity of the unilateral variation vis-à-vis the relevant FIFA guiding principles, and after determining whether the unilateral variation was valid or invalid, assess the unilateral termination vis-á-vis the RSTP.

184. In this regard, the Panel initially notes, that in the present case, the intended unilateral variation was decided by the Club at the beginning of July 2020, at a time when the competition was no longer suspended. Furthermore, the reduction of 15% of the Player's remuneration was to be applied with retroactive effect on the Player's remuneration for the entire 2019/2020 season and not only on the remuneration for the months of March, April and May 2020, which covered the period of the suspension of the league.

185. Moreover, the Panel notes that even if the Player's termination of the Employment Agreement occurred after the Player having been informed about the unilateral variation, the Panel finds that the termination was not made "following" such variation in the "because of" or "as a consequence of" sense, but based on the fact that the Club had failed to pay the outstanding remuneration to the Player in a timely manner even after having received the Default Letter.

186. As such, and without even discussing whether the Club's intended variation of the Employment Agreement was "reasonable", the Panel finds that the Club was not entitled to unilaterally reduce the Player's remuneration as set out in its letter of 10 July 2020, which also means that the FIFA DRC was correct in not applying such variation to the outstanding amount of remuneration due to the Player.

187. However, and as set out above, as the Club's payment to the Player of EUR 219,000 made on 30 July 2020 should be taken into account, the Panel finds that the outstanding remuneration due to the Player amounts to EUR 270,000.

188. With regard to the interest rate, the Panel finds no reason to deviate from the interest rate awarded in the Appealed Decision and therefore confirms that the Player is entitled to receive interest on the outstanding remuneration. However, taking into consideration the Club's payment of 30 July 2020, the Panel finds that interest shall be paid as follows:

- 5% interest p.a. of EUR 163,000 as from 1 May 2020 until 30 July 2020,
- 5% interest p.a. of EUR 53,000 as from 1 June 2020 until 30 July 2020,
- 5% interest p.a. of EUR 110,000 as from 1 June 2020 until the date of effective payment,
- 5% interest p.a. of EUR 3,000 as from 1 July 2020 until 30 July 2020, and
- 5% interest p.a. of EUR 160,000 as from 1 July 2020 until the date of effective payment.

189. With regard to the Player's claim for compensation for breach of contract, and since the Club is held liable for the early termination of the Parties' contractual relationship due to its breach of contract, the Panel finds that the Player is entitled, subject to Article 17 (1) of the FIFA RSTP, to receive financial compensation for breach of contract in addition to the above-mentioned payments of outstanding remuneration.

190. Article 17 (1) of the Regulations states as follows:

"*In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period. Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:*

i. in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;

ii. in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract. […]

191. With reference to the foregoing, the Panel finds that it is undisputed that no agreement has been concluded between the Club and the Player on the amount of compensation payable in the event of breach of contract.

192. As such, and in consistency with the well-established CAS jurisprudence, the Panel notes that the injured party is entitled to full reparation of the damage suffered according to the principle of "*positive interest*", under which compensation for breach must be

aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry (CAS 2012/A/2698; CAS 2008/A/1447).

193. Moreover, the Panel observes that Article 337c (1) and (2) of the Swiss Code of Obligations ("CO") provides the following: "*(1) Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration. (2) Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work*."

194. In view of the above, the Panel is satisfied to note that the Player has the right to have his compensation determined under the provisions of Article 17 (1) of the Regulations in the light of the principle of "*positive interest*" as specified above and with due consideration of the duty to mitigate damages according to Swiss law, which is consistent with CAS jurisprudence (CAS 2005/A/909-910-911; CAS 2005/A/801; CAS 2004/A/587).

195. With regard to *the remuneration and other benefits due to the player under the existing contract*, the Panel initially notes that it is undisputed that the Player was entitled to receive the total amount of EUR 3,500,000 net as remuneration for the 2020/2021 and 2021/2022 seasons, which amount should serve as a basis for the calculation of the amount of compensation due to the Player for the Club's breach of contract.

196. In the Appealed Decision, the FIFA DRC further found that the Player was entitled to receive the amount of EUR 72,000 net as housing allowances for the two seasons (24 x EUR 3,000) in accordance with the Employment Agreement which states: "*The Club shall grant and pay the Player a maximum net amount of 3.000 EUR for rent per month during the term of the Agreement. The Player will be responsible with paying the bills and other maintenance costs of the house. If the rent of the house is less than the maximum amount stipulated under this article, the Club will not be required to pay the maximum amount but only the amount equivalent to the rent of the house."*

197. However, the Panel agrees with the Club that pursuant to the said provision, the Club is not contractually liable to pay more to the Player as housing allowances than the actual amount of rent incurred by the Player during the relevant period.

198. Based on that, and since the Panel finds that the Player did not provide sufficient documentation of his payment of any such housing costs during the remaining term of the Employment Agreement, the Panel finds that the Player is not entitled to receive compensation for any amount of rent after the termination.

199. The Panel further notes that on 1 September 2020, the Player signed a new employment contract with Real Betis valid until 30 June 2021 (the "First New Contract"), according to which the Player was entitled to receive 10 monthly payments of EUR 61,000 gross each, together with a signing fee in the amount of EUR 800,000 gross. Moreover, the Player would receive certain variable bonuses.

200. Moreover, in June 2021 the Player and Real Betis signed a contract extension for a further two years (the "Second New Contract"), according to which the Player was entitled for the 2021/2022 season to receive twelve monthly payments of EUR 98,100 gross together with some additional bonuses.

201. While the Club and the Player do not dispute that the remuneration paid to the Player pursuant to the First New Contract should be deducted from the residual value of the original contract, the two parties are in dispute whether the remuneration pursuant to the Second New Contract should also be taken into consideration and whether it is the gross or net amount received by the Player pursuant to the contract(s) which must be deducted, and the two parties are also in dispute whether the bonuses payable to the Player by the New Club should be included in the calculation.

202. In this regard, the Panel initially notes that the FIFA DRC, in the Appealed Decision, did not have the opportunity to take into consideration the remuneration payable pursuant to the Second New Contract, since this was only entered into after the notification of the Appealed Decision.

203. Nevertheless, and in accordance with the principles of positive interest and the obligation to mitigate damages, the Panel finds that the Second New Contract must also be taken into consideration when calculating the amount with which the Player mitigated the damages suffered by him.

204. The Panel further notes that the FIFA DRC, in the Appealed Decision, did not appear to decide on whether, as a matter of principle, it was the gross or net amount received by the Player from the New Club, that should be applied for deduction as the FIFA DRC simply stated that the Player had not produced any evidence regarding the tax impacts on his new contract(s). As such, the submission of the Player that it is the net amount received that should be applied for deduction is not to be considered a material counterclaim.

205. In this regard, and as the Player, pursuant to the Employment Agreement, was entitled to receive his remuneration net of any taxes, which is not disputed by the Club, and since, during these proceedings, the Player has documented the tax impact on his remuneration pursuant to the First New Contract and the Second New Contract, the Panel agrees with the Player that it is the "net" amounts paid/payable by the New Club pursuant to the two new contracts which much be applied as the basis for deduction in order to calculate the actual amount due to the Player as compensation for the Club's breach of contract.

206. With regard to the bonus payments pursuant to the Employment Agreement and to the First New Contract and the Second New Contract, the Player submits that any bonuses received from the New Club should not be included in the calculation of his remuneration, since, due to his termination of the Employment Agreement caused by the Club's breach of contract, he was in fact deprived of the opportunity to receive bonus payments from the Club, which would have been the case if the Employment Agreement had not been breached by the Club.

207. However, the Panel finds that such alleged loss of opportunity is not to be compensated for, and any bonuses received from the New Club should therefore be included in the calculation of his remuneration paid by the New Club.

208. Finally, the Panel notes that pursuant to the pay slips submitted by the Player during these proceedings, the Player apparently received certain season passes and tickets, the value of which was included in the pay slips. The Panel finds that such passes/tickets are a part of the remuneration of the Player and that the corresponding value, as set out in the relevant pay slips, must be included as a part of the Player's remuneration from the New Club.

209. With regard to the remuneration (net) for the 2020/2021 season received by the Player from the New Club and based on the post-hearing letters of 9 and 16 March 2023 from the Player and the Club, respectively, the two parties appear to be in agreement that such payments amount to EUR 770,933.07 net in total. Based on the evidence on file, the Panel finds no reason to deviate therefrom.

210. With regard to the remuneration (net) for the 2021/2022 season received by the Player from the New Club, and based on the above-mentioned considerations of the Panel and the evidence on file, the Panel agrees with the Club that such payments amount to EUR 1,214,528 net in total, taking into account that some payments made to the Player included in this amount seem to concern the previous season, which, however, is of no substantial relevance to the final calculation.

211. Based on the above, the Panel finds that the amount of EUR 1,985,461.07 (i.e. EUR 770,933 net + 1,214,528 net) must be taken into account when considering the mitigation of the Player's damages.

212. Finally, and with regard to the Additional Compensation awarded to the Player in the Appealed Decision, the Panel notes that Article 17 (1) (ii) of the FIFA RSTP provides as follows: "*Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries."*

213. As the Panel agrees with the FIFA DRC that the termination of the Employment Agreement was caused by "overdue payables" and based on the other circumstances of this particular case, the Panel also agrees that the Player is entitled to receive an Additional Compensation corresponding to three monthly salaries.

214. However, even if the Panel finds no reason to deviate from the Appealed Decision in its finding that the monthly salaries to be taken into consideration amount to EUR 175,000 each, as applicable to the upcoming season, the Panel does not find that the housing allowances of up to EUR 3,000 per month should be included in such additional compensation.

215. As such, the Additional Compensation shall be reduced to EUR 525,000.

216. Based on the above, the Panel finds that the Club must pay the amount of 2,048,538,93 (EUR 3,500,000 minus EUR 1,985,461.07 plus EUR 525,000) as compensation to the Player for breach of contract.

217. With regard to the interest rate, the Panel sees no reason to deviate from the Appealed Decision concerning the interest rate and therefore confirms that the Player is entitled to receive interest on the amount of compensation as set out in the Appealed Decision as from the date of the claim until the date of effective payment.

X. COSTS

218. Article R64.4 of the CAS Code provides as follows:

> "*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.*"

219. Article R64.5 of the CAS Code provides as follows:

> "*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such a contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.*"

220. Having taken into account the outcome of the present proceedings, in particular the fact that the appeal was partially upheld, the Panel finds that the costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne 70% by the Appellant and 30% by the Second Respondent.

221. Furthermore, as a general rule, the award must grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. Taking into account that FIFA was not represented by outside counsel and that the Third Respondent did not participate actively in these proceedings, the Panel rules that the Appellant must pay a contribution towards the Second Respondent's legal fees in the amount of CHF 6,000 (six thousand Swiss francs), while all other parties must bear their own legal fees and expenses.

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ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Besiktas Futbol Yatirimlari Sanayi Ve Ticaret A.S. on 23 December 2020 against the decision of the FIFA Dispute Resolution Chamber issued on 22 October 2020 is partially upheld.
2. The decision of the FIFA Dispute Resolution Chamber issued on 22 October 2020 is confirmed, with the exception of point 3 of its operative part (Section IV.), which is amended as follows:

   "*Besiktas Futbol Yatirimlari Sanayi Ve Ticaret A.S. is ordered to pay to Mr Victor Ruiz Torre the following amounts:*

   - 5% interest p.a. of EUR 163,000 as from 1 May 2020 until 30 July 2020;
   - 5% interest p.a. of EUR 53,000 as from 1 June 2020 until 30 July 2020;
   - EUR 110,000 as outstanding remuneration plus 5% interest p.a. as from 1 June 2020 until the date of effective payment;
   - 5% interest p.a. of EUR 3,000 as from 1 July 2020 until 30 July 2020;
   - EUR 160,000 as outstanding remuneration plus 5% interest p.a. as from 1 July 2020 until the date of effective payment;
   - EUR 2,048,538.93 as compensation for breach of contract plus 5% interest p.a. as from 22 July 2020 until the date of effective payment."

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne 70% by the Besiktas Futbol Yatirimlari Sanayi Ve Ticaret A.S. and 30% by Mr Victor Ruiz Torre.
4. Besiktas Futbol Yatirimlari Sanayi Ve Ticaret A.S. is ordered to pay the amount of CHF 6,000 (six thousand Swiss francs) to Mr Victor Ruiz Torre as a contribution towards his legal fees and expenses incurred in connection with these arbitration proceedings.
5. Besiktas Futbol Yatirimlari Sanayi Ve Ticaret A.S., the Fédération Internationale de Football Association and Real Betis Balompié shall bear their own legal fees and expenses incurred in connection with these arbitration proceedings.
6. All other motions or prayers for relief are dismissed.

Seat of Arbitration: Lausanne, Switzerland

Date: 20 December 2023

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
President of the Panel

Nicolas Cottier
Arbitrator

Jan Räker
Arbitrator